

Course Manual

Protection of Civilians in Armed Conflict 2017-2018 period 5 (SSC 2066)

1. Objectives

The course is designed to provide students with a substantive introduction to the protection of civilians in situations of armed conflict at the normative level as well as in practice. Following their active participation in the course students are expected to:

- be familiar with basic protections offered by relevant strands of international law, in particular international humanitarian and human rights law, in an evolving context;
- understand protection methods applied by international actors on the ground, and challenges and issues arising in practice;
- be able to identify, on the basis of accepted international criteria, persons qualifying for refugee protection;
- be able to discuss contributions and challenges of international criminal justice in advancing the protection of civilians in armed conflict.

2. Description of the course

Large numbers of civilian casualties and the ongoing forced displacement of populations have drawn renewed attention to the often dramatic plight of civilians during armed conflicts, and to the serious problems in ensuring their protection against the effects of hostilities including war crimes and crimes against humanity. As illustrated by conflicts around the world, these problems are often of a political, legal as well as practical nature. Nonetheless, although media reporting tends to focus on the terrible face of armed conflict and persecution, in many situations protective efforts are being made by States and international and national organisations to reduce the level of violence and save lives.

In view of the increased prominence of the topic this course is designed to equip students a) with an understanding of the complementary normative frameworks for the protection of civilians; b) with insights into the main responsible actors and their operations and challenges on the ground on behalf of victims of conflict. Whereas the legal underpinning of protective efforts, including issues of interpretation of relevant international law, will be important, throughout the course attention will be given to concrete international practice based on examples from field experience.

International law is a prerequisite of the course, however arguments and aspects of an international political nature will frequently play a role as they do in actual practice. Several tasks will be action oriented. Students will be asked to perform real life protection functions using international norms as well as other arguments to protect civilians from harm.

Often the protection of civilians' theme is focused on measures to attenuate the plight of civilians caught up in violence in the theatre of armed conflict itself, i.e. in or near combat zones. This course takes a more integrated approach. Firstly, in terms of protection avenues the curriculum includes asylum for refugees as an important yet often problematic protection instrument. The students will moreover have the possibility to examine the potential preventative impact of international criminal justice mechanisms in situations of (impending) armed conflict, in addition to their retributive justice function for those who have already

fallen victim of war crimes or other international crimes. Another aspect of the more comprehensive approach taken by the course is the inclusion of human rights' based protection efforts, for example in unstable, semi-violent situations of transition when a re-lapse into armed conflict is easily possible.

The course will start with an introduction of the main characteristics of contemporary armed conflicts to be followed by a first discussion of elements of a framework for the protection of civilians. We will explore a variety of efforts to prevent violations of IHL involving states as well as non-state armed actors. We will then continue with a closer look at prominent norms of international humanitarian law particularly in connection with the conduct of hostilities, such as the principles of distinction and proportionality. Issues and dilemmas concerning their application in today's war zones are likely to come up. Notwithstanding the emphasis on the laws of war, due attention will be paid to the relevance of human rights norms and their interplay with IHL, for example in the area of conflict related detention. Importantly, several aspects of operations and measures to counter international terrorism will be discussed.

An important part of the course will be devoted to the practical contributions external actors are trying to make for the physical and humanitarian protection of civilians caught up in conflict. Based on examples from the field this will primarily cover measures applied by UN military and police forces and international humanitarian organizations such as the ICRC and UN agencies. Protective methods against attack, access for life saving humanitarian assistance and the specific situation of internally displaced persons will be examined more closely. On several occasions during the course we will come across contributions of UN human rights mechanisms, for example in the area of monitoring and investigation.

The course will then move to the protection provided by asylum to persons fleeing from violence and persecution, by discussing the international criteria for refugee status in connection with armed conflict and several issues arising in that context. Focusing on the activities of the International Criminal Court the course will proceed with a discussion of developments concerning remedies for civilian victims of serious violations of international norms committed during conflict. In particular, the students will explore to what extent (the threat of) criminal investigations, prosecution and punishment may contribute to the prevention of war crimes, crimes against humanity and genocide, and thus to the protection of civilians. The course will conclude with a discussion of mechanisms of supervision and other than judicial forms of enforcement of international norms.

In terms of method of instruction the course is built around a combination of Problem Based Learning and a more traditional approach to learning. The latter will for example be applied to explain certain concepts, share insights and convey experience from the field.

3. Course materials

Required materials:

- The main course book is "Constraints on the Waging of War, an Introduction to International Humanitarian Law" by Frits Kalshoven and Liesbeth Zegveld, 4th edition, Cambridge University Press and ICRC. It should be available in the bookshop in Maastricht, but can also be consulted on the internet.
- Also, the Protocols Additional to the Geneva Conventions of 12 August 1949 as published by the ICRC will be frequently referenced to. They can be consulted on the internet.
- As these publications cover only part of the course, there will be additional mandatory literature per task. This literature will be included in the student portal or announced during the tutorials. It is mostly available on the web.

Recommended materials:

- In addition optional literature will be indicated for most tasks. While not mandatory, the optional literature is highly recommended for a better understanding of the subject matter and an optimal preparation of the post-discussions.

4. Course schedule

Subject to possible changes as announced in class or through the student portal during the course, the Course schedule is as follows:

Week 1 9-13 April 2018

Lecture: *Context and characteristics of contemporary armed conflict*

First meeting

- Introduction to the course, relevant bodies of law and concepts of protection
- pre-discussion task 1: purpose, sources and norms of IHL- discussion of a war movie

Second meeting

- post-discussion task 1:
- pre-discussion task 2: issues of applicability of IHL

Week 2 16-20 April 2018

Lecture: *Protective norms in the conduct of hostilities*

Third meeting

- post-discussion task 2
- pre-discussion task 3: protection against effects of hostilities in densely populated areas and ways to implement the duty to respect IHL

Fourth meeting

- post-discussion task 3
- pre-discussion task 4: armed conflict, terrorism and measures to counter it

Week 3 23-27 April 2018

Fifth meeting

- post-discussion task 4
- pre-discussion task 5: physical protection against violence by external actors

Midterm (in class) exam

Week 4 30 April – 4 May 2018

Lecture: *Protection against violence by external actors*

Sixth meeting

- post-discussion task 5
- pre-discussion task 6: case study UN peace keeping in East-Timor

Seventh meeting

- post-discussion task 6
- pre-discussion task 7: humanitarian access, the plight of internally displaced persons and other protection challenges

Week 5 7-11 May 2018

Lecture: *Saving lives in the midst of conflict: contributions, constraints and dilemmas of humanitarian organizations*

Eighth meeting

- post-discussion task 7
- pre-discussion task 8: escaping from armed conflict, who is a refugee?

Week 6 14-18 May 2018

Lecture: *Contributions by international criminal justice: achievements and complications*

Ninth meeting

- post-discussion task 8
- pre-discussion task 9: enhancing the impact of international criminal justice

Tenth meeting

- post-discussion task 9
- pre-discussion task 10: national prosecution: the Alemu case

Week 7 21-25 May 2018

Eleventh meeting

- post-discussion task 10
- preparing for the final exam

Twelfth meeting

- discussion task 11: supervision and enforcement of international protective norms

Week 8 28 May-1 June 2018

Final (take home) exam

5. Assessment

Students' performance will be assessed on the basis of their active, substantive participation (10%), the midterm in-class exam (30%) and the final take home exam (60%). The final exam will consist of a combination of open questions and at least one case study. Grading on a scale of 1 to 10 will first of all depend on knowledge of the subject matter, understanding of conceptual and practical issues and the correctness of the answers (or, when a clear correct answer cannot be given, the validity of a particular viewpoint). Grading will however also reflect how well the answers are argued, in particular the extent to which important normative and other arguments have been taken into account. Finally, such factors as clarity of thought,

a solutions' oriented approach to protection problems, the use of reading materials and referencing to international law and practice will also be looked at.

The resit, limited to students with a grade below 5.5, will be in the form of an exam. Resits will only be available to students who have complied with the attendance requirements (or have been allowed, exceptionally, to make up for them by means of an additional assignment) and who have completed all assignments in the midterm and final exams. A completed assignment is one that is judged by the Coordinator-tutor to be a genuine attempt at a reasoned solution to the questions or issues raised in the exams.

6. Course attendance requirements, additional assignments

As stipulated in the student handbook, the minimum attendance requirement for the group meetings is 85%. In the current course students may miss 2 out of 12 meetings. Although there is no fixed minimum requirement for lectures in the student handbook, attendance in this course is required for 4 out of 5 lectures. The 4 required lectures need to include the lectures in week 1 and 2. Attendance of all lectures and group meetings is strongly recommended, also because of their relevance for the tutorials and the exams.

Students are asked not to disturb lectures and meetings by coming late. The tutor may allow a late student to join a group meeting but is according to the UCM Rules and Regulations required to register the person as absent.

If a student misses more than 30% of the group meetings, s/he automatically fails the course. Students who have not met the attendance requirement but have missed less than 30% of the group meetings, qualify for an additional assignment if in the opinion of the Coordinator-tutor the absence is justified by valid reasons, as provided in the relevant request form and submitted in time to the Office of Student Affairs.

7. Course coordination

Course coordinator and tutor is Wilbert-Jan van Hövell
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8. Assignments/Tasks

Task 1 Discussion of protective norms in war movie

Task 2 Issues of applicability of IHL

In the three western provinces of country X civilians, including ex-soldiers, have taken up arms against the government. Feeling marginalised by the dominant ethnic majority, they want the region to join neighbouring state Y which they regard as their ethnic motherland. Reports come in about shooting incidents, mortar attacks against two police stations, the assassination of civil servants and most people staying indoors. The government has sent in army reinforcements including some tanks. During the following weeks several protesters are shot during peaceful demonstrations and many men between 16 and 65 are detained by the authorities. Social media show pictures of mutilated bodies of government soldiers with their hands tied on their backs, and army barracks have recently been hit by grenade and bomb attacks.

In your meeting as a senior UN official with the Minister of Interior, the latter states that the government is conducting an anti-terrorism operation, that the disturbances will soon be over and that

IHL therefore does not apply. At any rate, he adds, his country has only ratified Additional Protocol 1 to the Geneva Conventions. After much urging he finally agrees that you also meet with commanders of the “terrorists”. During your meeting with them the top commander and his chief of operations tell you that they are not bound by the Geneva Conventions because only the government signed up to them. Moreover the government grossly violates these conventions by attacking civilians and detaining people on an arbitrary basis. They no longer recognize the government. Upon your return to UN headquarters in New York you organize a briefing for interested States and organizations and, with the protection of civilians in mind, engage in consultations.

A few weeks later reports suggest that country Y is providing not only political support to the insurgents but also military equipment and advisers. At least two top commanders have been regularly sighted in the country’s capital. Several captured rebel fighters have declared on television in country X to be ex-soldiers of country Y, which is meanwhile sending troop reinforcements towards the border. Thousands of civilians are now fleeing the affected provinces.

You are sent back to the region to discuss the mounting tension and the plight of civilians. The Minister of Foreign Affairs of country Y denies any military involvement, but promises to urge the insurgents in country X to show restraint and spare civilians.

The government of country X has called for an emergency session of the UN Security Council.

1) What would you try to achieve in your meetings in country X and country Y? 2) Which legal and other arguments would you use?

Task 3 Protection against effects of hostilities in densely populated areas and ways to implement the duty to respect IHL

The armed forces of your country are besieging a city where a few thousand rebel fighters are staying among 80.000 inhabitants. They are offering fierce resistance. In spite of the difficult situation most inhabitants support the rebels. The army intends to target senior rebel leaders who often meet over a late evening dinner in a house where one of them lives with his wife and five children. They like to meet there because the densely populated neighbourhood provides extra cover.

The army intends to use heavy artillery shells to destroy the house for good. They will of course make an effort to directly target the house to spare as much as possible civilians living in the vicinity, but they also realise that the heavy artillery shells may have a wider impact. If that proves to be the case, then so be it because this can serve as a message to the local population in the area to stop supporting the rebels.

The army also plans to attack a hospital, run by a humanitarian NGO, because it treats wounded rebels some of whom then return to the front line. Moreover, since a few days civilian labourers have been spotted helping the rebels during the night to build a heavy machine gun nest on the roof of the hospital, which would pose a direct risk for army helicopters and future ground operations. Other people have been seen carrying food and water into the hospital, presumably to the wounded rebels there. The army commanders see in principle no reason to spare all these so-called civilians as they are clearly supporting the rebels.

As the army’s legal adviser your task is to facilitate military operations in full respect of IHL. The commanders have mixed feelings about your advice in this situation.

1) What was your advice? 2) Taking into account this and earlier experience, you also propose a set of measures to institutionalize respect for IHL in the armed forces.

Task 4 Armed conflict, terrorism and measures to counter it

During the armed conflict in country X a well-organized rebel force makes regular use of road side bombs which are detonated by remote control when armoured vehicles of the government army pass by. The attacks kill and maim an increasing number of soldiers.

One day an insurgent blows himself up while queuing, in civilian clothes, in front of a police building together with a large group of men waiting to apply to join the national police force. The powerful detonation kills five police officers and at least 20 civilians who were standing nearby, and causes heavy damage to the police building. In a communiqué the rebel group warns the general public against joining the enemy ranks: all future applicants will be considered legitimate targets.

The army responds swiftly by rounding up several men from a civilian neighbourhood which is known for its support to the rebel cause, if only because the inhabitants and the rebels share the same religious background. The main purpose of the operation is to gather intelligence making it possible to map the structure and members of the rebel group. The detainees are not brought before a judge and are held incommunicado in an unknown destination. During the heavy handed interrogation sessions some detainees confirm the regular presence of rebel fighters in the neighbourhood with its web of small streets and easy escape routes. They allegedly often come at night for rest and recuperation and then stay on for a few days with their families, often sexually harassing young women and intimidating young adults into joining the fight.

Based on this information the army organises a sudden raid with extensive house search operations. Caught by surprise several rebels seek cover in a school where they had hidden a large amount of arms and ammunition, just in case. Without losing much time the army assaults the school. The ensuing fighting results in a blood bath in which unfortunately not only the rebels but also scores of children die.

Having procured new equipment, including drones, the army decides to take a more offensive posture to prevent further acts of terrorism, as one general put it. Soon a man is spotted who according to the army's database is accused of having transported explosives in his car on several occasions. During daytime he works as an electrician and his address could probably have been traced but earlier attempts to arrest him have always failed, presumably due to tip-offs. Now he is in full view. Just at the moment of targeting a father and his daughter are passing by, with some speed on their way to the weekly market. The decision makers in army HQ later state in an internal, highly confidential report that they unfortunately had not seen them but that the opportunity was in any event unique and could not be missed.

The funerals taking place after these incidents rapidly develop into demonstrations by large crowds against the killing of "innocent civilians". Sympathy for the rebel cause seems to be increasing.

Working for a reputable human rights NGO with expertise in IHL, you are asked to draft a letter to the government of country X. What would be your comments on the various incidents as well as on the evolving situation?

Task 5 Physical protection against violence by external actors

Situation 1

Fierce fighting has broken out in country X between the national army and armed groups that support the opposition. In the conflict thousands of civilians have already been killed and at least 200,000 are displaced and staying in camps. One day, 800 villagers belonging to the ethnic constituency of the main opposition party flee to one of the three bases of the UN peace keeping mission in the country and ask to be let in. They mention extremely violent operations, including rapes, by the army which regards them as enemies.

You are the head of the UN mission and have to decide whether to admit the group to the UN base. Among key staff of the mission, opinions are divided.

Situation 2

Meanwhile country Y is engulfed in a brutal civil war involving several belligerent parties. Neighbouring country Z is already hosting 500,000 refugees and many more are transiting to other countries. Country Z is therefore proposing the creation of a safety zone under international military protection just across its border inside country Y, to offer safety and relief to people fleeing the conflict. If the international community is unwilling to do so, country Z is prepared to establish the zone using its own armed forces, however inside the future zone UN agencies would need to care for the displaced. In or near the proposed zone rebels are hiding which regularly launch attacks in adjacent areas of country Z. Their group has laid political claims on the zone.

You are working at the Foreign Ministry of your country, which has been asked by country Z, an important trade partner, to support its proposal. Your task is to prepare a memorandum for your Minister taking into account any provisions for safety zones in IHL, aspects that would need to be considered based on past experience and possible implications.

Task 6 Protection contributions by a UN peace keeping operation: case study on East Timor

In the immediate aftermath of a referendum held in 1999, large scale attacks took place by pro-Indonesia militia on civilians deemed to have voted in favour of independence. The UN Security Council authorized a multinational force to stabilize the situation and a UN peace keeping mission to administer East Timor on a transitional basis. Following independence in 2002 the UN continued working, among other things, on institution building in the young state. However, between April 2006 and June 2008 several violent incidents and crises occurred which risked leading to new chaos and conflict.

In this case study we will review the UN response during this last episode. To what extent was it different from the 1999 episode? What does interim law enforcement mean? Which actions and which factors were key for the protection of civilians and the prevention of a new conflict?

Task 7 Humanitarian access, the plight of internally displaced persons and other protection challenges in the theatre of conflict

In country X 70,000 civilians are trapped in a rebel held town that has been under siege by government forces for over a year. The majority are internally displaced persons from the surrounding countryside, who belong to the same minority group as the rebels. Access of food and medical supplies to the town is increasingly denied, allegedly as part of a strategy to weaken support for the rebels who are branded by the government as secessionists. Reportedly people who have criticized the rebels have been summarily executed inside the town. The shelling has become very intense, the many wounded cannot be cared for and the food situation is getting critical. Many inhabitants send desperate messages via social media, including pictures of malnourished children, saying they want to leave the town immediately but are afraid to do so. Allegedly the rebels fear losing sufficient critical mass in case large numbers start leaving the town.

Across the front line living conditions seem to be deteriorating in a government held town which is besieged by the rebel group. The rebels have announced that they will no longer allow food and medical aid from the government through.

There are no UN troops in the country and some members of the UN Security Council regard the situation foremost as an internal affair of country X.

Being the UN Resident and Humanitarian Coordinator in the country you have called for an emergency meeting with humanitarian partner agencies.

1) Which initiatives will you propose to protect civilians and save lives? 2) Do civilians have a right to receive humanitarian assistance from international agencies? 3) Is the answer different in the case of IDPs? 4) Which obstacles and issues are likely to arise in the implementation of your proposals?

Task 8 Escaping from armed conflict: who is a refugee?

Carmen

Although the intensive armed conflict in country Z was concentrated in the eastern part of the country, living conditions also deteriorated in the western part. The economy went downhill. As for most people it became very difficult for Carmen, a single gay woman of 25 who had moved some years ago from the east to the west, to earn a living. Because of the high military expenditure the government had moreover difficulty in providing social safety nets and ensuring even the most basic health care. Law enforcement had weakened considerably and there were reliable reports of widespread corruption in the police force.

In this context Carmen contacted an employment agency to help her find work in Europe. Without her knowing it she was trafficked by a large criminal network and soon ended up in a brothel in a European capital. She was intimidated, her passport was taken away and her movements were controlled.

Now, one year later, she can no longer take it, escapes from the brothel and applies for refugee status. She fears for her life and freedom in case of return to country Z. The Ministry of Immigration rejects the application, stating that Carmen has left her country for economic reasons and that she is in any event entitled to the protection of the police in her own country.

Being Carmen's lawyer you have read several reports about the situation in her country and are considering whether to appeal the decision.

Peter

The armed conflict in country X, which started three years ago as a political uprising but is increasingly fought along sectarian lines, has intensified and human rights NGOs are accusing both sides of committing war crimes. Since the government has issued a general mobilization order, the army is on the offensive to regain parts of the country including a rebel held town. Artillery attacks, according to the army directed against military positions, are causing a rising civilian death toll in several parts of the town. A senior general has stated on television that people remaining in the town must be regarded as siding with the rebels, perhaps even as military accomplices. The rebel group has reacted by rounding up young males to defend the town. They have also captured and executed a number of government soldiers.

Peter, a teenager, is helped by his shop-keeping father to escape from the town. His family belongs to the same minority group as the government but is completely apolitical. On his father's advice Peter heads towards the border with country Y instead of going to an IDP camp in government territory, even though he would be safe there from the violence. Living conditions in the camp are said to be extremely poor and his father wants him to pursue his education instead of going to the army. With the help of a smuggler he crosses the border illegally, which is a criminal offence in both countries, and requests asylum two days later.

Country Y maintains friendly relations with its neighbour and is concerned about its security. It prefers fleeing civilians to be assisted inside their own country and has stepped up its support for relief actions in all IDP camps.

Working for the Refugee Status Determination Committee of country Y, which has ratified the 1951 Refugee Convention and its 1967 Protocol, you are drafting a decision on Peter's application for refugee status. Does the outcome differ if country Y is located in Africa or in the EU?

A month later one of the commanding artillery officers also applies for asylum. During the interview he states that he is fed up with the war, the mounting number of civilians killed and the bad living conditions in the army. You are also charged with his application.

Task 9 Discussion on preventive impact of international criminal tribunals

Joint Statement of the Prosecutors of the International Criminal Court,
the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for
Rwanda, and the Special Court for Sierra Leone (signed 27 November 2004)

As international prosecutors, we have been entrusted with the responsibility of bringing to justice individuals accused of genocide, crimes against humanity and war crimes.

We represent all the regions of the world. Our institutions were variously founded by treaty, by the United Nations Security Council, or by agreement between the United Nations and national governments.

Having reviewed the challenges of international criminal justice, we have concluded that the ideal behind the establishment of each of our institutions is the same: to end impunity for the most serious crimes that plague humankind, and to contribute to peace and the prevention of future crimes.

These tribunals have made great progress. Heads of state or government have been brought to justice. Other major perpetrators have been indicted, arrested and tried; many have been convicted; trials are ongoing. These institutions have recognized that genocide can be committed through acts of sexual violence; they have found that the use of child soldiers is a crime against humanity, they have brought the weight of law to bear on the evils of ethnic cleansing. But because many people continue to suffer from these crimes throughout the world, we affirm that only a sustained commitment to accountability will deter these atrocities.

The ultimate success of these tribunals depends on the continued political support of the international community. Resources, cooperation, and assistance are essential to enforce the principle of accountability and the rule of law.

The resolve of the international community will also be measured by its willingness to deliver indictees for trial, even if politically difficult. International criminal justice must apply to indicted fugitives such as Radovan Karadzic, Ratko Mladic, Ante Gotovina, Félicien Kabuga, and Charles Taylor. To permit individuals accused of the gravest of crimes to evade justice would reinforce the culture of impunity that fuels conflict and atrocities.

National legal systems have a vital role in the prosecution of these grave crimes. International institutions need step in only when national systems lack the strength or impartiality to hold the most serious offenders to account. Combined national and international efforts will be a guarantee of impartial justice.

We reaffirm our commitment to the task that has been entrusted to us. We call upon all national and international authorities to strengthen their dedication to justice.

We believe that the people of the world are entitled to a system that will deter grave international crimes and hold to account those who bear the greatest responsibility. Only when a culture of accountability has replaced the culture of impunity can the diverse people of the world live and prosper together in peace.

Luis Moreno Ocampo, Prosecutor of the International Criminal Court
Carla Del Ponte, Prosecutor of the International Criminal Tribunal for the former Yugoslavia
Hassan Bubacar Jallow, Prosecutor of the International Criminal Tribunal for Rwanda
David Crane, Prosecutor of the Special Court for Sierra Leone

Task 10 National prosecution: the Alemu case

Task 11 Discussion on supervision and enforcement of international protective norms

