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# The situation in south-east Turkey: Is it an armed conflict for the purpose of international humanitarian law?

## Abstract

*This article aims to start an academic debate on the question of the insurgency in south-east Turkey and whether the clashes between the Turkish security forces and the Kurdistan Workers' Party (PKK) can be classified as an armed conflict. It looks at the roles of international, regional and domestic institutions such as the United Nations, the European Union and the Turkish Government in resolving the issues in the region. Against this backdrop, it considers the international law implications of past and future actions and the applicability of international humanitarian law in defining the situation in south-east Turkey as an armed conflict using the Geneva Conventions of 1949 and international customary law. This article does not attempt to find a solution to the conflict rather it suggests ways to move the debate forward.*

## Introduction

The purpose of this article is to begin an academic debate on whether the long-standing insurgency in south-east Turkey between the Turkish armed and security forces and the Kurdistan Workers' Party (PKK) could be classified as an armed conflict. This will be a very important debate as there are a number of international law implications from such a classification. Up until this point, the United Nations, the European Union and the Turkish government - and for that matter the world's media - have labelled the insurgency in south-east Turkey as a series of terrorist attacks. There is no legal bar to having both classifications, a group could be labelled terrorist but still be a participant in an armed conflict. There are two separate questions being examined in this article. Firstly, whether

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the conflict itself is at an intensity that results in it being an armed conflict and, secondly, what international legal rules might be applicable in that event.

This article can only contribute to a debate still in its infancy, and will certainly not provide a definitive answer to the question of whether the insurgency is an armed conflict but will suggest that the international law rules constituting international humanitarian law (or as known as *jus in bello*) might impact on those who are involved in the conflict. This article will be divided into two sections, first a brief description of the conflict in southeast Turkey since 1999 with an analysis of the questions that must be considered in whether this situation might be classified as an armed conflict. The second section will consider those rules of international humanitarian law that would or might apply if the situation were thus classified. The conclusion will suggest ways forward if the debate moves into the arena of solutions to armed conflict rather than the professed and disputed category of a 'war on terrorism'.

### **1. The situation in south-east Turkey – classification as armed conflict**

The conflict between the Turkish government and the PKK dates from 1984 with 30000-40000 persons killed, three million displaced and over 3000 villages in the region destroyed.<sup>1</sup>

It was initially argued that the conflict ended in 1999 with the arrest of Abdullah Öcalan and the declaration of a PKK ceasefire.<sup>2</sup> However, the conflict never truly ended, with skirmishes continuing since the ceasefire. Recently we have seen an increase in the level of severity to the point that the Turkish parliament voted overwhelmingly on 17 October 2007 to authorise sending troops into northern Iraq. This could potentially involve Turkey and Northern Iraq in an international armed conflict, but until that point the focus has to be on the events in south-east Turkey.

Project Ploughshares in its annual Armed Conflict report of 2003 traced the conflict back during the previous few years. It recounted that during 1999 armed clashes between government forces and Kurdish rebels continued in the Southeast and northern Iraq, though the intensity of the fighting decreased. The 1999 death toll was estimated at about 1,300 people killed, including civilians, a decline from the 1998 figure of 2,100. It was reported that in 2000 the Turkish

K. Yildiz, *The Kurds in Turkey*, (London, Pluto Press 2005) p.2 and 'Project Ploughshares', *Armed Conflict Report: Turkey 2003*  
<http://www.ploughshares.ca/libraries/ACRText/ACR-Turkey.html> accessed 10 November 2007

2 Yidiz, p. 15.

forces, in dismissing the the PKK ceasefire as a terrorist ploy, pursued PKK rebels deeper into northern Iraq. During that campaign at least 100 people were killed. The report then reviewed the major Turkish military operation in January 2001 which was one of only a few incidents of violence reported for the year. There was a corresponding decline in the death toll for the year to an estimated 20.<sup>3</sup>

There was a similar situation reported by Project Ploughshares for 2002. The Turkish military and Kurdish rebels engaged in a number of skirmishes on Turkish and Iraqi soil. The Turkey-based Kurdistan Freedom and Democracy Congress (KADEK) deployed man-portable surface-to-air missiles (SAMs) on Turkey's border with Iraq in anticipation of a possible Turkish invasion in northern Iraq triggered by a US-led war in Iraq. It was alleged that the 'village guards' armed by Turkey against Kurdish rebel incursions were accused of raping, attacking and, in some cases, murdering villagers returning to their land through a resettlement program initiated by the government. On 27 May 2002 the Kurdistan Observer reported that 700 Turkish soldiers battled in northern Iraq with 500 Kurdish guerrillas of the People's Defence Force (HSK) an armed wing of KADEK. Even so, in December the government lifted its state of emergency in the Southeast. Due to the decrease in the actual death toll (estimated 20 for the year 2002) Project Ploughshares removed the situation from their annual armed conflict reports in 2004. This is in spite of the fact that on 1 June 2004, the PKK ended their ceasefire.<sup>4</sup>

The media began to report on an escalating conflict from 2004. The BBC reported that in 2004 the PKK resumed its violent campaign, which escalated steadily from 2004 to the present despite several other short-lived, unilateral ceasefires. It was stated that the Turkish government believed that the PKK had several thousand fighters based in the Qandil Mountains of northern Iraq.<sup>5</sup> A major incident took place on 16 July 2005 when it was alleged that the PKK launched a bomb attack in Kuşadası. Five people including tourists from Britain and Ireland died and thirteen were wounded. The PKK denied responsibility and another group, the TAK (*Teyrenbaze Azadiya Kurdistan*, the Kurdistan Freedom Falcons), claimed responsibility for this and another attack earlier in the month which wounded 21

3 Project Ploughshares, *Armed Conflict Report: Turkey 2003* <http://www.ploughshares.ca/libraries/ACRText/ACR-Turkey.html> accessed 10 November 2007.

4 Ibid.

5 P. O'Toole, 'Profile: the PKK', BBC News 15 October 2007, <http://news.bbc.co.uk/2/hi/europe/7044760.stm> accessed 10 November 2007.

people including three foreign tourists in the Aegean coastal town of Çeşme.<sup>6</sup> On 25 March 2006 fourteen PKK were killed during an armed attack by the Turkish security forces in the Şenyayla region. In the next month it was reported that at least a dozen people were killed in clashes between Kurdish protesters and security forces in the Southeast.<sup>7</sup>

The reports of violence escalated in 2007. On 30 September 2007 the Associated Press reported that according to a local official, Kurdish rebels ambushed a minibus carrying pro-government village guards and civilians in south-east Turkey and killed 12 people. It was stated that the rebels armed with automatic weapons attacked the minibus in Şırnak province near the border with Iraq, killing seven village guards and five civilians. Two people were wounded, but it was not clear whether they were village guards or civilians.<sup>8</sup>

Kurdistan TV reported that a land mine exploded on Sunday 7 October some 25 kilometres inside Turkey from the Iraq border in the south-eastern Şırnak Province. The mine killed 13 soldiers. It was also reported on Kurdistan TV that on Saturday, 20 October, a Kurdish attack killed 10 Turkish soldiers already massed at the frontier.<sup>9</sup> On 21 October Canadian Broadcast Company news reported that Turkish artillery units shelled rebel positions in northern Iraq in retaliation for an ambush that killed at least 12 soldiers and injured 16 others. The Turkish military said its troops, backed by helicopter gunships, killed 32 rebels belonging to the PKK.<sup>10</sup>

Although these reports would have to have some independent verification for accuracy, especially with respect to death toll, there is no question of a serious escalation of violent clashes between the PKK and the Turkish military with thousand of combatants being involved on each side. However, one of the most controversial areas in international humanitarian law is whether or not a civil disturbance or insurgency can rise to the level of an armed conflict. It is the general practice of a sovereign state not to admit that they have an internal armed

6 BBC News, 'Turkish Resort Blast kills five, BBC News' 16 July 2005, <http://news.bbc.co.uk/2/hi/europe/4688575.stm> accessed 10 November 2007.

7 BBC News, 'Timeline Turkey' [http://news.bbc.co.uk/1/low/world/europe/country\\_profiles/1023189.stm](http://news.bbc.co.uk/1/low/world/europe/country_profiles/1023189.stm) accessed 10 November 2007.

8 BBC News, 'Kurd Attack kills 12 in Turkey', as reported by Associated Press 30 September 2007, [http://news.bbc.co.uk/2/hi/middle\\_east/7020360.stm](http://news.bbc.co.uk/2/hi/middle_east/7020360.stm) accessed 11 November 2007.

9 Kurdistan TV reports at <http://www.kurdistantv.net/english.asp?ser=20> accessed 11 November 2007.

10 CBC News, 'Turkey considers response after deadly rebel ambush on soldiers', 21 October 2007 <http://www.cbc.ca/world/story/2007/10/21/turkey-kurds.html> accessed 11 November 2007.

conflict. Those who wish to secure a new political arrangement are classified as rebels, terrorists or insurgents - or as Margaret Thatcher famously said with respect to the IRA captives during the Northern Ireland Troubles – criminals.

There are two main legal difficulties. Firstly, due to disagreement among States, there was deliberate absence in the 1949 Geneva Conventions of a definition of what constitutes an armed conflict, as the provision for non-international armed conflict, Common Article 3 states simply that it applies to ‘an armed conflict not of an international character occurring in the territory of one of the High Contracting Parties’. It should be noted that there is also not an agreed formula as to how to classify a conflict as international or non-international.<sup>11</sup> Secondly, there is also no definition of armed conflict that might constitute customary international law. States do express positions on whether a situation of violence amounts to an armed conflict in General Assembly or Security Council resolutions but the States involved in this type of insurgency rarely agree with this classification and tend to argue that the action of its military is for the purpose of law enforcement or counter-terrorism operations. Rather, it is left to the international community and often civil society to argue that the situation has escalated to that extent. An example given by Pejić is that the Russian Constitutional Court in 1995 indicated that Additional Protocol II was applicable to the fighting in Chechnya at that time, but when hostilities resumed in 1999 the Russian executive referred to the situation as a counter-terrorist action.<sup>12</sup>

This means that distinguishing between situations of non-international armed conflict which will trigger the operation of common Article 3 to the Geneva Conventions and Additional Protocol II of 1979 (if applicable), and situations of internal disturbance or tension is a very difficult task. The result of this lack of definition is that a series of criteria has been developed in the practice of States and in the legal literature, even though it might not be accepted as customary. The first and primary criterion is the existence of parties to the conflict. Common Article 3 is applicable to ‘each Party to the conflict’ and this means there must be in existence at least two parties. It is not difficult to determine the existence of the armed forces of one of the parties - the State but the non-State armed group is more difficult. It is widely recognised that an armed group has to have a ‘certain

11 J. Pejić, ‘Status of armed conflicts’ in E. Wilmshurst and S. Breau, *Perspectives on the iCRC Study on Customary International Law*, (Cambridge University Press 2007), p. 78.

12 Ibid. p.79.

level of organisation and command structure, as well as the ability to implement international humanitarian law.<sup>13</sup>

In addition there are other important criteria, including whether the government is obliged to use military force, the number of victims, the means used to deal with the opposing side, the duration and level of violence involved.<sup>14</sup> In his lectures to “The Hague Academy of International Law”, Schindler came up with the following definition which will suffice for the purpose of examining the Kurdish Conflict. He stated:

Practice has set up the following criteria to delimit non-international armed conflicts from internal disturbances. In the first place, the hostilities have to be conducted by force of arms and exhibit such intensity that, as a rule, the government is compelled to employ its armed forces against the insurgents instead of mere police forces. Secondly, as to the insurgents, the hostilities are meant to be of a collective character, that is, they have to be carried out not only by single groups. In addition, the insurgents have to exhibit a minimum amount of organisation. Their armed forces should be under a responsible command and be capable of meeting minimal humanitarian requirements. Accordingly, the conflict must show certain similarities to a war, without fulfilling all conditions necessary for the recognition of belligerency.<sup>15</sup>

One case that has considered this issue is the *Abella* case in the Inter-American Commission on Human Rights. In the view of the commissioners a conflict lasting 30 hours between a group of dissident officers and the Argentine military at the Tabalda military base qualified as an armed conflict and Common Article 3 was held to be applicable.<sup>16</sup>

The test is more stringent in Additional Protocol II to the Geneva Conventions. Article 1:

13 Ibid. pp. 85-86 and L. Moir, *The Law of Internal Armed Conflict* (Cambridge University Press, 2002) p.36.

14 J. Pejčić, ‘Status of armed conflicts’ in E. Wilmshurst and S. Breau, *Perspectives on the ICRC Study on Customary International Law*, (Cambridge University Press 2007), p. 86

15 D. Schindler, ‘The Different Types of Armed Conflicts According to the Geneva Conventions and Protocols’, *Recueil des cours, Volume 163/ii*, 1979, p. 147.

16 *Juan Carlos Abella v. Argentina*, Case 11.137, Report N° 55/97, Inter-Am. C.H.R., OEA/Ser.L/V/II.95 Doc. 7 rev. at 271 - November 18, 1997.

1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.
2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

The two key additional factors were territorial control and the ability to carry out sustained and concerted military operations. An explanation is that Additional Protocol II was negotiated in an atmosphere of determining the lowest common denominator in a situation of infringement of state sovereignty. Therefore, the scope of application is much narrower than Common Article 3 but the Protocol specifically states that it develops and supplements Common Article 3 without modifying its existing conditions of application. The Geneva Conventions are now universally ratified Conventions whereas many countries, including Turkey, are not party to Additional Protocol II. The International Court of Justice has declared that Common Article 3 represents customary international law in both international and non-international armed conflict.<sup>17</sup>

The Rome Statute of the International Criminal Court provides yet another definition of a non-international armed conflict. Article 8 2(f) provides a definition that is not as stringent as Additional Protocol II but not as general as Common Article 3. It states:

Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict

<sup>17</sup> Military and Paramilitary Activities in and against Nicaragua (Nicaragua. v.USA.), Merits, 1986 ICJ Rep. 4, at paras. 118-120.

between governmental authorities and organized armed groups or between such groups.

The only criteria of an organised armed group and protracted conflict are also found in the Schindler summary of practice in the area.<sup>18</sup>

Pejić summarises the serious legal problem with this issue by stating:

Political considerations aside, there remains the difficulty of determining and analysing the various factual criteria to which legal conclusions can be pinned. Based on the facts, it can legitimately, if only hypothetically, be asked whether, for example, the situations in Northern Ireland, Turkey and Algeria, constituted internal disturbances or tensions or internal armed conflicts. The general conclusion to be drawn is not that a definition of internal armed conflict would solve the problem - the examples provided above would attest to the contrary - only that knowledge of the facts, careful analysis and a bona fide approach to the habitual criteria for assessment are required.<sup>19</sup>

If one carefully analyses and assesses the increase in violence in south-east Turkey and the history of the conflict we can see that there has been sustained violence between the military and security forces of Turkey and an organised group, the PKK since 1984. Secondly, the violence takes place within a sovereign State Turkey. Thirdly, the PKK has the level of organisation required and has a military command structure. Fourthly the PKK has expressed its agreement to abide by the laws of armed conflict. This was confirmed by a statement to the United Nations delivered in Geneva on 24 January 1995 which states:

In its conflict with the Turkish state forces, the PKK undertakes to respect the Geneva Conventions of 1949 and the First Protocol of 1977 regarding the conduct of hostilities and the protection of the victims of war and to treat those obligations as having the force of law within its own forces and the areas within its control.<sup>20</sup>

Finally, the violence may be reaching the intensity of armed conflict. Only cautious analysis of each incident and a comprehensive review of the structure of the PKK will give a definitive answer but certainly an initial and careful view of the

18 See footnote 62

19 Pejić, *op cit*, p.89.

20 PKK Statement to the United Nations Geneva, 24 January, 1995.

criteria and facts of this conflict suggests to this author that a non-international armed conflict exists in south-east Turkey. Regardless of this answer it is clear that Turkey will probably not agree with this assessment.

Nevertheless, this conflict must be examined by the rest of the international community in light of these well established criteria. States who are members of the United Nations should not forget their obligations under international law to respond to situations of armed conflict including internal armed conflicts as threats to international peace and security.

## **2. The applicable international humanitarian law should the situation in south-east Turkey be classified as armed conflict**

The Martens Clause has formed a part of the laws of armed conflict since its first appearance in the preamble to the 1899 Hague Convention (II) with respect to the laws and customs of war on land. It states:

Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience.<sup>21</sup>

Notions of the 'laws of humanity' and 'the requirements of public conscience' have led to the development of a series of international humanitarian law instruments with a primary focus to prevent human suffering for persons who were 'hors de combat' and civilians. A specific example of such protection is Common Article 3 to all Four Geneva Conventions of 1949, which states:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in

21 Hague Convention II Laws and Customs of War on Land, 29.07.1899.

all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.<sup>22</sup>

As part of four universally ratified treaties, the Geneva Conventions can also constitute customary international law. Thus the provision is binding on the Turkish government and also binding by its own agreement, as discussed above, on the PKK.

In addition to these specific protections and many more outlined in various treaties, the rules of *jus in bello* have evolved into three primary rules: necessity, distinction and proportionality. It is accepted that human lives will be lost in an armed conflict but the primary goal is to limit the casualties to the actual belligerents. Armed conflict is to be directed against a state's military not their civilians. Attacks are to be against military targets not civilian ones such as hospitals, schools and churches and for that matter, villages, as has been the alleged practice by the Turkish forces in the course of this conflict.

The first general principle is the rule of necessity which prohibits destructive or harmful acts that are unnecessary to secure a military advantage. Before any military action commences, it must be established that a direct military advantage will result.<sup>23</sup> This is a primary rule of military targeting.

22 Geneva Conventions I-IV, 75 UNTS, 31, 85, 135 and 287.

23 M. Schmitt, "Clipped Wings" in Schmitt, (ed.), *International Law Studies Volume 72*, (1998) p.247.

The second principle distinction requires that a belligerent distinguishes between civilian and military objectives and between civilians and combatants. Article 48 of the First Additional Protocol to the Geneva Conventions sets out the basic rule of distinction:

In order to ensure respect for and protection of the civilian population and civilian objects, the parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.<sup>24</sup>

Furthermore, Article 51 paragraph 2 of AP I prohibits 'acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited'. In paragraph 4 and 5 of the same article, area bombardment is outlawed, which is defined as 'an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives in a city, town, (or) village.'<sup>25</sup>

The third primary principle is the rule of proportionality. It means that in warfare, 'a belligerent may apply only that amount and kind of force necessary to defeat the enemy.'<sup>26</sup> The rule implies that the enemy should be defeated with a minimum loss of life or property. The use of any kind of force not required for the defeat of the enemy was prohibited. Even if a target was a military objective, it should be avoided if it might cause excessive civilian casualties. The first specific provision is Additional Protocol I Article 51(5) (b) which states:

An attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.<sup>27</sup>

The Protocol goes on in Article 57 to outline a series of precautionary measures to avoid civilian casualties:

24 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, (Protocol I) 8 June 1977 Article 48.

25 Ibid. Article 51.

26 C. Greenwood, 'Historical Development and Legal Basis' in D. Fleck, (ed.), *The Handbook of Humanitarian Law in Armed Conflict*, (Oxford University Press, 1995), p.30.

27 Protocol I 8 June 1977, Article 51

1. In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.
2. With respect to attacks, the following precautions shall be taken:
  - (a) Those who plan or decide upon an attack shall:
    - (i) Do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives within the meaning of paragraph 2 of Article 52 and that it is not prohibited by the provisions of this Protocol to attack them;
    - (ii) Take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects;
    - (iii) Refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;
  - (b) An attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;
  - (c) Effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit.
3. When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected shall be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects.
4. In the conduct of military operations at sea or in the air, each Party to the conflict shall, in conformity with its rights and duties under the rules of international law applicable in armed conflict, take all reasonable precautions to avoid losses of civilian lives and damage to civilian objects.

5. No provision of this Article may be construed as authorizing any attacks against the civilian population, civilians or civilian objects.<sup>28</sup>

This principle is further supported in the Advisory Opinion on Nuclear Weapons when it states ‘respect for the environment is one of the elements that go to assessing whether an action is in conformity with the principles of necessity and proportionality.’<sup>29</sup>

These rules, are also argued to be customary, as is evidenced by the International Committee of the Red Cross study on customary international humanitarian law.<sup>30</sup> This influential study does much to clarify the rules of international humanitarian law in light of the fact that several countries have not ratified the more specific Additional Protocols I and II of 1977 to the Geneva Conventions. The first part of the rules, as may be expected set out the rules surrounding the three principles of distinction, proportionality and necessity:<sup>31</sup>

Rule 1

The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians.

Rule 11

Indiscriminate attacks are prohibited.

Rule 12

Indiscriminate attacks are those:

- (a) which are not directed at a specific military objective;
- (b) which employ a method or means of combat which cannot be directed at a specific military objective; or
- (c) which employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.

Rule 14

28 Ibid. Article 57.

29 *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996 [1986] ICJ Reports 14, Para 140

30 Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law (3 volumes)* (ICRC and Cambridge University Press, 2005)

31 *Ibid Volume I*, Part I, pp. 3-76 Rules 1-24 and see M. Schmitt, ‘The Law of Targeting’ in E. Wilmshurst and S. Breau, (eds.), *Perspectives on the ICRC Study on Customary International Humanitarian Law*, Chapter 6.

Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.

The study contends that all these rules are applicable in internal armed conflict even though they are not specifically mentioned in either Common Article 3 or Additional Protocol II to the Geneva Conventions of 1977.

It has to be pointed out that these specific rules apply to both sides in this conflict. Allegations of terrorism on the part of insurgency groups often relate to the use of methods that target civilians. However, in armed conflict civilians might be killed if they are present at a military objective, for example civilians working in an arms factory or military base. The obligations expressed in the established rules of customary international law prohibit any targeting of civilians to spread terror. Notwithstanding a label of terrorist a belligerent can still be a participant in an armed conflict and bound by the customary and treaty rules of international humanitarian law.

There are many other rules of conflict that could be discussed but space does not permit. This would be particularly the case if the conflict becomes an international armed conflict if the Turkish forces invade northern Iraq. Nevertheless, the cardinal rules of distinction, proportionality and necessity will prevail regardless of the type of armed conflict that is pursued. There is also the assistance of the Declaration of Minimum Humanitarian Standards negotiated at Turku that merit examination in the context of any type of internal disturbance even if it does not rise to the level of armed conflict but it contains many of the same guarantees contained in Common Article 3 to the Geneva Conventions.<sup>32</sup>

## Conclusion

In the upcoming publication on this issue to be co-authored by myself and Kerim Yildiz of the Kurdish Human Rights Project, another important area in this debate will be canvassed, that of possible political solutions to the situation of the Kurds in south-east Turkey. If the situation rises to the level of a non-international armed conflict, as indeed seems likely, there is an international

32 Declaration of Minimum Humanitarian Standards, *reprinted in* Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its Forty-sixth Session, Commission on Human Rights, 51st Sess., Provisional Agenda Item 19, at 4, U.N. Doc. E/CN.4/1995/116 (1995) (Declaration of Turku).

obligation on the parties and the international community to seek an appropriate and long-lasting political arrangement that might prevent further conflict. The number of lives lost, properties destroyed and persons injured necessitates an urgent examination of possible solutions to this long-standing dispute.