HUMAN RIGHTS IN ARMED CONFLICT FROM THE PERSPECTIVE OF THE CONTEMPORARY STATE PRACTICE IN THE UNITED NATIONS: FACTUAL ANSWERS TO CERTAIN HYPOTHETICAL CHALLENGES

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INTRODUCTION

International human rights law (HRL) and international humanitarian law (IHL) share the same fundamental principles, aiming to protect human beings. Although they both came to the forefront of discussions after the devastating consequences of World War II, HRL and IHL were initially dealt with as two completely distinct bodies of law, applying in different situations. Although the human rights treaties did not state this, the general understanding was to see HRL applying during peacetime and IHL during wartime. This approach, however, was gradually abandoned. Today, it is accepted that HRL continues to apply in situations of armed conflict together with IHL. This has been confirmed, by, among others, the jurisprudence of the International Court of Justice (ICJ), which stated that 'the protection of the International Covenant on Civil and Political Rights does not cease in times of war'.[1] The support for continued applicability of HRL during armed conflicts can be found in virtually every direction one turns to, including the academia.[2]

Despite the seemingly clear picture, the continued objections raised by two States (albeit key players on the international arena) that HRL ceases to apply in times of armed conflict pose a serious danger to the established system of human rights protection and weaken the protection of persons caught up in armed conflicts. Among others, the United States maintains that 'the conduct of a government in legitimate military operations, whether against Al Qaida operatives or any other legitimate military target, would be governed by the international law of armed conflict'[3] only. Claiming that HRL does not apply in times of armed conflict, the US has attempted to deprive human rights mechanisms of the

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[1] *The Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, [*hereinafter* Nuclear Weapons Advisory Opinion] 1996 *I.C.J. Reports* 226, para. 25.

[2] *Inter alia,* Louise Doswald-Beck & Sylvain Vité, *International Humanitarian Law and Human Rights Law,* 293 IRRC 94 (1993); Françoise Hampson & Ibrahim Salama, *The Relationship between Human Rights Law and International Humanitarian Law*, UN Sub-Commission on the Promotion and Protection of Human Rights, Working Paper, UN Doc. E/CN.4/Sub.2/2005/14 (June 21, 2005); Cordula Droege, *The Interplay between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict*, 40 (2) Isr. LR 310 (2007).

[3] Letter dated 14 April 2003 from the Chief of Section, Political and Specialized Agencies, of the Permanent Mission of the United States of America to the United Nations Office at Geneva addressed to the secretariat of the Commission on Human Rights (Response of the Government of the United States of America to the letter from the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions Asma Jahangir's letter to the Secretary of State dated November 15, 2002 and to the findings of the Special Rapporteur contained in her report to the Commission on Human Rights (E/CN.4/2003/3)), UN Doc. E/CN.4/2003/G/80, 2-3.

competence to address its actions from a human rights perspective thus attempting to leave its practice of targeted killings uncontested.[4]

The present Study aims to assess the practice of various political bodies, primarily within the ambit of the United Nations to establish a more comprehensive picture of the position shared by the majority of States. Generally, customary law is created through State practice and *opinio juris* and such elements are clearly found in the decisions of the political bodies established through international organisations. In this context, the present document pays particular regard to the position, as well as the votes and statements, of the opposing States and consequently aims at disproving the claims put forward against the application of HRL in times of armed conflict. For these purposes, the scope of the Study covers the relevant resolutions adopted between the years 2000 to 2010 and attempts to answer the following questions: Is the position voiced against the application of human rights law in armed conflict followed by the practice of the majority of States? Are the objecting States consistent in their own practice?

The Study provides a systematic analysis of the United Nations resolutions, concentrating on conflict situations addressed by relevant bodies and the trends identified within. It is accompanied by an *Addendum* containing the database of relevant resolutions grouped according to the respective bodies. 'Facts and Figures' at the end of this Study summarize the main points covered in the *Addendum*.

It should be noted that the authors took a restrictive approach to identifying the relevant resolutions. As a result, the Study does not refer to some of the resolutions with a remote connection to the issue under consideration. In other words, the number of relevant resolutions listed in the *Addendum* of the Study should not be considered exhaustive and there may be some additional documents adopted by pertinent bodies that could also be considered as confirming the applicability of human rights in times of armed conflict.

I. APPLICABILITY OF HUMAN RIGHTS LAW IN TIMES OF ARMED CONFLICT

A. Human Rights Law continues to apply in Armed Conflict

There seems to be a consensus today affirming the applicability of HRL in times of armed

[4] For details, see Philip Alston, Jason Morgan-Foster and William Abresch, 'The Competence of the UN Human Rights Council and its Special Procedures in relation to Armed Conflicts: Extrajudicial Executions in the "War on Terror"', 19(1) EJIL 183 (2008).

conflict, at least within judicial fora and academia, including the ICJ[5], various regional courts and quasi-judicial bodies[6] as well as academic commentators.[7] The opposite position finds very limited support.[8]

There are a number of country-specific resolutions adopted by the Security Council (SC), General Assembly (GA), Human Rights Council (HRC) and the Commission on Human Rights (CHR) that, taken separately as well as in their entirety, point to the general understanding that HRL applies in times of armed conflict.[9] In fact, sometimes even the titles of particular resolutions adopted in the context of an armed conflict clearly point to such an understanding. For instance, among others, the title of the resolution A/HRC/RES/12/5 of the HRC, being 'Protection of the human rights of civilians in armed conflict', speaks for itself.[10]

Furthermore, the SC, GA, HRC and CHR have all adopted different resolutions that unequivocally condemn the violation of both IHL and HRL in certain armed conflicts.[11] For

[5] Nuclear Weapons Advisory Opinion, *supra* note 1, para. 25; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* [*hereinafter* the Wall Advisory Opinion], Advisory Opinion, 2004 *I.C.J. Reports*, para. 106; Case Concerning *Armed Activities on the Territory of the Congo* (DRC v. Uganda), ICJ, Judgement of 19 December 2005, para. 216.

[6] Both the European Court of Human Rights (EC_tHR) and the supervisory organs of the American Convention on Human Rights have examined possible violations of the human rights during armed conflicts. EC_tHR relating to the conflict in Chechnya (*Isayeva, Yusupova and Bazayeva v. Russia*, (Applications nos. 57947/00, 57948/00 and 57949/00), Judgement of 6 July 2005) and in Northern Cyprus (*Loizidou v. Turkey*, (Application no. 15318/89), Judgment of 18 December 1996). The AC_tHR has also applied international human rights law in a conflict situation, in Guatemala (Case *Bámaca Velásquez vs. Guatemala*, Judgment of 25 November 2000). The Human Rights Committee and the Committee on Economical, Social and Cultural Rights have recognized the applicability of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights during armed conflicts. In addition, national courts took into consideration HRL while examined for the British occupation in Iraq (Al-Skeini and others v. Secretary of State for Defence, [2007] UKHL 26, 13.6.07 and *R. (on application of Al-Jedda) v. Secretary of State of Defense*, [2007] UKHL 58, 12.12.07), and the Israeli High Court of Justice reviewed the legality of a military order dealing with detention of Palestinians in the Occupied Territories in light of the ICCPR (HCJ 3239/02 *Marab v. The Commander of IDF Forces in the Judea and Samaria Area*, 57(2) P.D. 349).

[7] DOSWALD-BECK, Louise & VITÉ, Sylvain, "International Humanitarian Law and Human Rights Law", 293 IRRC 94 (1993).

[8] DENNIS, Michael, "Application of human rights treaties extraterritorially in times of armed conflict and military occupation", 99 AJIL 119 (2005).

[9] For details see the Facts and Figures and the *Addendum*.

[10] Similarly, Question of the violation of human rights in: The occupied Arab territories, including Palestine, A/CHR/RES/60/10 (2004); Situation of human rights in Iraq, GA, A/RES/57/232 (2002); Situation of Human Rights in Sudan, GA, A/RES/57/230 (2002).

[11] *Inter alia,* Situation of human rights in the Democratic Republic of the Congo, GA, A/RES/57/233 (2002), Operational Paragraph 2 (a) (hereinafter Opp); *Similarly*, Situation of human rights in Iraq, GA, A/RES/57/232 (2002), Opp 4 (a); Situation of Human Rights in Sudan, GA, A/RES/57/230 (2002), Opp 3

instance, the SC in one of the earlier resolutions relating to the situation in the Democratic Republic of Congo (DRC) in 2001, expressed 'its grave concern at the repeated *human rights violations* throughout the Democratic Republic of the Congo *in particular in the territories under the control of the rebel groups*'.[12]

Similarly, the GA stated in its resolution relating to the Israel-Lebanon conflict in 2006 that 'attacks against civilians, wherever they may occur, are contrary to international humanitarian law and constitute flagrant violations of human rights' and, further, called 'particularly upon Israel to abide scrupulously by its obligations under human rights law'.[13] The statement that the GA is '[g]ravely concerned in particular by reports regarding serious human rights violations and grave breaches of international humanitarian law committed during the military operations in the Gaza Strip between December 2008 and January 2009'[14] clearly points to the firm confirmation that HRL is applicable in times of armed conflict.

Furthermore, a number of resolutions call for compliance with both bodies of law.[15] The GA, for instance, has stated that 'human rights instruments *must* be respected in the Occupied Palestinian Territories (OPT), including East Jerusalem, as well as in the occupied Syrian Golan'.[16] There are also instances where the bodies acknowledge the improvement of the situation of human rights and underline the need for further improvement. It should be

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(b); The situation in Somalia, SC, S/RES/1910 (2010); The situation in Georgia, SC, S/RES/1287 (2000), Opp 7; The situation concerning Democratic Republic of the Congo, SC, S/RES/1952 (2010), Preambular Paragraph 16 (hereinafter Prp); Follow-up to the report of the Committee of independent experts in international humanitarian and human rights law established pursuant to Council resolution 13/9, HRC, A/HRC/RES/15/6, Prp 6; Human rights situation in southern Lebanon and west Bakaa, CHR, A/CHR/RES/56/16, Prp 1 and others.

[12] The situation concerning the Democratic Republic of the Congo, SC, S/RES/1376 (2001), Opp 5 (emphasis added).

[13] The human rights situation arising from the recent Israeli military operations in Lebanon, GA, A/RES/61/154 (2006), Opp 4.

[14] Work of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, GA, A/RES/64/91 (2009), Prp 7; See also, *inter alia,* Situation of human rights in the Democratic Republic of the Congo, GA, A/RES/57/233 (2002), Opp 2 (a); Situation of human rights in Iraq, GA, A/RES/57/232 (2002), Opp 4 (a); Situation of Human Rights in Sudan, GA, A/RES/57/230 (2002), Opp 3 (b) and others.

[15] *Inter alia,* The situation in Afghanistan, SC, S/RES/1890 (2009), Opp 15; The situation concerning the Democratic Republic of the Congo, SC, S/RES/1355 (2001), Opp 15; Situation of human rights in Iraq, GA, A/RES/57/232 (2002), Opp 5 (a); Situation of Human Rights in Sudan, GA, A/RES/57/230 (2002), Opp 4 (a); Technical cooperation and advisory services in the Democratic Republic of the Congo, CHR, A/CHR/RES/61/85, Opp 4 (a); Situation of human rights in the Sudan, CHR, A/CHR/RES/56/27, Opp 2 (a); Assistance to Somalia in the field of human rights, HRC, A/HRC/RES/7/35, Opp 2 and others.

[16] GA, A/RES/64/185 (2009), Prp 7 (emphasis added).

noted that on some occasions the nature of the situation is not clear. The SC, for example, mentions a post-conflict situation in Cote d'Ivoire but it makes reference to previous thematic resolutions that address armed conflict situations.[17] The HRC has repeatedly stressed that any kind of military operation should comply with both HRL and IHL. This clearly demonstrates that, at any point during the military operations, the parties to the conflict need to comply with the rules of both bodies of law.[18]

There are also thematic and general resolutions adopted by each of the relevant bodies that affirm in general terms that HRL and IHL are equally applicable in armed conflicts. For instance, in the resolutions concerning the issue of 'Women and Peace and Security', the SC repeatedly confirms that both HRL conventions and IHL rules apply.[19] The SC voiced a clear position on the matter in thematic resolution 1738 on 'Civilians and armed conflict' when it explicitly referred to 'the commission of systematic, flagrant and widespread violations of international humanitarian and human rights law in situations of armed conflict'.[20] Similarly, some of the thematic resolutions adopted by the GA, such as the resolution relating to the extrajudicial, summary or arbitrary executions for instance, clearly point out that 'international human rights law and international humanitarian law are complementary and mutually reinforcing'.[21]

Lastly, certain resolutions contain general statements that armed conflicts result in violations of both HRL and IHL. Among others, the GA has noted that 'armed conflicts are continuing in various parts of the world, often resulting in serious violations of international humanitarian law *and* human rights law'[22] or that 'occupation itself represents a gross and grave violation of human rights'.[23] The same approach is seen in the practice of the SC[24], the

[17] The situation in Cote d'Ivoire, SC, S/RES/1880 (2009), Prp 10; The situation in Cote d'Ivoire, SC, S/RES/1865 (2009), Prp 10.

[18] *Inter alia* Human rights violations emanating from the Israeli military attacks and operations in the Occupied Palestinian Territory, HRC, A/HRC/RES/10/19 (2009), Prp 7.

[19] S/RES/1888 and 1889 (2009), Prp 5-6; *See also* The situation in Afghanistan, SC, S/RES/1833 (2008), Prp 13.

[20] S/RES/1738 (2006), Opp 9. The SC stresses twice the importance of HRL and in Opp 26, it condemns the targeting of civilian population and other protected persons and the systematic violations of IHL and HRL in situations of armed conflict.

[21] Extrajudicial, summary or arbitrary executions, GA, A/RES/63/182 (2008), Prp 6; Similarly, Rights of the Child, GA, A/RES/63/241 (2008), Opp 55 (g): 'protect children affected by armed conflict, in particular from violations of international humanitarian law and human rights law'. Similar resolutions can be found in HRC and CHR.

[22] The Missing, GA, A/RES/63/183 (2008), Prp 5.

[23] *Inter alia,* Work of the Special Committee to Investigate Israeli Practices Affecting the Human Rights

CHR and the HRC.[25]

In this regard, it is noteworthy that a consensus on the applicability of HRL in times of armed conflict is also reflected in the approach of various regional political bodies. For instance, the Council of Europe Parliamentary Assembly (PACE) has adopted resolutions regarding, *inter alia,* an Israeli military attack on a humanitarian flotilla to Gaza on 31 May 2010 as well as the August 2008 armed conflict between Georgia and the Russian Federation. In particular, the PACE deems the Israeli raid upon the humanitarian flotilla to be a violation of 'international human rights and humanitarian law'.[26] Similarly, PACE expressed concern about 'the human rights and humanitarian law violations committed by both sides in the context of the war'[27] while addressing the international armed conflict taking place between Georgia and the Russian Federation in 2008.

Consequently, the recent practice of States makes their understanding as to the applicability of HRL in times of armed conflict clear: human rights law continues to apply along with the relevant international humanitarian law.

a. Certain Identifiable Trends

It should be noted that the practice of the relevant UN bodies reveals certain interesting trends on the issue. The common thread that can be identified from among the extensive resolutions adopted by the SC, GA, HRC and CHR is that all of these bodies, being political, employ carefully crafted language, albeit to varying degrees, and avoid pronouncing on issues explicitly. While these bodies were much more selective in the phraseology employed in earlier resolutions (mostly between 2000 and 2004), the subsequent practice has been to articulate more clearly and straightforwardly.

For instance, while explicit reference to HRL by the SC in relation to States facing conflict situations is quite common in resolutions of 2010, these were only made

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of the Palestinian People and Other Arabs of the Occupied Territories, GA, A/RES/58/96 (2003), Prp 5.

[24] The situation in Chad, SC, S/RES/1923 (2010).

[25] *Inter alia* Missing persons, CHR, A/CHR/RES/60/50, Prp 4; Situation of human rights in the Sudan, CHR, A/CHR/56/26, Opp 2 (a); Missing Persons, HRC, A/HRC/RES/7/28, Prp 5&8; The grave human rights violations by Israel in the Occupied Palestinian Territory, including East Jerusalem, HRC, A/HRC/RES/13/8 (2010); Question of the violation of human rights in the occupied Arab territories, including Palestine, CHR, A/RES/56/6 (2000).

[26] Flare-up of tension in the Middle East, PACE Resolution 1748 (2010), para. 4.

[27] The consequences of the war between Georgia and Russia, PACE Resolution 1633 (2008), para. 11.

infrequently a few years ago. Similarly, a difference in the wording of the SC Resolutions can be identified between the years of 2008 and 2009. Specifically, while explicit reference to the application of HRL are found in the resolutions of 2009, in 2008 the SC limited itself mainly to condemning violations of both branches of law without clarifying if both applied in the same situation or if the situation was unclear.

In 2007, the SC confined itself to general statements, which nevertheless seem to imply an acceptance of the simultaneous application of both branches of law. Reference to HRL during the previous years was comparatively infrequent and often only implicit. Nevertheless, there are certain early resolutions of the SC employing quite explicit language, such as the thematic resolution 1738 (2006) on 'Civilians and armed conflict' and resolution 1376 (2001) concerning the DRC, both referred to above. Finally, compared to the vague references to 'human rights' in the beginning of the decade, the SC has recently started to refer more often to 'human rights law' instead. In other words, it made its understanding of the legal framework in armed conflicts comprising this field of law more explicit.

Similarly, although the GA has been more explicit than the SC from the beginning of the decade, the change in language and tone may nevertheless be identified as the years pass by. Specifically, the wording of the GA resolutions became especially straightforward following the findings of the ICJ in the *Wall Advisory Opinion*. For instance, the resolution entitled 'Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem', adopted in each of the 10 years covered by the present Study, contained the following statement in 2000: the GA 'Demands that Israel, the occupying Power, *cease all practices and actions that violate the human rights of the Palestinian people'*.[28] The statement gradually changed its tone and was given the following formulation by 2009: the GA 'Demands that Israel, the occupying Power, cease all practices and actions that violate the human rights of the Palestinian people, including the killing and injury of civilians, *and that it respect human rights law and comply with its legal obligations in this regard*.'[29]

The practice of the HRC and the CHR does not require a long analysis. Their language has been explicit throughout the ten years under consideration in the present study. As the years passed, they became more elaborate in their analysis and approach to the subject. This will be considered in more depth below.

[28] Opp 3 (emphasis added).

[29] GA, A/RES/64/94 (2009), Opp 2 (emphasis added). *See also* A/RES/63/98 (2008), Opp 2 and GA, A/RES/62/109 (2007), Opp 7.

To conclude, all bodies relevant to the present study share a common understanding that HRL not only continues to apply in armed conflict *de jure* but also as a matter of state practice. This trend will become particularly evident in the second part of the present document addressing particular human rights norms applicable in armed conflict.

b. Position of States

The resolutions analyzed as part of the present Study not only reveal that there is a general consensus on the issue of the applicability of HRL in armed conflict but also demonstrate certain interesting facts concerning the position of States that have challenged the applicability of HRL in times of armed conflict on various occasions. The majority of States have voted in favor of every resolution affirming the applicability of HRL during armed conflict. In the rare instances where a State has voted against or abstained from voting, their explanatory statements are particularly interesting. They have never objected to the application of HRL during armed conflicts and have even confirmed its applicability.

Particular regard should be had for the practice of the United States (US) and Israel. More specifically, while the US has determinedly claimed in the context of its 'war on terror' that armed conflicts are ultimately governed by IHL and that HRL obligations of States are not relevant,[30] its actual practice is somewhat at odds with such a claim. Particularly in the context of the SC, the US has almost never voted against or abstained from voting for the respective resolutions.[31]

The same is true of the position of Israel, which, while denying the applicability of HRL to the Occupied Palestinian Territories, has voted in favor of resolutions condemning human rights violations in armed conflict situations, thus affirming that HRL does apply in armed conflict. Interestingly, the United States and Israel voted in favor of the resolution on the situation of human rights in Iraq in 2000-2003. The resolution explicitly condemned 'the systematic, widespread and extremely *grave violations of human rights and of international humanitarian law* by the Government of Iraq'[32] and called upon the Government of Iraq 'to *abide by its freely undertaken obligations under international human rights instruments and*

[30] For details, see P. Alston, J. Morgan-Foster and W. Abresch, *op. cit.,* 183-209.

[31] For details, see the *Addendum*.

[32] Situation of human rights in Iraq, GA, A/RES/57/232 (2002), Opp 4 (a); Situation of human rights in Iraq, GA, A/RES/56/174 (2001), Opp 3 (a); Situation of human rights in Iraq, GA, A/RES/55/115 (2000), Opp 3 (a) (emphasis added).

international humanitarian law'.[33] The US voted in favor of similar resolutions regarding Iraq in the SC.[34]

The US and Israel cast positive votes in the process of adopting resolutions in the context of conflicts in the DRC and Sudan. The DRC resolutions adopted by the GA unequivocally condemn the 'ongoing violations of human rights and international humanitarian law'.[35] Equally, in the SC, the US voted in favor of resolutions concerning the situation in the DRC[36] all of which condemned the persistence of HRL and IHL violations.

Resolutions condemning violations of human rights in Sudan have appeared repeatedly before every UN body and the US has always voted in their favor. Resolutions relating to the human rights situation in Sudan express a deep concern for the 'impact of the ongoing armed conflict on the situation of human rights and at the continuing serious violations of human rights, fundamental freedoms and international humanitarian law by all parties to the conflict[37] and urging 'all parties to the conflict' to 'respect and protect human rights and fundamental freedoms'.[38]

Importantly, the resolutions relating to the situation in Afghanistan, condemning the violation of both HRL and IHL and calling on parties to abide by both bodies of law, have all been adopted without a vote by the GA and the CHR. The US has always voted in favor of the resolutions adopted by the SC.[39]

Lastly, particular mention should be made of the resolutions relating to the

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[33] Situation of human rights in Iraq, GA, A/RES/57/232 (2002), Opp 5 (a); Situation of human rights in Iraq, GA, A/RES/56/174 (2001), Opp 4 (a); Situation of human rights in Iraq, GA, A/RES/55/115 (2000), Opp 4 (a) (emphasis added).

[34] The situation concerning Iraq, SC, S/RES/1790 (2007), Prp 19.

[35] *Inter alia,* Situation of human rights in the Democratic Republic of the Congo, GA, A/RES/60/170 (2005), Opp 4 (a); Situation of human rights in the Democratic Republic of the Congo, GA, A/RES/59/251 (2004), Opp 4. For details, see the *Addendum*.

[36] *Inter alia,* The situation concerning the Democratic Republic of the Congo, SC, S/RES/1906 (2009); The situation concerning the Democratic Republic of the Congo, SC, S/RES/1711 (2006), Prp 11. The CHR adopted similar resolutions condemning the violations of both IHL and IHRL, which were adopted without vote. For details, see the *Addendum*.

[37] *Inter alia,* Situation of human rights in Sudan, GA, A/RES/57/230 (2002), Opp 2 (a). For more details, see the *Addendum*.

[38] *Inter alia,* Situation of human rights in Sudan, GA, A/RES/57/230 (2002), Opp 3 (b). Reports of the Secretary-General on the Sudan, SC, S/RES/1574 (2004). In the HRC and CHR, the resolutions for these countries were always adopted without vote. For more details, see the *Addendum*.

[39] Even in cases where other countries abstained. *Inter alia,* The situation in Afghanistan, SC, S/RES/1333 (2000). For more details, see the *Addendum*.

Occupied Palestinian Territories. The applicability of HRL in such a situation has never been contested during the GA, HRC or CHR sessions.[40] The member-States voting against such resolutions do not justify their decision on the basis of the non-applicability of HRL. Generally, they confirm the application of HRL. The lack of equality of responsibility of both parties is what concerns them.[41] Similarly, the US has never contested the substance of pertinent resolutions based on the non-application of HRL. On the contrary, the US has made statements where HRL applicability is implicitly or explicitly confirmed.[42] In the HRC and CHR, the US – when it was a member – voted only against the resolutions concerning Israel and its arguments were not related to the applicability, or otherwise, of HRL.[43] On the contrary, the US has even occasionally affirmed the applicability of human rights. It has stated that the 'human rights situation in those areas had deteriorated largely because of the conflict'. According to the US representative, the resolution had a completely one-sided perspective.[44]

The practice clearly demonstrates that not only do the majority of States agree that HRL applies in armed conflict situations but also that the two principal States in opposition do not always support their own "traditional" position. Rather, the US and Israel seem to have a political agenda behind their statements that oppose the applicability of HRL to particular situations. The practice thus shows that the objecting States contradict their own

[40] On the contrary it is constantly reaffirmed. Inter alia A/HRC/RES/13/5 (2010), Human rights in the occupied Syrian Golan, Prp 1 & Opp 3.

[41] Canada, for example, repeatedly expressed its serious concerns that the resolution does not provide a balanced assessment of the human rights situation in the region and does not contribute to a peaceful and fair solution to the conflict. Human rights in the occupied Syrian Golan, HRC, A/HRC/RES/7/30 (2008). Other statements can be found in the *Addendum*.

[42] In three occasions did US, before the SC, abstain from voting procedure and they were both related to the Israeli occupation. These particular resolutions did not make any reference to IHRL. The situation in the Middle East, including the Palestinian question, SC, S/RES/1544 (2004); S/RES/1435 (2002); S/RES/1322 (2000). The statements of Israel in these occasions fail to reaffirm the opposition of Israel to the application of human rights. They confine themselves to accusations towards the opposite side for the situation and the problems occurring. [Human rights situation in the Occupied Palestinian Territory, A/HRC/RES/3/1 (2006)]. Israel argued that such resolutions addressed political and non-human rights issues. Israeli settlements in the occupied Arab territories, A/CHR/RES/60/9 (2004) or Israel stresses that all the inhabitants of Syrian Golan territories enjoy the same civil, political, economic, social and cultural rights, as guaranteed by law, Human rights in the occupied Syrian Golan, A/HRC/RES/7/30 (2008).

[43] Follow-up to the report of the Committee of independent experts in international humanitarian and human rights law established pursuant to Council resolution 13/9, HRC, A/HRC/RES/15/6 (2010).

[44] Question of the violation of human rights in the occupied Arab territories, including Palestine, A/CHR/RES/60/10 (2004).

statements or, at least, are inconsistent in following them. Consequently, the positive votes cast by the objecting States in relation to resolutions affirming application of HRL in armed conflict, suggest that the challenges put forward by them are fallacious and unsupported in law and State practice, including their own.

B. Human Rights Law and International Humanitarian Law are complementary

While the practice of States explicitly affirms the application of human rights in times of armed conflict, the particular relationship between HRL and IHL remains unclear. The ICJ concluded that there are three different facets of their interrelation: some rights may be exclusively a matter of IHL, some exclusively of HRL, whereas others may be regulated by both branches of law.[45] It did not, however, specify which rules belong to each of the respective categories or how they interact when simultaneously applied. Different theories have been proposed in order to clarify the matter but there is no consensus in this regard.

Here, the practice of States through relevant bodies does not provide explicit clarification as to the particular nature of the relationship between the two bodies of law. They nevertheless seem to adopt the complementarity theory, which, in general terms, supports the conclusion that IHL and HRL are two distinct bodies of law that complement one another.[46] Where the bodies of law overlap, there is no clear consensus as to which prevails.[47] The relevant bodies do not deal with the question of giving precedence to either body of law when they regulate the same matter in different ways and limit themselves to an affirmation that HRL and IHL are complementary, not mutually exclusive.[48]

The phrase: "[e]mphasizing that international human rights law and international humanitarian law are complementary and mutually reinforcing" appears in the GA, HRC and

[45] *Wall Advisory Opinion*, *op. cit.*, para. 106.

[46] Noam Lubell, *Parallel Application of International Humanitarian Law and International Human Rights Law: an Examination of the Debate*, 40 (2) Isr. LR 650 (2007); Robert Kolb & Sylvain Vite, *Le droit de l'occupation militaire, Perspectives historiques et enjeux juridiques actuels,* Bruylant, Bruxelles, 2009.

[47] According to one part of this theory, for example, there should not be a question of which of the two bodies of law prevails, but which gives the best protection to achieve the common purpose. The Human Rights Committee seems to adopt this theory. Genera Comment 31, *Nature of the General Legal Obligation on States Parties to the Covenant*, UN Doc.CCPR/C/21/Rev.1/Add.13 (2004), para. 11.

[48] *Inter alia,* Extrajudicial, summary or arbitrary executions, GA, A/RES/61/173 (2006), Prp 6.

CHR resolutions more and more often as the years pass.[49] The SC is not so explicit. Nevertheless, the continuous reference to issues that are covered by either or both of the two bodies of law can only be taken as a clear manifestation of this position. The resolutions adopted on the issue of missing persons constitute a good example of how the two bodies complement one another.[50] These resolutions affirm the right of the family to be informed of the whereabouts of their family member. The duty to search for the missing as soon as possible and the duty to identify the bodies seem to have been influenced by IHL regulation of the matter. On the other hand, the obligation to prevent people from going missing, the collection of data and the special attention to children are more HRL-oriented provisions. Any further analysis as to the different theories would go beyond the scope of the present document.

C. Extraterritorial application of Human Rights Law

The practice of various bodies regarding the extraterritorial application of human rights is less clear. Nevertheless, there are several meaningful resolutions supporting the position that the HRL obligations of a State not only continue to apply in case of an armed conflict within its territory, but extend beyond its borders.[51] In other words, regardless of whether a party to the conflict is acting within or beyond its State borders, the human rights obligations remain in force and have to be observed wherever the State exercises its activities.[52]

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[49] First time it appears in CHR Resolutions on Protection of the human rights of civilians in armed conflicts, A/CHR/RES/61/63 (2005), Prp 6 and Extrajudicial, summary or arbitrary executions, A/CHR/RES/61/34 (2005), Prp 8. It appears in GA resolution on Extrajudicial, summary or arbitrary executions, A/RES/61/173 (2006), Prp 6; The human rights situation arising from the recent Israeli military operations in Lebanon, A/RES/61/154 (2006), Prp 6; The resolution on Extrajudicial, summary or arbitrary executions [A/RES/63/182 (2008), Prp 6] was adopted with 127 States in favor and 58 abstaining, there are no negative votes to it challenging such an explicit declaration. Since then the HRC picked the phrase and reproduced it in many occasions. *Inter alia* Resolution A/HRC/RES/13/8 (2010); The grave human rights violations by Israel in the Occupied Palestinian Territory, including East Jerusalem and others.

[50] Missing Persons, HRC, A/HRC/RES/7/28 (2008), Opp 2-6; The Missing, GA, A/RES/63/183 (2008).

[51] One of the few resolutions that could lead to the opposite conclusion with regard to the acceptance of extraterritorial application of human rights is a resolution of CHR on Situation of human rights in Iraq. The CHR is this case separates between the obligations with regard to HRL for Iraqi authorities and reminds that all parties to the conflict are parties to the Geneva Conventions. Situation of human rights in Iraq, CHR, A/CHR/RES/59/84, Prp 2-4.

[52] Such a position is also shared by the Parliamentary Assembly of the Council of Europe. More specifically, the Assembly referring to actions of the Russian Federation on the Georgian territory during the August 2008 international armed conflict between Georgia and the Russian Federation noted that "Russia bears full responsibility for violations of human rights and humanitarian law in the

The numerous resolutions adopted in relation to the Occupied Palestinian Territories and the obligations of Israel therein[53] are a straightforward example of the confirmation of the extraterritorial application of HRL. Furthermore, the political bodies refer not only to occupation issues but also to military operations. The GA, in its resolution of 2006 concerning the Israel-Lebanon armed conflict, makes it clear that 'attacks against civilians, *wherever they may occur*, are contrary to international humanitarian law and constitute flagrant violations of human rights' and further calls upon Israel 'to abide scrupulously by its obligations under human rights law'.[54] In a landmark resolution, the SC adopted an even more extensive approach. The SC, in Resolution 1906 (2009) concerning the situation in the DRC, calls on '*States to ensure that any military actions against armed groups are made in accordance with international humanitarian law and human rights law rules.*'[55] This resolution is unique, as it explicitly establishes the extraterritorial applicability of HRL in military operations and not in situations of occupation, where the control of the occupying power over the territory is established.[56]

II. HUMAN RIGHTS AND TYPES OF ARMED CONFLICT

The SC, GA, CHR and HRC have on various occasions addressed conflict situations (in, for

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areas under its de facto control." The consequences of the war between Georgia and Russia, PACE Resolution 1633 (2008), para. 12.

[53] *Inter alia*, GA Resolutions A/RES/64/94 (2009); A/RES/63/98 (2008); A/RES/62/109 (2007); A/RES/61/119 (2006); HRC Resolutions A/HRC/RES/13/8 (2010); A/HRC/RES/13/7 (2010); A/HRC/RES/7/18 (2008); CHR Resolutions A/CHR/RES/61/7 (2005); A/CHR/RES/59/6 (2003).

[54] The human rights situation arising from the recent Israeli military operations in Lebanon, GA, A/RES/61/154 (2006), Opp 4 (emphasis added). Also, the SC in the Resolution concerning The situation between Eritrea and Ethiopia calls the parties to comply with their obligations under IHL, HRL and RL. The SC does not clarify where these obligations apply. It could be interpreted both ways. S/RES/1344 (2001).

[55] The situation concerning the Democratic Republic of the Congo, SC, S/RES/1906 (2009), Opp 17 (emphasis added).

[56] The SC does not refer explicitly to particular operations but several operations have taken place in the Eastern part of DRC during the previous years by invasions of Uganda, Rwanda and Burundi. But even in 2009 Rwanda organised joint operations with the DRC government in Eastern Congo. See UN fears Congo-Rwanda operation may spark abuses, 27 January 2009, http://www.reuters.com/article/idUSLR362463; Rwanda-DRC ready for more joint operations – Kagame, 27 July 2009, http://www.reuters.com/article/idUSLR313937. CH .2400.

example, Afghanistan, the DRC, Iraq, Myanmar, Palestine, Sudan) in terms of human rights obligations. The position regarding the applicability of HRL is sometimes clear even from the title of United Nations resolutions that address 'the situation of human rights' in contexts of armed conflict.

Nevertheless, it is interesting to examine whether the content of the human rights framework varies according to the type of conflict addressed. The present Study splits the types of conflicts addressed by relevant resolutions into 4 types: international armed conflicts, occupation, non-international armed conflicts and protracted armed conflicts limited to particular regions of a country. Under IHL conflicts are classified as either IAC (including occupation) or NIAC (including protracted internal conflicts limited to particular geographic areas) and the four categories considered herein create an artificial distinction for the purposes of this study only.

It should be noted that in the majority of situations, the bodies under consideration avoid explicit qualification of the situation. The SC, for example, generally avoids qualifying the situation. Classification of the conflict is implicit. This could erroneously be considered a sign that HRL does not apply in every situation and, at times, the very existence of armed conflict being disputed, the SC chooses to refer to both bodies of law. This interpretation is not correct. In fact, regard should be had for the political sensitivity of particular situations and the modalities that the various organs employ to achieve consensus for the text of a particular resolution. Thus resolutions that do not contain explicit classification of the conflict are nevertheless relevant to the present Study since the adopting States are aware of the existence of armed conflict.

A. International Armed Conflicts

Resolutions applicable to international armed conflicts, such as that between Ethiopia and Eritrea[57] or between Israel and Lebanon, contain explicit reference to the applicability of HRL.[58] These conflicts, regardless of the qualification given by the relevant bodies, do constitute the clearest examples of international armed conflict occurring within the last decade. References to international human rights documents clearly demonstrate the understanding that the norms affirmed therein do apply to this type of conflict.

[57] The situation between Eritrea and Ethiopia, SC, S/RES/1344 (2001).

[58] The human rights situation arising from the recent Israeli military operations in Lebanon, GA, A/RES/61/154 (2006).

References to Afghanistan and Iraq cannot be ignored. Notably, the UN bodies seem to intentionally avoid clarifying which conflict they are referring to because of the political implications in these particular situations. Although resolutions on the situation in Afghanistan can be found in almost every year of the SC and GA sessions,[59] reference to non-territorial forces, other than the Northern Alliance and Taliban, is missing or rare. Also worth mentioning is a short phrase found in a resolution concerning DRC. In resolution 1906, the SC demands that all military operations organised by other States should comply with both IHL and HRL provisions.[60] This resolution has no precedent.[61]

B. Occupation

The most important situation in this respect is the situation of the Occupied Palestinian Territories, including East Jerusalem. The issue has repeatedly resurfaced before the GA, HRC and CHR.

The GA alone adopted around 46 relevant resolutions between 2000 and 2009 that affirm that HRL applies to the Occupied Palestinian Territories. A number of similar resolutions have been adopted during recent years by each of the UN bodies.[62] Many of the resolutions do not limit themselves to a mere statement that human rights law applies, but actually refer to the particular human rights treaties as applicable within the OPT. These resolutions provide for a set of human rights norms and explicit affirmation that Israel has to afford the population of the OPT their rights under these instruments. To name but a few, the Resolution entitled 'Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem' and adopted annually, with slight modifications, is the clearest example of the approach taken by the GA.[63] Similar

[59] See the *Addendum*.

[60] The situation concerning the Democratic Republic of the Congo, S/RES/1906 (2009), Opp 17 & 22.

[61] Only another resolution of HRC can be compared to it but it referred to an occupying situation. 'Recognizing that the *Israeli military attacks and operations* in the Occupied Palestinian Territory *have caused severe violations of international humanitarian law and of the human rights* of the Palestinian people,...' Human rights violations emanating from Israeli military attacks and incursions in the Occupied Palestinian territory, particularly the recent ones in the occupied Gaza Strip, A/HRC/RES/7/1 (2008), Prp 5 (emphasis added).

[62] For details, see Facts and Figures.

[63] See GA Resolutions A/RES/64/94 (2009); A/RES/63/98 (2008); A/RES/62/109 (2007); A/RES/61/119 (2006); A/RES/60/107 (2005); A/RES/59/124 (2004); A/RES/58/99 (2003); A/RES/57/127 (2002); A/RES/56/62 (2001); A/RES/55/133 (2000).

resolutions have been adopted annually by the HRC and the CHR.[64]

Relevant resolutions provide for the application of an extensive set of human rights norms in times of occupation. In particular, a general reference to civil, political, economic, social and cultural rights of Palestinians[65] demonstrates that the human rights obligations of the occupying power are extensive. Here, particular regard should be had to the prolonged nature of the Israeli occupation as one of the factors that might be motivating States to apply the relevant human rights rules to the situation more extensively.

C. Non-International Armed Conflicts

There are a number of resolutions addressing situations of non-international armed conflict and affirming the applicability of HRL. This is not coincidental; non-international armed conflicts represent the vast majority of conflicts worldwide, with international armed conflicts being more of a rarity.

Clearly, the selection of particular cases, especially by the SC, is a political process affected by the veto power of the member States which might result either in failure to adopt a particular resolution or adoption of a text with particularly vague language. Resolution 1946 is one of the rare resolutions – maybe the only one – where the SC uses the term 'Internal Armed Conflict'.[66] The tendency to concentrate on certain situations cannot be ignored. In SC sessions, the situations in the DRC, Cote d'Ivoire, Sudan and Somalia are addressed on a yearly basis. This is true also of the situations in Afghanistan, Burundi, Georgia or Iraq, which are also referred to regularly. The situation in Chad has appeared with increasing frequency, while references to the Great Lake Region or Timor-Leste have disappeared through the years.

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[64] The grave human rights violations by Israel in the Occupied Palestinian Territory, including East Jerusalem, A/HRC/RES/13/8 (2010); Human rights in the occupied Syrian Golan, A/HRC/RES/13/5 (2010); The situation of human rights in the Occupied Palestinian Territory, A/CHR/RES/58/1 (2002). The SC refers to 'The situation in the Middle East, including the Palestinian question', adopts more than one resolution every year but without making reference to HRL. Further details see the *Addendum*.

[65] *Inter alia,* Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, GA, A/RES/64/94 (2009), Opp 12; The human rights situation in the Occupied Palestinian Territory, including East Jerusalem, HRC, A/HRC/RES-12/1 (2009), Opp(A) 1.

[66] The situation in Côte d'Ivoire, SC, S/RES/1946 (2010), Opp 7.

Similarly, the GA has addressed the situation in Afghanistan annually, whereas the situations in the DRC, Iraq, Myanmar, Palestine and Sudan do not appear every year. Furthermore, it is to be noted that the GA qualified the situation in Myanmar as an internal armed conflict in 2008 and 2009[67], while the question of whether there was an armed conflict prior to that is not clear. The understanding of the GA may be determined by the absence or presence of the reference to IHL in some of the relevant resolutions as well as in the light of the relevant facts on the ground.

The practice of States affirming the extensive application of HRL in situations of a non-international armed conflict is particularly important for the protection of civilians caught up in such conflicts. Given that there are fewer rules of treaty-based IHL regulating non-international armed conflict; it is a particularly welcome understanding of States that the relevant human rights framework fills gaps in protection.

D. Protracted Armed Conflicts Limited to Particular Regions of a Country

One final issue merits consideration. There are several situations today where there is an on-going conflict that continues for many years. These situations are quite hard to define. Often the conflict is limited to a particular region. In such cases the political situation of the country is also very unstable, in part because some armed groups exercise extensive territorial control.

Of this category of conflict, DRC and Afghanistan are two prominent examples.[68] Both are non-international armed conflicts with unique characteristics. Although mostly limited to certain parts of a State, these conflicts create instability in the entire country. The particular wording employed by the UN bodies cannot be ignored. The approach of relevant resolutions seems to reflect the peculiarities of the contexts. On the one hand, they refer to the conflict situation with particular reference to specific regions and the issues that often occur in hostile environments. For example, the SC requests full respect of both IHL and HRL and condemns the recruitment of child soldiers.[69]

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[67] Situation of Human Rights in Myanmar, GA, A/RES/64/238 (2009), Opp 23; A/RES/63/245 (2008), Opp 5 (h). Contrary to the GA, the HRC does not refer to an internal armed conflict in its resolution concerning the situation of Human Rights in Myanmar (A/HRC/RES/10/27 (2009)). It makes reference to the problems that exist but no reference to conflict.

[68] The situation in Afghanistan, SC, S/RES/1868 (2009); Technical cooperation and advisory services in the Democratic Republic of the Congo, CHR, A/CHR/RES/61/85 (2005).

[69] The situation in Afghanistan, SC, S/RES/1868 (2009), Opp 15-16.

On the other hand, they reserve a special part of their content to enumerate certain obligations, principally of the government authorities, which are found only in human rights instruments. In the same resolutions, the SC calls on the governments to reform the prison sector, to respect freedom of media, to promote gender equality and condemns violence that prevents girls from going to school.[70] The language used and the obligations referred to within are purely human rights based. Two remarks should be made in order to emphasize the particularity of these resolutions.

First, it is unlikely that reference to these issues would have been made in short-term situations. In other words, the more protracted the regional conflict, the more human rights become an important consideration for the relevant UN bodies. Additionally, the language of such resolutions somehow points to the emergence of a trend toward treating the situations in these countries on two levels, by distinguishing between the situation in the conflict region and the rest of the country. Importantly, none of the bodies explicitly confirms this understanding *i.e.* separation between the particular conflict region and the rest of the country in terms of applying certain rights in one area and not in the other. However, there is undeniably a tendency to invoke a larger part of the human rights norms in cases of protracted violence where the conflict continues and the situation is generally unstable. The language used becomes much more human rights-oriented. While, usually, the SC would carefully enumerate rights that overlap in both branches of law, in such situations the rights added are found only in human rights instruments.[71] The authors welcome such a progressive development in terms of applying HRL more extensively.

III. REFERENCE TO PARTICULAR HUMAN RIGHTS NORMS

Despite the constant reiteration that both IHL and HRL apply in armed conflict situations, not all human rights provisions are found in such resolutions. First of all, these resolutions are always limited to one particular situation or a particular issue. Additionally, they are adopted

[70] *Inter alia,* The situation in Afghanistan, SC, S/RES/1868 (2009), Opp 24 & 28-29; Question of Human Rights in Afghanistan, GA, A/RES/55/119 (2000); The situation in Afghanistan, GA, A/RES/64/11 (2009); Situation of Human Rights in Myanmar, GA, A/RES/64/238 (2009).

[71] The situation in Afghanistan, SC, S/RES/1890 (2009), Prp 18; The situation in Afghanistan, SC, S/RES/1868 (2009), Opp 16, 24 & 28-29; The situation in Côte d'Ivoire, SC, S/RES/1865 (2009), Opp 11-12.

by political bodies who intend to tackle emergency situations of a certain gravity and impact. Consequently, they do not intend to be exhaustive. Nevertheless, their references are not as sporadic or unconnected as it might seem at first glance. There is a tendency to refer mainly to certain specific rights, which are either part of HRL only or both IHL and HRL. In doing so, the resolutions appear to create a core of the most important human rights that must be preserved in every situation.

The present Study attempts to identify those 'core' rights and obligations in a systematic way, *i.e.* the rights referred to most often by the pertinent resolutions. In effect, these rights seem to constitute a set of *erga omnes* obligations of States. Secondly, this Study addresses the rights and obligations of States as interpreted by the relevant bodies based on human rights instruments and lastly, the issues of particular concern to the respective bodies are briefly pointed out.

It is to be noted that the approach used to identify the relevant rights is restrictive and does not include those rights which are generally superseded by IHL norms on account of the fact that the latter regulates the specific matter with greater detail and specificity. The order chosen reflects, to the greatest extent possible, the level of importance that the bodies seem to give to the applicable norms.[72]

Before venturing into the issue of which rights are insisted on by political bodies for armed conflict situations, a short comment should be made identifying some of the human rights documents that are repeatedly quoted in the relevant resolutions. Among these are the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture (CAT), the Convention on the Rights of the Child (CRC)[73] and the Convention on the Elimination of Discrimination against Women (CEDAW).[74]

[72] There are several thematic resolutions adopted by the HRC that they are concentrated on the protection of a particular right or issue. Some examples are the Resolutions on transitional justice (A/HRC/RES/12/11 (2009)), on the right to truth (A/HRC/RES/12/13 (2009), A/HRC/RES/9/11 (2008)), on access to safe drinking water (A/HRC/RES/12/8 (2009)) and others. In these resolutions, the HRC makes reference to any relevant body of law of both HRL and IHL and stresses the importance of promoting and respecting them in every situation, in peacetime and wartime. Of course, they do not constitute a proof of the simultaneous application of both legal regimes during armed conflicts but what they do prove is that there are some fundamental rights or needs, which demand action to be taken in every situation. A conflict does not seem to change their value for the survival and well being of humans.

[73] *Inter alia,* GA resolutions: A/RES/64/185 (2009); A/RES/64/125 (2009); A/RES/64/94 (2009); A/RES/63/140 (2008).

[74] *Inter alia,* GA, A/RES/64/125 (2009); GA, A/RES/63/140 (2008); HRC, A/HRC/RES/13/9, Prp 3-4; HRC, A/HRC/RES/9/9; CHR, A/CHR/RES/61/7.

Reference is also made to the UN Charter.[75] It should be noted that, unlike the better elaborated content of the resolutions adopted by other UN bodies, the SC rarely refers to specific rights. Finally, it is remarkable that certain resolutions concerning the situation in Myanmar call for the observance of human rights obligations contained in major human rights documents even though Myanmar is not party to these instruments.[76]

A. Core Rights and Obligations

a. Prohibition of Torture and Inhuman or Degrading Treatment or Punishment

The prohibition of torture and inhuman or degrading treatment or punishment is found in both IHL and HRL. The prohibition is absolute in all circumstances. The content and nature of the rule exemplify the complementary of the two bodies of law and demonstrate how HRL can harmonize the substance of IHL. More specifically, unlike the relevant norms of IHL, the content of the rule prohibiting torture has been elaborated by several human rights bodies. Consequently, the substance of the rule prohibiting torture, inhuman and degrading treatment or punishment under HRL complements and contributes to the substance of the relevant rule in IHL.

Resolutions on the prohibition of torture and inhuman or degrading treatment or punishment are adopted annually within the framework of the GA, HRC and CHR. After clarifying the field of application, the HRC adopts a series of directives that should be followed by States in such situations. Most of these directives are taken from human rights instruments.

Relevant resolutions contain comments which are instrumental in the interpretation of the type of behaviour that may amount to torture or other cruel, inhuman or degrading treatment or punishment, including: gender-based violence, corporal punishment or intimidation and coercion, including serious and credible threats, as well as death threats, to the physical integrity of the victim of a third person, and prolonged incommunicado detention, which can amount to torture.[77] An investigation must be conducted promptly and

[75] HRC, A/HRC/RES/13/5 (2010); HRC, A/HRC/6/1 (2007) and a lot of others. The present Study and the *Addendum* do not contain all the resolutions that refer to these issues. Few examples are given indicatively.

[76] Situation of human rights in Myanmar, GA, A/RES/64/238 (2009).

[77] Torture and other cruel, inhuman or degrading treatment or punishment, A/CHR/RES/58/38 (2002),

impartially by the competent national authority.[78] Personnel who refuse to obey orders to commit such acts should not be punished.[79] Medical and other personnel, whose role in documenting such incidents is essential, are to be protected.[80] Governments should assure that victims obtain redress and are awarded fair and adequate compensation and receive appropriate socio-medical rehabilitation.[81] Finally, preventive measures should be adopted.[82] All the above analysis is repeated by the HRC in a recent resolution.[83]

b. The Right to Life

The importance of the right to life is constantly repeated and reaffirmed in many resolutions. The right is mentioned in the context of indiscriminate attacks affecting civilians, by emphasizing the fundamental value of the right to life and calling relevant parties to abide by their obligations in this respect.[84]

The HRC has stressed that the right to life is the most fundamental of all rights.[85] It repeatedly condemns attacks against the civilian population.[86] References to, and special focus upon vulnerable groups, women, children, IDPs, as well as human rights defenders and humanitarian workers show the influence of HRL on armed conflict situations.[87] It also

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Opp 4-6&14.

[78] A/CHR/RES/58/38 (2002), Opp 8; Torture and other cruel, inhuman or degrading treatment or punishment, GA, A/RES/64/153 (2009), Opp 6.

[79] A/CHR/RES/58/38 (2002), Opp 9.

[80] *idem*., Opp 11.

[81] *ibis.,* Opp 10.

[82] Governments are urged to take effective legislative, administrative, judicial or other measures to prevent and prohibit the production, trade, export and use of equipment, specifically designed to inflict torture. A/CHR/RES/58/38 (2002), Opp 12.

[83] *Inter alia* Torture and other cruel, inhuman or degrading treatment or punishment: the role and responsibility of medical and other health personnel, A/HRC/RES/10/24 (2009).

[84] Resolutions where right to life is underlined by HRC and CHR resolutions. Human rights violations emanating from the Israeli military attacks and operations in the Occupied Palestinian Territory, HRC, A/HRC/RES/10/19 (2009), Opp 2; The human rights situation in the Occupied Palestinian Territory, including East Jerusalem, HRC, A/HRC/RES/S-12/1 (2009), Prp 3.

[85] The grave human rights violations by Israel in the Occupied Palestinian Territory, including East Jerusalem, A/HRC/RES/13/8 (2010), Prp 10.

[86] *Inter alia* Situation of Human Rights in Myanmar, A/HRC/RES/13/25 (2010), Opp 14.

[87] *Inter alia* Situation of human rights in the Sudan, A/HRC/RES/9/17 (2008) & A/HRC/RES/7/16 (2008), Opp 9 & 6 respectively.

condemns summary and extrajudicial executions.[88] The CHR has also condemned the use of the death penalty without regard for the ICCPR's safeguards.[89]

In this context, targeted attacks against civilians have repeatedly been condemned by the SC as violating both branches of law.[90] The relevant bodies tend to employ HRL terms regarding the question of targeted killings and extrajudicial executions which have been condemned by all UN bodies on several occasions.[91] Furthermore, the CHR has invoked the obligation to take measures to prevent loss of life in all circumstances.[92] In sum, the right to life represents an important component of the majority of the conflict-related resolutions.

c. Right to a Fair Trial

Right to a Fair Trial is a right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law[93] and affirmed by various bodies either implicitly or explicitly.[94]

d. Non-Discrimination and Gender Equality

Non discrimination and gender equality are among the issues that keep appearing in SC and GA resolutions, especially those pertaining to the situation in Afghanistan. The SC has repeatedly expressed its concern regarding the manner some women and girls are treated during armed conflict. It has also referred to more specific issues such as the use of violence to prevent girls from going to school.[95] Similar emphasis is placed on non-discrimination by

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[88] Apart from references found in resolutions dealing with a specific situation (*inter alia* Assistance to Somalia in the field of human rights, A/HRC/RES/12/26 (2010); Technical cooperation and advisory services in the Democratic Republic of the Congo, A/CHR/RES/60/84 (2004)) each year CHR adopted a resolution concentrated on the issue of Extrajudicial, summary or arbitrary executions (*Inter alia* A/CHR/RES/61/34 (2005)). Since the HRC tends to reintroduce the whole agenda of issues addressed by CHR, it won't be long before this issue reappears separately on HRC sessions.

[89] CHR, A/CHR/RES/57/14 (2001), Opp 2 (d).

[90] SC, S/RES/1906 (2009), *op. cit*., Prp 8.

[91] SC, S/RES/1906 (2009), *op. cit.,* Prp 8; Assistance to Somalia in the field of human rights, A/CHR/RES/61/83, Opp 5; Extrajudicial, summary or arbitrary executions, GA, A/RES/63/182 (2008); Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, GA, A/RES/64/94 (2009), Opp 2.

[92] Extrajudicial, summary or arbitrary executions, CHR, A/CHR/RES/56/31 (2000), Opp 8.

[93] Extrajudicial, summary or arbitrary executions, CHR, A/CHR/RES/61/34 (2000), Opp 4; Extrajudicial, summary or arbitrary executions, GA, A/RES/63/182 (2008), Opp 3.

[94] Situation of human rights in Myanmar, GA, A/RES/63/245 (2008), Opp 2 (d).

[95] The situation in Afghanistan, SC, S/RES/1917 (2010), Opp 35; SC, S/RES/1868 (2009), Opp 29.

the HRC.[96] The SC also makes a reference to gender-based violence in Sudan, the wording of which reveals the influence of HRL.[97] Resolutions on the Cote d'Ivoire always stress the importance of the participation of women in the peace process[98] and the need to ensure their security.[99]

Furthermore, the SC stressed the need to refrain from any act of ethnic discrimination in a resolution adopted in the context of Georgia.[100] The GA also takes an explicit stand on this point, emphasizing the need to ensure gender equality. It has urged 'all Afghan parties to respect all international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women, to bring to an end without delay all violations of the human rights of women and girls, to take urgent measures to ensure respect for all fundamental freedoms and to respect international humanitarian law with regard to the conduct of hostilities'.[101]

e. Freedom of expression and right to be informed

The SC and the GA have mentioned freedom of expression (with particular focus given to the freedom of the media) on several occasions. Special reference to freedom of the media was made in a resolution on Afghanistan.[102] In addition, there were calls for equal protection of freedom of opinion and expression and equitable access to the media with regard to the elections in the volatile situation of Cote d'Ivoire.[103] A resolution calling for the prevention of the use of media to incite hatred while respecting freedom of expression and of the press has also been adopted.[104]

Furthermore, every year the CHR has devoted a resolution to the 'right to truth'. The relevant treaties of both IHL and HRL are mentioned. The CHR acknowledges 'in cases of

[96] Religious and cultural rights in the Occupied Palestinian Territories, including East Jerusalem, A/HRC/RES/6/19 (2010), Opp 1.

[97] Reports of the Secretary-General on the Sudan, SC, S/RES/1881 (2009), Opp 4; S/RES/1706 (2006), Prp 8.

[98] The situation in Côte d'Ivoire, SC, S/RES/1865 (2009), Prp 12.

[99] The situation in Côte d'Ivoire, SC, S/RES/1795 (2008), Opp 11.

[100] The situation in Georgia, SC, S/RES/1866 (2009), Opp 3.

[101] *Inter alia,* Question of Human Rights in Afghanistan, GA, A/RES/55/119 (2000), Opp 13.

[102] The situation in Afghanistan, SC, S/RES/1917 (2010), Opp 34; The situation in Afghanistan, GA, A/RES/64/11 (2009), Opp 36.

[103] The situation in Côte d'Ivoire, SC, S/RES/1880 (2009), Opp 9 & 12.

[104] The situation concerning the Democratic Republic of the Congo, SC, S/RES/1565 (2004), Opp 17.

gross violations of human rights and serious violations of international humanitarian law, the need to study the interrelationship between the right to the truth and the right to access to justice, the right to obtain effective remedy and reparation, and other relevant human rights'.[105] It makes reference to the different nomenclature that can be adopted for this right: the right of everyone to know the truth, the right to be informed or the right to freedom of information.[106] These are all terms used in HRL. Similarly, other instructions given by the CHR are influenced by HRL. It urges States to preserve archives of evidence to facilitate knowledge of gross violations of human rights and IHL, to investigate such violations and to provide victims with access to an effective remedy.[107]

f. Other Rights

The pertinent bodies have also referred to some other rights, albeit less often. The HRC has reaffirmed the right of persons to visit their family and underlined the fact that this right can be found in both Geneva Convention IV and the ICCPR.[108] The HRC condemns the disrespect of religious and cultural rights by the occupying power and underlines that these rights are provided in core human rights instruments and humanitarian law.[109] Some rights found in both bodies of law are also mentioned, without specifying which body of law was being referred to.[110] Freedom of movement is also considered by each body and, although this right is guaranteed by both bodies of law, particular reference is made to the ICCPR and the ICESCR.[111] In addition, arbitrary detention, as violating the right to liberty, is also mentioned

[105] The right to the truth, CHR, A/CHR/RES/61/66 (2005), Prp 9.

[106] *idem*., Prp 10.

[107] *ibis*., Prp 13.

[108] Human rights in the occupied Syrian Golan, HRC, A/HRC/RES/13/5 (2010), Opp 4.

[109] The grave human rights violations by Israel in the Occupied Palestinian Territory, including East Jerusalem, HRC, A/HRC/RES/13/8 (2010), Opp 4-5; A/HRC/RES/10/19 (2009), Opp 3; Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, GA, A/RES/63/98 (2008), Prp 2.

[110] Such as the demolition of houses, evacuation of families, closing boarders and keeping prisoners, A/HRC/RES/13/8 (2010), op. cit., Opp 10-12; Human rights violations emanating from the Israeli military attacks and operations in the Occupied Palestinian Territory, A/HRC/RES/10/19 (2009).

[111] Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, A/CHR/RES/61/7 (2005), Prp 5; Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, GA, A/RES/63/98 (2008), Opp 9.

and condemned.[112]

B. Interpreted Rights and Obligations

Every now and then, the practice of States goes beyond the clearly formulated treaty obligations of Governments. There are instances when certain resolutions refer to obligations of States that are not explicitly formulated in any human rights instrument, but nevertheless flow therefrom.

First of all, the obligation of States to investigate the alleged violations of both HRL and IHL is clearly established. The bodies continuously refer to the obligation of States to investigate allegations of human rights abuse.[113] Among others, the GA urged Israel to 'undertake investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian *and* international human rights law'.[114] This obligation is expressly found in IHL conventions but is limited to very specific instances.[115] There is no obligation to investigate violations of the right to life in the actual wording of the human rights treaties[116], but the right to life has been so interpreted by human rights treaty bodies.

Reference should be made to the understanding of the GA regarding the 'obligation of all States to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions'[117] and calls on Myanmar 'to allow a full, transparent, effective, impartial and independent investigation into all reports of human

[112] Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, A/CHR/RES/61/7 (2005), Prp 5; Situation of Human Rights in Myanmar, GA, A/RES/64/238 (2009), Opp 7.

[113] *Inter alia* The situation in Burundi, SC, S/RES/1577 (2004), Opp 3; Situation of human rights in the Sudan, A/HRC/RES/7/16 (2007), Opp 13; Follow-up to Council resolution S-9/1 on the grave violations of human rights in the Occupied Palestinian Territory, particularly due to the recent Israeli military attacks against the occupied Gaza Strip, HRC, A/HRC/RES/10/21 (2009), Prp 2; Situation in the Republic of Chechnya of the Russian Federation, CHR, A/CHR/RES/57/24 (2001), Opp 7-10.

[114] Follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict, GA, A/RES/64/10 (2009), Opp 3 & 4 (emphasis added).

[115] Article 121 of Geneva Convention (III) relative to the Treatment of Prisoners of War, 12 August 1949 and Article 131 of Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949.

[116] Loss of life in times of war was not considered by the drafters of the rules of IHL because loss of life was probably seen as an accepted, expected and justified consequence of war.

[117] Extrajudicial, summary or arbitrary executions, GA, A/RES/63/182 (2008), Opp 3.

rights violations.'[118] In its resolutions on extrajudicial, summary or arbitrary executions the CHR stresses the obligation of States to conduct exhaustive and impartial investigation of all cases of suspected violations.[119] The HRC and CHR have also called for an effective investigation, conducted independently and impartially by a competent body.[120]

In addition, on numerous occasions the resolutions affirm the obligation of States to provide redress to the victims of human rights violations.[121] Lastly, there are instances when the relevant bodies require adequate HRL and IHL training to be administered to armed forces, police and prison personnel.[122]

C. Issues of Particular Interest

In addition to references to particular human rights and obligations, the relevant bodies demonstrate that there are issues of particular concern in times of armed conflict that repeatedly draw the attention of States. These rules and principles are found in both branches of law, namely IHL and HRL. However, the constant reference to these issues by all political bodies demonstrates their growing importance.

i. Special protection of children and recruitment of children:

Particular interest is shown in regards to the protection of children in armed conflict.[123] States are called upon 'to protect children affected by armed conflict, in particular from violations of international humanitarian law and human rights law'.[124] The issues of

[118] Situation of Human Rights in Myanmar, GA, A/RES/64/238 (2009), Opp 7; Torture and other cruel, inhuman or degrading treatment or punishment, CHR, A/CHR/58/38 (2002).

[119] CHR, A/CHR/RES/58/36 (2002), Opp 5.

[120] Torture and other cruel, inhuman or degrading treatment or punishment: the role and responsibility of medical and other health personnel, HRC, A/HRC/RES/10/24 (2009), Opp 7.

[121] *Inter alia,* Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention, HRC, A/HRC/RES/14/12 (2010), Opp 2; The right to the truth, CHR, A/CHR/RES/61/66, Prp 13; Situation of human rights in Afghanistan, CHR, A/CHR/RES/56/18, Opp 8 (e); Extrajudicial, summary or arbitrary executions, GA, A/RES/63/182 (2008), Opp 3; The situation in Afghanistan, GA, A/RES/64/11 (2009), Opp 34.

[122] *Inter alia,* Situation of Human Rights in Myanmar, A/HRC/RES/13/25 (2010), Opp 16; Extrajudicial, summary or arbitrary executions, GA, A/RES/63/182 (2008), Opp 11.

[123] *Inter alia,* Protection of children in armed conflicts, SC, S/RES/1882 (2009); Rights of the Child, GA, A/RES/61/146 (2006).

[124] *Inter alia,* SC resolution 1882 (2009); Rights of the Child, GA, A/RES/61/146 (2006), Opp 36 (e).

recruitment of children[125] and sexual abuse of children[126] repeatedly appear in the resolutions of every political body.[127]

ii. Special protection of women and sexual violence and abuse against them:

A growing number of resolutions voice concern regarding sexual violence against women and girls. A thematic resolution on 'Women and Peace and Security' adopted annually by the SC explicitly raises such concerns.[128] The SC Resolution 1888 addresses the issue of sexual violence and abuse of women in situations of armed conflict.[129] Reference to these thematic resolutions can be found in the preambular paragraphs of almost every resolution that refers to armed conflict.

Additionally, references to women's position in a society and the prohibition of all forms of violence and abuse against them are repeatedly found within numerous resolutions.[130] One last issue that needs to be addressed is the reference of SC to a zero-

[125] *Inter alia,* The human rights situation in the Occupied Palestinian Territories, including East Jerusalem, HRC, A/HRC/RES/S-12/1 (2009), Opp 5. Notably, references to recruitment of children are not systematically addressed in the *Addendum* since they fall short of the particular aim of the excel database which is to identify human rights norms instead of issues governed mainly by IHL.

[126] *Inter alia,* Rights of the child: the fight against sexual violence against children, A/HRC/RES/13/20 (2010), Prp 16 & Opp 10.

[127] *Inter alia,* Children and armed conflicts, SC, S/RES/1460 (2003). The issue of children is also one of the main concerns of UN bodies. The HRC adopted a lengthy resolution on the Rights of children, where they refer to both peacetime and wartime situations and stress also the issue of recruitment of children (A/HRC/RES/7/29 (2008)). A Special Representative of the Secretary-General for Children and Armed Conflict has been appointed (A/62/228 (2007)). References to IHL and armed conflict situations can be found also in the CHR Resolutions concerning children [Rights of the Child A/CHR/RES/61/44 (2005), Abduction of children in Africa A/CHR/RES/61/43 (2005)].

[128] Women and Peace and Security, SC, S/RES/1889 (2009); S/RES/1820 (2008). For details see the *Addendum*. The issue of violence against women is also touched upon by the HRC. In 2008 it adopted a thematic resolution on Elimination of violence against women (A/HRC/RES/7/24 (2008)). It does not make a distinction between peacetime and wartime situations. From the very beginning of its work it adopted resolutions trying to coordinate the efforts of promoting rights of women. A resolution on Integrating the human rights of women was adopted in 2007 (A/HRC/RES/6/30 (2006)).

[129] The SC appointed a Special Representative of the Secretary-General on Sexual Violence in Conflict in this resolution. Women and Peace and Security, SC, S/RES/1888 (2009).

[130] *Inter alia,* The situation in Afghanistan, SC, S/RES/1746 (2007), Opp 25; Human rights violations emanating from Israeli military incursions in the Occupied Palestinian Territory, including the recent one in northern Gaza and the assault on Beit Hanoun, HRC, A/HRC/RES/S-2/1 (2006), Opp 1; Assistance to Somalia in the field of human rights, CHR, A/CHR/RES/58/88 (2002). Similarly to resolutions on children the references to women and sexual violence are not systematically included in the *Addendum*.

tolerance policy against sexual abuse and violence by the members of the peacekeeping forces against the local population. Since 2004-2005, most of the relevant resolutions include a standard paragraph that appears towards the end of the text.[131] A new phrase makes its appearance in Resolution 1949 (2010): the SC 'underlines that a gender perspective should be taken into account in implementing all aspects of the mandate of UNIOGBIS and encourages UNIOGBIS to work with national authorities in this regard, and relevant stakeholders to improve women's participation in peacebuilding'.[132]

D. Conclusion to Part III

The practice reveals that States address the issue of human rights applying in an armed conflict in a somewhat hierarchical manner. In particular, a 'core of rights' can be identified including, but not limited to, the right to life and the prohibition of torture and inhuman or degrading treatment, the prohibition of discrimination and the right to a fair trial. The relevant resolutions lead to the conclusion that States tend to treat these as the primary, critical rights applicable in all circumstances. The repeated calls upon relevant parties and the international community at large to respect, protect and ensure respect of these rights by various means should be taken as an indication of a trend toward considering that certain rights impose *erga omnes* obligations upon States, including in times of armed conflict.[133]

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[131] '*Welcomes* the efforts being undertaken by the United Nations Disengagement Observer Force to implement the Secretary-General's *zero tolerance policy on sexual exploitation and abuse* and to ensure full compliance of its personnel with the United Nations code of conduct, requests the Secretary-General to continue to take all necessary action in this regard and to keep the Security Council informed, and urges troop-contributing countries to take preventive and disciplinary action to ensure that such acts are properly investigated and punished in cases involving their personnel; (emphasis added)' The situation in Middle East, SC, S/RES/1648 (2005). One of the first resolutions that addresses the issue appears in 2002 at the resolution on the situation in Sierra Leone, SC, S/RES/1436 (2002), Opp 15. The pattern paragraph is included more rarely after 2007.

[132] SC, S/RES/1949 (2010), Opp 19. This sentence encompasses more holistically the issue of participation of women in the operations, including the issue of sexual abuses. It is a much more human rights friendly term. It also shows how the issues become more elaborated as the years pass. We have to wait to see if this sentence will become a new pattern sentence. However, in the new Thematic resolution on Women and Peace and Security, the SC reproduces the old language on zero tolerance policy (S/RES/1960 (2010), Opp 16).

[133] Linos-Alexander Sicilianos, *The human dimension of International Law, Interplay of General International Law and Human Rights,* Nomiki Vivliothiki Group, Athens, 2010, (in Greek), 376ff.

The idea of applying HRL in armed conflict is no longer revolutionary, as demonstrated by the contemporary practice of States. The trend of extensive reference by States to various human rights norms as part of the normative framework regulating situations of armed conflict along with the relevant IHL norms is undoubtedly a great achievement. As the HRC explicitly concludes, the protection of civilians is an obligation that derives from both IHL and HRL.[134]

IV. ADDRESSEES OF HUMAN RIGHTS OBLIGATIONS

The human rights obligations referred to in the relevant resolutions are not always limited to States. There are obviously instances when the addressees of the relevant obligations are only States, but certain resolutions also contain references to armed groups or generally, 'all parties to the conflict'.[135] *Inter alia,* the GA resolution concerning Sudan urges 'all parties to the conflict in the Sudan' to 'respect and protect human rights and fundamental freedoms, to respect fully international humanitarian law'.[136] Similarly, often the resolutions condemn the violations of IHL and HRL committed by all parties to the conflict[137], without specifying the perpetrators.

The demand that 'all parties to the conflict … comply with their obligations' under IHL, HRL and Refugee Law (RL) is repeated within several resolutions.[138] Two remarks should

[134] Human rights violations emanating from the Israeli military attacks and operations in the Occupied Palestinian Territory, HRC, A/HRC/RES/10/19, Opp 5.

[135] *Inter alia,* Situation of human rights in the Democratic Republic of the Congo, GA, A/RES/56/173 (2001), Opp 3 (e); Situation of human rights in the Democratic Republic of the Congo, GA, A/RES/55/117 (2000), Opp 3 (c).

[136] Situation of human rights in Sudan, GA, A/RES/57/230 (2002), Opp 3 (b); Situation of human rights in Sudan, GA, A/RES/56/175 (2001), Opp 3 (a).

[137] The situation concerning the Democratic Republic of the Congo, SC, S/RES/1736 (2006), Prp 6; The situation in Côte d'Ivoire, SC, S/RES/1721 (2006), Prp 13, Opp 30 & 32; Reports of the Secretary-General on the Sudan, SC, S/RES/1663 (2006), Opp 7.

[138] *Inter alia,* Thematic Resolution on Protection of Civilians in armed conflicts, Res. 1894 (2009), Opp 1; The situation concerning the Democratic Republic of the Congo, SC, S/RES/1856 (2008), Opp 23; The situation concerning the Democratic Republic of the Congo, SC, S/RES/1843 (2008), Prp 8; The situation concerning Iraq, SC, S/RES/1790 (2007), Prp 19; Follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict, GA, A/RES/64/10 (2009), Prp 8; The Situation in Afghanistan, GA, A/RES/62/6 (2007), Opp 22; The situation in Afghanistan, GA, A/RES/61/18 (2006), Opp 16; Situation of human rights in Sudan, GA, A/RES/57/230 (2002); Opp 3 (b).

be made in this respect. First, special attention should be paid to the construction of the phrase. The SC, as well as the GA, calls upon all parties to comply with their obligations under IHL, HRL and RL. These resolutions do not specify which obligations each of the respective parties has. Second, the references to 'all parties to the conflict' mostly appear in resolutions concerning situations where the official government is rather weak and the armed groups are controlling considerable parts of an area or population thus exercising a considerable degree of power. Usually these are long-term armed conflicts in African countries.[139]

Some resolutions clearly specify that rebel groups are to respect human rights. In a resolution on Sudan, the SC recalls that all parties, including rebel groups, must comply with IHL and IHRL.[140] Importantly, the SC, in its resolution 1906 (2009) regarding the DRC, 'Demands that *all armed groups*, in particular the Forces Démocratiques de Libération du Rwanda (FDLR) and the Lord's Resistance Army (LRA), *immediately cease all forms of violence and human rights abuse* against the civilian population in the Democratic Republic of the Congo, in particular gender-based violence, including rape and other forms of sexual abuse'.[141] Again in 2006, the SC '[e]xpresses its grave concern at the repeated human rights violations throughout the Democratic Republic of the Congo *in particular in the territories under the control of the rebel groups party* to the Lusaka Ceasefire Agreement, and calls on all parties to put an end to such violations'.[142]

With regard to the peacekeeping forces, there is a particularly interesting resolution adopted by the SC in 2009, which declares that UN forces can support the operations of Armed Forces of DRC, only if the latter comply with the rules of IHL, HRL and RL.[143] Lastly, a call to disseminate IHL, HRL and RL addressed to all parties to the conflict should also be mentioned.[144] All parties to the conflict are called upon to take appropriate steps to protect

[139] Mainly in Sudan, DRC, Cote d'Ivoire, Somalia.

[140] Reports of the Secretary-General on the Sudan, SC, S/RES/1574 (2004), Prp 11; Reports of the Secretary-General on the Sudan, SC, S/RES/1564 (2004), Prp 11.

[141] The situation concerning the Democratic Republic of the Congo, SC, S/RES/1906 (2009), Opp 10, (emphasis added).

[142] The situation concerning the Democratic Republic of the Congo, SC, S/RES/1376 (2001), Opp 5 (emphasis added).

[143] The situation concerning the Democratic Republic of the Congo, SC, S/RES/1906 (2009), Opp 22.

[144] Protection of civilians in armed conflicts, SC, S/RES/1894 (2009), Opp 7 a-b.

the civilian population in accordance with IHL, HRL and RL.[145]

In sum, the practice of States reveals a trend away from the traditional position that human rights bind only States, to finding that the addressees of human rights obligations include non-state, armed groups, especially if they control significant areas.

[145] The situation in Somalia, SC, S/RES/1863 (2009), Opp 19; S/RES/1801 (2008), Prp 13; S/RES/1772 (2007), Prp 19.

CONCLUSION

There has been a long debate during the last two decades about the applicability of HRL in situations of armed conflict. Despite the persistence of a handful of countries, there is no longer any ground to support the claim that HRL ceases to apply during armed conflict. The growing number of resolutions of the political bodies confirming the applicability of HRL reinforces the already established practice of judicial bodies, advisory committees of experts and the academia. It is notable that there is neither a resolution as such nor a statement by a state representative within the relevant bodies that would challenge the applicability of HRL in times of armed conflict.

The real question could be whether, in the light of the understanding of States, HRL is applicable in armed conflicts in the same manner as in peacetime, albeit taking into account the particular characteristics of armed conflict in certain situations. Unfortunately, States make their position less clear in this respect. Furthermore, they do not address the question of possible collisions between the respective norms of HRL and IHL.

Be that as it may, the present Study demonstrates that the recent challenges to the applicability of HRL in times of armed conflicts by two States, in particular the US, is nothing but an expression of their political, not legal, aspirations. In other words, the position of the US objecting to the application of HRL to armed conflicts is not supported by its own practice. On numerous occasions the US has voted in favour of resolutions explicitly affirming the application of HRL and condemning the violations thereof in times of armed conflicts. The resolutions on the situation in the DRC addressed by the relevant resolutions of the SC and the GA alone suffice to reveal the inconsistencies in its position.

Consequently, the recent claims put forward by the US that HRL is not applicable in their 'war on terror'[146] is nothing but an attempt to obtain impunity for its own actions by depriving the relevant human rights mechanisms of the competence to address its actions from a human rights perspective. Even if we were to accept the doctrine of a persistent objector being exempt from the development of a rule of international law[147], the States that oppose the application of HRL would not be able to rely on this, as their own practice

[146] P. Alston, J. Morgan-Foster and W. Abresch, *op. cit.,* 183-209.

[147] Dumberry, P., Incoherent and Ineffective: the Concept of Persistent Objector Revisited, 59 ICLQ 779 (2010).

does not reveal such consistency.

In a nutshell, the practice of States confirms that HRL not only continues to apply in times of armed conflicts but is also an integral part of the legal framework regulating such conflicts. Finally, human rights, once understood as binding only for States, is expanding to address also non-State actors, thus enlarging its reach and scope of protection to the maximum extent possible.

FACTS AND FIGURES

- Total number of resolutions affirming applicability of HRL: 330 out of 576 armed conflict-related resolutions.[148] This number is broken down into the following parts: SC: 109/200, GA: 103/239, HRC: 36/50, CHR: 82/87.
- Both the US and Israel have voted on various occasions in favour of resolutions affirming HRL application. The Authors identified more than 171 affirmative votes of the US (*inter alia,* 14 in the GA and 108 in the SC).[149] Furthermore, 14 affirmative votes of Israel are found in the voting procedures of the GA. Israel was not a member of the other UN bodies under consideration during the past decade.
- The number of resolutions of the SC referring to HRL increased impressively during the last five years, during which time the majority of resolutions are to be found. From the 109 resolutions referring to HRL that were adopted the last decade, 69 were adopted during the last five years. Another figure demonstrates the increasing awareness regarding the need to tackle particular issues that appear in armed conflicts: the SC addressed the issue of sexual violence against women in 40 resolutions out of the 109; 31 of these resolutions were adopted in the last 5 years. Reference to recruitment of children is found in 31 resolutions, 25 of which were adopted between 2005 and 2010. Another example, 46 resolutions of the past decade refer to zero-tolerance of sexual abuse policy; the 44 were adopted after 2005.
- The HRC is a young body with less substantive work, but the resolutions it adopted speak for themselves, not leaving much room for speculation on what the position of the body is.
- Overall, the position voiced against the application of HRL in armed conflict does not find any support in practice. State practice in this connection, as reflected in the voting procedures of international organizations, and primarily the United Nations, proves to be rather straightforward. The political bodies confirm the application of HRL during armed conflict and tend to recall it more and more often in their respective resolutions. Among others, the increase in reference to HRL by the SC in the last 5 years as well as the

[148] The 576 resolutions designated as 'armed conflict related' have been adopted within the ambit of the SC, GA, HRC and CHR and all pertain to the armed conflict situations in one way or another while the 330 resolutions affirming applicability of HRL in armed conflict have been identified as a result of a restrictive selection by the Authors and are contained in the *Addendum*.

[149] The US was not a member of the CHR and the HRC at all times and a number of resolutions have been adopted without vote.

affirmative votes cast by such States as Israel and the US while adopting certain resolutions in the GA is rather impressive and offers the most significant proof to the fact that HRL continues to apply in times of armed conflict. It is virtually impossible to characterize such a practice as incidental or fragmented as, in fact, while numbers of relevant resolutions affirming applicability of HRL speak for themselves[150], there is not a single resolution that would affirm the claim to the contrary.

[150] For further details see the *Addendum*.