

At a minimum, there is a need for some mechanism, be it an independent determining body or precise treaty terminology, that makes it almost impossible for states to hide or deny the existence of internal armed conflicts broadly defined.

It makes no sense that different rules apply for armed conflict between states, as opposed to internal wars. If anything, internal or civil wars can incur far more serious human rights violations and are in far more need of international protection of human rights in armed conflict as often best set out in the law of armed conflict.⁵⁴ That states and thus international law continue to differentiate between the two, is a reflection of international politics and the difficulty of changing international law. It is not indicative of any fundamental difference between human rights entitlements in internal armed conflicts and human rights entitlements in 'inter-state' armed conflicts.

Even in the absence of an identifiable guerrilla or armed opposition, "there is growing support for the view that even without separate warring sides, violence in a contested political situation may trigger customary law of armed conflict governing non-international armed conflicts."⁵⁵ Thus in the situation like Haiti under the more repressive periods of the military dictatorship, the use of force by a government to violently repress its citizens should bring it under the law of armed conflict. Equally, the tactics of the Tamil LTTE in Sri Lanka or the Sendero Luminoso in Peru, patently deserve to be judged by the law of armed conflict as well as international human rights law.

3.3 Binding on UN Field Operations

A fair amount of legal debate has gone on as to whether the UN is bound by international law. The traditional legal niceties such as the legal standing of the UN to be a party to treaties, or the inapplicability to the UN of various provisions of various treaties, will continue to provide substantial scope for ongoing debate and academic writings. Such debate, focussing on the traditional grounds for the binding nature of international law, is missing the point. The reality of the UN's unique international character establishes a *prima facie* case, that the UN is bound by universal law and UN sponsored international law. The onus should be upon those arguing otherwise to prove the contrary.

⁵⁴ A possible counter argument is that international human rights law ostensibly applies internally already, so what additional protection could the law of armed conflict provide? A partial answer is that governments and armed opposition groups will use a state of national emergency as a rationale for derogating from normal human rights standards, but the law of armed conflict has been deliberately crafted to protect human rights in armed conflict *per se* with almost no scope for derogation. Invariably the law of armed conflict is a better tool to protect human rights during armed conflict, assuming of course that a *de facto* armed conflict is recognized as a *de jure* armed conflict.

⁵⁵ Lawyers Committee for Human Rights, *Protect or Obey: The United States Army versus Captain Lawrence Rockwood*, New York, May 1995, p. 5