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Research paper

*REASSESSING THE GENEVA CONVENTIONS IN LIGHT OF CONTEMPORARY ASYMMETRIC
WARFARE*

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INTRODUCTION

In 1949 the representatives of states gathered in Geneva and adopted the four *Geneva Conventions*, which are considered to be the cornerstone of *international humanitarian law* (IHL). They aimed to prevent the suffering of civilians during the World War II happening again. However, the time has changed and traditional battlefield and armies recede. Also, unlike the first half of the 20th century about 90 per cent of all armed conflicts in these days are internal.¹ Through the years measures in order to solve this issue were taken, including the *Additional Protocol II* of the Geneva Conventions or various agreements and treaties.

Unfortunately, it seems that they (or maybe the respect for them) are not sufficient enough. As ICRC president Petr Maurer says, war tactics including siege, attacks on hospitals, sexual violence or the arbitrary execution of detainees in conflicts such as Syria, Yemem, Iraq or Afghanistan add up to a "shattering of the system of the Geneva Conventions".²

Furthermore, since the 9/11 and the war on terror we have been able to hear opinions that the Geneva Conventions should not apply to certain combatants and that they make the fight against extremists slower and more difficult, therefore worse for civilians.

How should the UN tackle this issue and adapt the Geneva Conventions to modern warfare?

DEFINITION OF KEY TERMS

asymmetric warfare

- warfare in which opposing groups or nations have unequal military resources, and the weaker opponent uses unconventional weapons and tactics, as terrorism, to exploit the vulnerabilities of the enemy³

IHL – International Humanitarian Law

- International humanitarian law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict.⁴

GENERAL OVERVIEW

The Geneva Conventions and their Additional Protocols

The Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field was adopted in 1864. In years 1906 and 1929 it was further developed.

The ICRC drafted a text of an international convention on protection for civilians of enemy nationality on territory which is belongnig to or occupied by a belligerent country. However, this convention was not adopted, therefore its rules were not applied in the Second World War.

Not only that, as we all know, many other principles were grossly violated during the World War II. In the aftermath of the horrific experience during the War, important international negotiations among states were held in order to prevent any similar suffering in the future.

One of them was at a conference in Geneva with the result of adopting the four Geneva Conventions in 1949. These conventions were ratified by almost all states around the world.

The first three of them were developed from already existing treaties, however the fourth one was a breakthrough as it was the first IHL treaty protecting the civilians and not only soldiers during an armed conflict.

The Additional Protocols supplementing the Geneva Conventions and adopted in 1977 further

strengthen the protection of civilians and the second one is even more relevant to our topic because it deals with non-international conflicts so it aims to protect people in civil wars.

War on terror

During the 1980s and 1990s several international treaties banning certain conventional weapons were adopted. However, it was on the 11th September 2001 when the attacks showed as probably the biggest challenge for IHL so far. Discussions whether the subsequently declared “global war on terror” belongs under the specification of armed conflict or if the protection of IHL covers the terrorists, too.⁶

It was Bush administration which suggested that the Geneva Convention on prisoners of war would not apply to those captured and taken to Guantanamo Bay. (However, the US supreme court has denied this.⁷) The following events of the 9/11 discovered certain gaps in the Conventions, which should be specified and updated.

Although international community tries to deal with this issue e.g. in events such as the International Red Cross Conference in 2015 or the World Humanitarian Summit 2016 in Turkey no really progressive treaties have been adopted recently and the attitude of certain superpowers is questionable. As the example we can mention that the US, Russia and China have not ratified the International Criminal Court.⁵

We should keep in mind the warnings of many experts that opening the Geneva Conventions might end up weakening them instead of strengthening them.

MAJOR PARTIES AND THEIR VIEWS

- ICRC
 - International Committee of the Red Cross has a mandate to protect victims of both international and internal armed conflicts given by the Geneva Conventions. They generally emphasize the importance and relevance of the Geneva Conventions nowadays, however support the discussion among states on adapting them to contemporary warfare.
- Member States
 - There are various attitudes towards the reassessing of the Conventions. Although they are often claimed to be unintentional, cases in which facilities such as school or hospital have been bombed during armed conflicts have not been very rare unfortunately and that definitely strongly violates the principles of the Conventions. The criticism of the Geneva Conventions has also been used as a part of political campaign, e.g. by Donald Trump (later he stepped back).⁸

TIMELINE OF KEY EVENT

1864 – The first Geneva Convention for the Amelioration of the Wounded in Time of War

1949 – The Four Geneva Conventions of 1949

-the fourth updated version of the conventions from years 1864, 1906 and 1929

1977 – the two Additional Protocols of the Geneva Conventions

-Protocol I – protection of people involved in wars of “self-determination” redefined as international conflicts

-Protocol II – protection of human rights in non-international conflicts

PREVIOUS ATTEMPTS TO RESOLVE THE ISSUE

The Additional Protocols were definitely a great step forward in solving this issue as well as several international treaties in following years. Also the International Criminal Court has significantly helped in investigating and punishing war crimes and therefore strengthening the respect for IHL, however, it has not been joined by the US, Russia, China or India.

This issue has also been a main topic for several international conferences such as the International Red Cross Conference in 2015 or the World Humanitarian Summit in 2016.

APPENDIX

A publication explaining useful facts about international humanitarian law, which you can download for free:

<https://shop.icrc.org/droit-international-humanitaire-reponses-a-vos-questions-2598.html>

Website of ICRC:

<https://www.icrc.org/en>

Relevant articles:

<http://www.bbc.com/news/world-europe-35023029>

<https://www.theglobeandmail.com/news/politics/how-the-geneva-conventions-are-changing/article1379880/>

<http://intercrossblog.icrc.org/blog/are-the-geneva-conventions-still-relevant>

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