

# Global Security And Human Rights

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## Abstract

This article describes the concept of global security with respect to human rights protection by using qualitative research methods. To this end, this article inspects the global perspective of war and how they are executed and their significance to highlight whether wars are the last resort. Further, this article critically investigates the law of war with reference to the human right perspective to analyze the restrictive and traditional approaches in using armed forces for settling wars and the state's responsibility in controlling the war. Then, this research paper focuses on state and global security with regard to human right protection to pinpoint how human rights law can help in controlling and discouraging the concept of wars for the promotion of global security.

**Keywords:** Wars, Global Security, State, Human Right, Law.

## 1. Introduction

The term security is freedom from danger, threats, force, menace, and attack. There are various forms of security which can be either national or global security. The article describes the basic concept of security with reference to human right law. This article is divided into various segments and sub-segments. The second segment elaborates scope of the war, its concept, and basic knowledge in the views of various scholars to generate an idea of whether wars are the last resort or not. The third segment inspects how wars are regularized by the law of war. Whether this law plays a significant role in regularisation of war is the main focus of this segment. Then, this segment is subdivided into various parts. It discusses various approaches that are used to deal with the armed forces. This part dissects the traditional and the restrictive

approaches utilised to use the armed conflicts. Further, it highlights the responsibility of the state during wars. How the state should play a responsible role while dealing with wars and how the state can promote human rights during it and whether the state can use human rights as the defence against wars is basically discussed in this part. The last segment provides a critical analysis of global security and human rights are protected by the state and how the state is obliged to promote global security with the help of human rights. In the end, there is a reasonable and justified conclusion.

## 2. Whether War is Last Resort

War is a contention between two or more states, through their armed forces, for the purpose of overpowering each other and imposing such conditions of peace as the victor pleases

(Oppenheim). According to Professor Hanson, “Native people had no abstract notion that war is the ultimate and final arbiter of politics, a uniquely Western idea that goes back to Aristotle’s amoral observation in the first book of his Politics that the purpose of war is always acquisitions and thus a logical phenomenon that takes place when one State is far stronger than the other and therefore naturally seeks the political subjugation of its inferior rival through any means possible. Such views are later thematic in Polybius’s Histories, omnipresent in Caesar’s Gallic Wars, and once again amplified and discussed in abstract terms by Western thinkers as diverse as Machiavelli, Hobbes, and Clausewitz. Plato in his Laws assumed that every state would, when its resources were strained, seek to annex or incorporate land that was not its own, as a logical result of its own ambition and self-interest” (Victor, 2001).

According to Alfred p. Rubin, “the law of War or as they are more generally referred to, the Laws of armed conflict, apply during armed conflicts. They do not apply all the time and cover every situation. There are times and places when it is appropriate to apply the Laws of war and there are other times, hopefully much more frequent, when it is appropriate to apply other legal regimes such as the criminal law of a state at peace. Almost by definition, war is composed of a series of acts that are ordinarily criminal by its nature: Killing, assaults, deprivations of liberty, and destruction of property. Persons who commit such acts should not be entitled to legitimize their activities by simple pleadings that they thought that there was a war on and that they were fighting in it. A primary purpose of the laws of war is to minimize human suffering and the destruction of values. Premature application of the laws of war may result in a net increase in human suffering because the laws of war permit violence prohibited by domestic criminal law” (Alfred, 1985).

According to Hugo Grotius, “the possibility of being attacked confers the right to attack is abhorrent to every principle of equity. Human life exists under such conditions that complete security is never guaranteed to us”. There must be a just cause for war. Meaning thereby that element of fear that other countries will attack is not an ample ground to wage war. There must be a reasonable apprehension and certainty regarding such intention. Wars must be proportional to the costs entailed in prosecuting them. There must be a reasonable chance to succeed. Only legitimate authority can declare war. War must always be a last resort.

### **3. Regularisation of Wars under the Law of War**

After determining the law of war, there are numerous international statutes that regulate war and ascertain the rights and duties arising out of it. Such instruments include the 1907 Hague Regulations respecting laws and customs of war on land annexed to the 1907 Hague Convention IV and Geneva Conventions 1949 including its two additional protocols 1977. Further Article 3 common to the four Geneva Conventions provides minimum protection to victims of armed conflict, not of an international character (Basic Rules, 1987). Article 1 of the third Hague Convention 1907 provides that “the contracting powers recognize that hostilities between themselves must not commence without previous and explicit warning, in the form of a reasoned declaration of war or an ultimatum with conditional declaration of war”.

#### **3.1 Use of Armed Forces**

If we look at the UN Charter, it gives two different approaches to deal the legitimacy of to use of armed force to settle international disputes. A first approach is a traditional approach. Article 51 states that Nothing in the present Charter shall impair the inherent right of individual or

collective self-defense if an armed attack occurs against a member of the United Nations until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security (UN, Art. 51).

Another approach is a kind of restrictive approach which is based on the interpretation of principles underlying the purpose of abolishing War. Article 2(4) of the UN charter states that All members shall refrain in their international relations from the threats or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations (Article 2(4), UN charter).

### **3.2 Responsibility of State during Wars**

According to the General Assembly Resolution 2625(XXV) “there are certain duties and obligations on the States to be observed. The adoption of these duties by the states gives an indication of their opinion juris as to customary international law. Every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning the frontiers of States. States have the duty to refrain from acts of reprisal involving the use of force. Every state has the duty to refrain from any forcible action which deprives people referred to in the elaboration of the principle of equal rights and self-determination of that right to self-determination and freedom. Every State has the duty to refrain from organizing or encouraging the organization

of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State. Every State has the duty to refrain from organizing, instigating, assisting, or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed toward the communication of such acts when the acts referred to in the present paragraph involve a threat or use of force” (Resolution 2625).

Rebels, insurgents, and belligerents are sometimes depicted by international lawyers as being positioned on a sliding scale according to degrees of control over territory and recognition by governments (Heather, 1985). According to Antonio Cassese, “International law originally only considered belligerents as having international rights and obligations from the time they graduate to the insurgency. Traditionally, belligerents were considered to have international rights and obligations with regard to those states that recognized them as having such a status. According to Antonio Cassese, to be eligible for such recognition belligerents need only satisfy minimum conditions: International law only establishes certain loose requirements for eligibility to become an international subject. In short, rebels should prove that they have effective control over some part of the territory, and civil commotion should reach a certain degree of intensity and duration it may not simply consist of riots or sporadic and short-lived acts of violence. It is for states both that against which the civil strife breaks out and other parties to appraise by granting or withholding, if only implicitly, recognition of insurgency whether these requirements have been fulfilled” (Antonio, 2005).

With regard to an insurrectional group recognized as such by the relevant state, it is clear that there are certain international rights and obligations that flow from this status, depending on the terms of the recognition. (Eibe 2000). Under this

traditional international law, insurgents who were recognized by the state against which they were fighting not only as insurgents but also expressly as belligerents, became assimilated into a state actor with all the attendant rights and obligations which flow from the laws of international armed conflict. Today, these recognition regimes have been replaced by compulsory rules of international humanitarian law which apply when the fighting reaches certain thresholds (Ingrid, 2000). Commentators such as Ingrid Detter have suggested that the idea that the application of the rules of armed conflict is related to the recognition of belligerency has been abandoned, and Heather Wilson has claimed that, since the First World War, the old law is “more theoretical than real”, since recognition has hardly occurred since that time (Heather, 1988).

### 3.3 Recognition of Rebels

Although the theoretical possibilities remain for states to bestow rights and obligations on rebels by recognizing them as either insurgents or belligerents, it makes more sense today simply to consider rebels (unrecognized belligerents) as addressees of international obligations under contemporary international humanitarian law, especially the obligations contained in Common Article 3 to the four Geneva Conventions of 1949, in Additional Protocol II of 1977 to the Geneva Conventions and in Article 19 of the Hague Convention on Cultural Property of 1954. Today, international law imposes obligations on certain parties to an internal armed conflict irrespective of any recognition granted by the state they are fighting against or by any third state. The problem is that governments are often loath to admit that the conditions have been met for the application of this international law, for to admit such a situation is seen as an admission that the government has lost a degree of control and as an “elevation” of the status of the rebels (Liesbeth, 2002).

Whereas in Tadjic jurisdiction case, the international criminal tribunal for Former Yugoslavia (ICTY), the court in defining an armed conflict has deemed there to be a NIAC in the sense of Common Article 3 ‘whenever there is protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. The Prosecutor v. Dusko Tadic can be cited. The Tribunal’s subsequent decisions have relied on this definition, explaining that the ‘protracted’ requirement is in effect part of the intensity criterion. A similar definition is contained in the Statute of the International Criminal Court (ICC), which, in addition to proscribing as war crimes serious violations of Common Article 3, contains a list of other serious violations of the laws and customs applicable in armed conflicts not of an international character, namely armed conflicts ‘that take place in the territory of a State when there is a protracted armed conflict between governmental authorities and organized armed groups or between such groups’ (Article 8(2)(f)).

Theodor (2000) stated that there is some debate in the legal literature as to whether the ICC Statute in fact created three different types of NIAC as a result of the wording mentioned above; an ICC Pre-trial Chamber decision seemed to suggest that this was the case (Affaire, 2007). It is submitted that the better view is that the NIAC referred to in Article 8(2)(f) has the same threshold of applicability as Common Article 3, and that the Statute did not intend to infer a different trigger. Based on this reading, a 2008 public ICRC opinion paper on the definition of armed conflict under IHL defines non-international armed conflicts as protracted armed confrontations occurring between governmental armed forces and the forces of one or more armed groups, or between such groups arising on the territory of a State (party to the Geneva Conventions). The armed confrontation must

reach a minimum level of intensity and the parties involved in the conflict must show a minimum of the organization (ICRC, 2008).

Keeping in view all this Al Qaeda is an organized terrorist group. The Bush Administration had designated this conflict between Al Qaeda and its affiliates and the United States, as a 'global war on terror (gwot) and determined that it was neither an international armed conflict governed by the Geneva Conventions because Al Qaeda was not a state party nor a non-international armed conflict because it exceeded the territory of one state (White House Memorandum, 2002). That view was domestically superseded by the US Supreme Court, which ruled in the 2006 Hamdan v. Rumsfeld, it was held that the armed conflict in question was at least governed by Common Article 3 as a matter of US treaty obligation, thereby implying that it was non-international in nature. It is not clear whether the Obama Administration considers the war with Al Qaeda and its affiliates to be global and or non-international, although there are indications to that effect (Report of USA).

#### **4. State and Global Security with respect to Human Rights Protection**

Human rights can be secured by the global order and the global order can be achieved by preventing the trends of war. Moreover, discouraging the promotion is also best for global security (Robertson, 1962). To this end, there is a need to discuss Article 55 of the UN Charter 1945. Article 55 says that:

“With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”

Article 55 creates no discrimination on the basis of race, language, religion, or sex. The actual and factual implementation of Article 55 will help in living a friendly life that will be full of peace and if this article is simply enforced then it best resort for global security as well. Furthermore Article 1 of the “Statute of the Council of Europe 1949” promotes the same concept which core and significant doctrine of this statute. This statute was introduced for the war waging and atrocities of the Nazis. Both of these statutes are encouraging the primacy of the people against the extraordinarily powerful countries. These statutes aim to establish political and civil independence. Moreover, these statutes protect the basic and fundamental concept of democracy. Undoubtedly, it is an admitted fact that democracy is the basic tool that is helpful in maintaining global security by promoting harmony and peace among the people and between nations (Simpson, 2004).

These fundamental rules and the combination of human rights and their implementation in acquiring global security should not only be maintained at the international level as it should also be promoted at the national level as well. It is true that many of human rights charters, laws obligations, and protocols comprise significant human rights insights that oblige the states to enforce this enlightenment. European Convention on Human Rights is the best example

of it. This Convention in its preamble provides that to maintaining peace and delivering justice one has to rely on the fundamental concepts of freedom and human rights.

Generally, there is an ambiguity that it is usually admitted that security and human rights are two different and even different concepts. However, the highly stable, significant, and reliable concept is that security can only be achieved with the help of human rights. One of the main objectives is to achieve security not only at the international but also at the national level. Remarkably, European Convention promotes the protection of global security. However, these statutes or conventions remain unsuccessful in expressly describing the obligation of the country in that context (Comment 1984). Furthermore, many cases of military acts that are occurred outside the jurisdiction of the state do not fall in the ambit of treaties of human rights (Bankovic, 2001). Hence, it can be concluded that human rights law provides the very least guidance to global confrontations and relations and it defines and describes a very weak meaning of global security.

## 5. Conclusion

It is the responsibility of the state to control wars and discourage the promotion of war for maintaining peace and harmony. It is submitted that human rights law remained cold in giving the best guidance regarding international affairs and confrontations. So, it also remained unsuccessful in describing the correct and precise meaning of global security with respect to human rights law. Global security and fundamental human rights are related to one other. However, the real issue is that international human right law is a bit slow in dealing with global security with respect to human rights. Even human rights law has not provided the best and most distinct perspective on global security. Moreover, it has provided diffused concepts on security. The concepts

relating global security with human rights are not reasonable and clear. The concept of global security implies that protection and safeguarding of human rights need the state should be responsible while taking measures to protect human rights.

## References

1. Affaire Lubanga Dyilo, Chambre préliminaire I, Décision sur la confirmation des charges, 29 janvier
2. Antonio Cassese, *International Law*, 2nd edn, Oxford University Press, (Oxford, 2005) 125.
3. Article 1 ICCPR, and further Human Rights Committee (HRC), General Comment No 12: The right to self-determination of peoples (art. 1), 13 March 1984, HRI/GEN/1/Rev.1 at 12 (1994); 1-2 IHRR 10 (1994) at para 8: "The Committee considers that history has proved that the realisation of and respect for the right of self-determination of peoples contributes to the establishment of friendly relations and cooperation between States and to strengthening international peace and understanding."
4. Basic Rules Of Geneva Conventions and Their Additional protocols (icrc, 1987)
5. detainees'.
6. Eibe H. Riedel, "Recognition of Insurgency", in Rudolf Bernhardt (ed.), *Encyclopedia of Public*
7. Eibe H. Riedel, "Recognition of Insurgency", in Rudolf Bernhardt (ed.), *Encyclopedia of Public*
8. Fredman, 'The Positive Rights to Security', in Gould and Lazarus, *supra* n1 at 307-11.
9. General Assembly Resolution 2625 (XXV)



10. Glanville, 'The Antecedents of "Sovereignty as Responsibility"' (2011) 17 *European Journal of International Relations* 233; and, for example, Crawford, *The Creation of States in International Law* (Oxford: Oxford University Press, 2007) at 6-10
11. Hague Convention III of 1907, Art. I. "The contracting Powers recognize that hostilities between themselves must not commence without previous and explicit warning, in the form either of a declaration of war, giving reasons, or of an ultimatum with conditional declaration of war."
12. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (hereafter, the *Hamdan case*), 628-631
13. Harris, O'Boyle, Bates and Buckley, *Harris, O'Boyle and Warbrick: Law of the European Convention on Human Rights*, 2nd edn (Oxford: Oxford University Press, 2009) at 132-3.
14. Heather A. Wilson, *International Law and the Use of Force by National Liberation Movements*,
15. Heather A. Wilson, *International Law and the Use of Force by National Liberation Movements*,
16. How is the Term 'Armed Conflict' Defined in International Humanitarian Law? ICRC Opinion Paper,
17. Hugo Grotius, *The Law Of War And Peace*, Chap 22, v, 1.
18. Hugo Grotius, *The Law Of War And Peace*, Chap. Chap 24, VII
19. Human Rights in conjunction with the Universal Periodic Review', 21.
20. ICTY, *The Prosecutor v. Dusko Tadic*, Decision on the Defence Motion for Interlocutory Appeal on
21. Ingrid Detter, *The Law of War*, 2nd edn (Cambridge University Press, Cambridge, 2000) 43.
22. *International Law*, Vol. 94 (2000) 260.
23. *International Law*, Vol. IV, Elsevier, (Amsterdam, 2000) 54-60.
24. *International Law*, Vol. IV, Elsevier, (Amsterdam, 2000). 47-50.
25. Joseph, Schultz and Castan, *The International Covenant on Civil and Political Rights*, 2nd edn (Oxford: Oxford University Press, 2005) at paras 11.3-6; and Trechsel, *Human Rights in Criminal Proceedings* (Oxford: Oxford University Press, 2006) at 411-2.
26. *Jurisdiction*, IT-94-1-A, 2 October 1995, para. 70.
27. L.F.L. Oppenheim, V, II, *British Manual Of Military Law*, Part III, 5.
28. Liesbeth Zegveld, *Accountability of Armed Opposition Groups in International Law*, Cambridge
29. March 2008.
30. Oxford University Press, (Oxford, 1988) 24.
31. Oxford University Press, (Oxford, 1988) 27.
32. Remarks by Alfred P. Rubin, penal on "Should The Law Of War apply to Terrorists"? *The American Society of International Law*, 1985.
33. Report of the United States of America submitted to the U.N. High Commissioner for
34. Robertson, *Human Rights in Europe* (Manchester: Manchester University Press, 1963)
35. Simpson, *Human Rights and the End of Empire. Britain and the Genesis of the European Convention* (Oxford/New York: Oxford University Press, 2004) at 157 and 219-20.
36. Theodor Meron, 'The humanization of humanitarian law', in *American Journal of*
37. This particularly applies in regard to the European Convention; see Bankovic and

- Others v Belgium and 16 Other Contracting States 2001-XII;44 EHRR SE5; see, for exceptions, Al-Skeini and Others v United Kingdom 53 EHRR 18. For further reading, see Miller, 'Revisiting Extraterritorial Jurisdiction: A Territorial Justification for Extraterritorial Jurisdiction under the European Convention' (2009) 20 European Journal of International Law 1223. The ICCPR Human Rights Committee (HRC) has adopted a more extensive interpretation of jurisdiction: see, for example, HRC, General Comment No 31: The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13; 11 IHRR 905 (2004), at para 10; and HRC, Concluding observations regarding Israel, 3 September 2010, CCPR/C/ISR/CO/3, at para 5. It is still unclear, however, whether the HRC would expect a State Party to apply the ICCPR in a situation where the State Party did not have control over the territory concerned: see Byron, 'Blurring of the Boundaries: The Application of International Humanitarian Law by Human Rights Bodies' (2007) 47 Virginia Journal of International Law 839 at 865-78 and 880-81.
38. UN Charter, Art, 2(4) "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."
39. UN Charter, Art, 51. "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."
40. University Press, (Cambridge, 2002) 49–51.
41. Victor Davis Hanson, Carnage and culture, 213 (Anchor (New York, 2001))
42. Waldron, 'Security and Liberty: The Image of Balance' (2003) 11 Journal of Political Philosophy 191 at 210; see also Ashworth, 'Security, Terrorism and the Value of Human Rights', in Goold and Lazarus, supra n1 at 203, 208-9.
43. White House Memorandum of February 7, 2002 on the 'Humane treatment of Taliban and Al Qaeda
44. Zedner, 'Seeking Security by Eroding Rights: The Side-stepping of Due Process', in Goold and Lazarus, supra n 1 at 257 and 258, under reference to Loader and Walker, 'Locating the Public Interest in Transnational Policing', in Goldsmith and Sheptycki (eds), Crafting Transnational Policing (Oxford: Hart Publishing, 2007) at 111.