Freedom fighters and rebels: the rules of civil war

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War is not as simple as it used to be. Wars (or armed conflicts, to use the modern term) between states are now infrequent and civil wars, which have always happened, attract more attention than previously. In the face of terror and localized violence to civilians on a large scale within a state the United Nations (UN), or even other states, may feel compelled to do something to prevent such actions in the future. This 'something' may involve the use of armed force to defeat or 'bring to justice' those considered responsible for the condemned acts. Frequently overlaid with such action is the desire of aid agencies to provide medical and other services to those affected by the conflict. In reality, terror on a large scale tests to the extreme the law's ability to prevent it. This paper is concerned with one aspect of the matter—namely, the activities of freedom fighters and rebels in civil wars and how international law (in the form of international humanitarian law) can be used to protect those who do not take part in the conflict. This is a widespread phenomenon which should not be overshadowed by the events of 11 September 2001.

International humanitarian law (or the laws of war) has developed principally to control the treatment of the 'victims' of an *international* armed conflict, such as the wounded and sick, shipwrecked, prisoners of war and civilians. The four 1949 Geneva Conventions and their first Additional Protocol of 1977 are the main sources of this law. Members of the armed forces of a state are entitled to take part in the conflict, are styled as 'lawful combatants' and upon capture are to be treated as prisoners of war, entitled to the detailed regimen set out in the third Geneva Convention of 1949.

The 1949 Geneva Conventions contain only one Article dealing with a *non-international* armed conflict (common Article 3) but Additional Protocol II of 1977 (much shorter than Protocol I) applies to conflicts between the armed forces of a state and 'dissident armed forces or other organised armed groups, which under responsible command exercise such control over a part of the territory as to enable them to carry out sustained and concerted military operations and to implement this protocol'. The article does not apply to sporadic acts of violence, and a state may of course deny that what is happening is an armed conflict. As at 19 April 2001 there are 157 States party to this Protocol; all 189 members of the UN have signed up to the Geneva Conventions of 1949. In this paper I concentrate on non-international armed conflicts, or civil wars, though the term can be ambiguous. There may be doubt whether the armed conflict is international or non-international: a state may disintegrate into separate states; there may be an attempt to take over the government of a state by 'rebels'; 'warlords' may control part of the territory of the state rich in natural resources; 'freedom fighters' may seek independence for a part of the state comprised of a particular ethnic group. The intensity of the conflict may increase and decrease. The state concerned may be strong or weak. I shall refer to those who fight against the armed forces of the state as 'rebels'.

Government forces will usually have an advantage, in terms of military equipment and manpower, over the rebels. For instance, the rebels are unlikely to possess jet bombers or sophisticated attack helicopters. The rebels may therefore resort to more 'basic' activities that include terrorizing, killing or injuring those who are not taking an active part in the conflict. Moreover, rebels are unlikely to have any knowledge or training in the limits of action imposed by international humanitarian law (it has to be assumed that government forces will have had some basic training in this area of law and that the commanders will wish to maintain discipline amongst their troops).

Overlaid with international humanitarian law is the law of the state concerned. Thus, rebels will often be seen by the government as 'outlaws' or 'terrorists'. In such conflicts, unlike international armed conflicts, there is no notion of the 'lawful combatant' on the part of the rebels.

CAN REBELS BE ACCOUNTABLE FOR THEIR ACTIONS?

If captured, a rebel may face prosecution under the national law of the state, which is likely to include emergency legislation. A prosecutor will have no difficulty in finding criminal offences with which to charge individuals, ranging from treason, murder and assault to destruction of property, membership of a proscribed organization, possession of ammunition.

The International Tribunal for the Former Yugoslavia and its Rwanda counterpart have established that rebels may be charged with breaches of the laws or customs of war or

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of common Article 3 to the 1949 Geneva Conventions (which protects non-combatants, among others), or crimes against humanity (murder, torture, rape) or genocide. The difficulty with these tribunals is that they are limited to the geographical area for which they were established. They have, however, established the important principle that rebels may be liable for breaches of international humanitarian law during a non-international armed conflict. The Rome Statute of the International Criminal Court, which has to await 60 ratifications before it comes into force, imposes without geographical limitation liability for war crimes (including genocide and crimes against humanity) committed in non-international armed conflicts. A difficulty to be faced is that, unless all states become a party to this treaty (the Rome Statute), the International Criminal Court will generally lack jurisdiction.

An alternative to national law or an international tribunal is a combination of the two—the establishment of a 'special court' in conjunction with a state, as happened in Sierra Leone in 2000.

Lastly, jurisdiction may be assumed by another state. In June 2001 a Belgium court sentenced two Rwandan nuns (who had come to live in Belgium) to long terms of imprisonment for committing crimes against humanity during the 1994 genocide in Rwanda. The UK does not have comparable legislation, nor does the International Criminal Court Act 2001 give such jurisdiction to UK courts.

HUMAN RIGHTS

In contrast to international humanitarian law, there is generally no international forum to try *individuals* for breaches of human rights. The state may be liable for breaches of human rights committed by its own soldiers/officials; the European Court of Human Rights has heard several cases against Turkey. Increasingly, however, states have established extraterritoriality for crimes such as torture. A rebel who enters the territory of such a state may find himself on trial or extradited to some other state wishing to try him (see the Pinochet case).

OF WHAT RELEVANCE IS THIS LAW TO REBELS?

Lawyers tend to think that more law will solve difficult problems caused by human action. In respect of non-international armed conflicts, international law is in its infancy. In practice, national law may be invoked against captured rebels and not against government forces (thus killing by soldiers is seen as justifiable but killing by rebels is murder). What can be done to increase the chances of all sides conforming to the basic principles of law?

First, involvement of the UN Security Council may lead to the establishment of peace support operations, a 'special court' (see above in respect of Sierra Leone), greater awareness of a non-international armed conflict and special resolutions. In relation to Sierra Leone one resolution called upon states to break the link between the 'trade in diamonds produced from countries engaged in armed conflict and the supply to rebel movements of weapons, fuel or other prohibited material'. In the past, the UN has made efforts to restrict the use of mercenaries and to control the export of small arms.

Second, press coverage of a conflict, including the methods and means adopted by those taking part, can be very effective in drawing attention to abuses.

Third, further development of international cooperation by the assumption of extraterritorial jurisdiction through the International Criminal Court or otherwise (see the example of Belgium above and the Pinochet case in the UK) to draw attention to the non-acceptability of certain actions committed during a non-international armed conflict and the likelihood of prosecution or extradition.

Fourth, the norms of international humanitarian law applying during an *international* armed conflict may, in practice, be employed in a non-international armed conflict. A report produced in 2000 by the International Council on Human Rights stated:

> '. . . in most of the countries we studied, efforts to hold armed groups accountable were not obviously hampered by the confusion or contradictions in existing international law. Both UN and NGO [non-governmental organization] staff suggested to us that lack of clarity about international law is simply not that important. Those adopting a legal framework for their actions tend to be pragmatic, using either or both bodies of law as circumstances allow and taking into account what would be most effective'[1].

Fifth is the desire for reciprocity of treatment between government and rebel forces.

And, finally, there is the desire of the rebels to be accepted by the international community if their will prevails and they are able to form a government.

REFERENCE

1 International Council on Human Rights Policy. *Ends and Means: Human Rights Approaches to Armed Groups.* Versoix, Switzerland: ICHRP, 2000: 63