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Centre africain d'Etudes Internationales
Diplomatiques Economiques et Stratégiques

Série du CEIDES consacrée au 100ème Anniversaire des Conventions de Genève

THE CONVENTION OF GENEVA A CENTURY LATER: LESSONS LEARNED AND PERSPECTIVES

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Février 2020

« La beauté des conventions de Genève et la manière dont elles sont formulées, c'est qu'en leur donnant une interprétation actualisée, évolutive, on est capable aujourd'hui de les appliquer à tous les conflits armés qui ont cours dans le monde »[1]

[1] Pr Julia Grignon, « 70 ans de conventions de Genève : Où en est le DIH ? », www.info.tv5monde.com , 11/01/2020, 10.am

The geopolitical configuration of our contemporaneity submits us to a haunting verdict of reality: The world space is increasingly subject to conflict-type turbulence, mixing in turn inter-state armed conflicts, non-state armed conflicts, new forms of war and violence, etc. Any analyst called upon to make a sharp critique of the mapping of conflicts is no longer obliged to focus on the Right to wage war or to prevent war (*Jus ad bellum* and *jus contra bellum*); but rather on the way in which the different wars are regulated (*jus in bello*). In doing so, immersion in International Humanitarian Law (IHL) is irrefutable. "A branch of International Law, it is a set of legal rules which, **for humanitarian reasons**, seeks to limit the effects of armed conflict. **It protects those who are not or no longer participating in combat** and restricts the means and methods of warfare" [emphasis added][2]. One of the consubstantial instruments that inevitably contribute to the ontology of International Humanitarian Law is the Geneva Convention/Geneva Conventions[3]. "***The Geneva Conventions are a set of international treaties that contain rules setting limits to the barbarity of war. They protect civilians, members of medical and humanitarian personnel, the wounded, sick and shipwrecked, and prisoners of war"***[4]. In view of the resurgence of armed conflicts, we are left with the question: What have we learned from the Geneva Conventions and what perspectives emerge from our analysis? The first part of this paper will examine the socio-historical evolution of the conventions and the lessons that contemporary society has taught us; the second part will look at the prospects that are envisaged.

I- The Geneva Conventions: from sociohistory to the lessons of contemporaneity

The Geneva Conventions and their additional protocols as we know them today were not structured in abstracto. On the contrary, they are the product of a configuration, adapting each time to the context in force. It is therefore essential to revisit this socio-historical path before highlighting the various lessons learned.

[2]www.Icrc.org, 11/01/2020, 10 a.m.

[3] The subject invites us to talk about the Geneva Convention a century later, but the only period during which we have spoken of a convention in the singular is in the 19th century, that is to say two centuries earlier, mainly when the 1st Geneva Convention was signed on 22 August 1864. As the 20th century runs from 1901 to 2000, we will focus on the conventions that are currently authentic, those dating from 1949 and the additional protocols.

[4]www.icrc.org , 12/01/2020, 9.am

From 1864 to 1949, highlighting a socio-historical evolution[5]

The very first Geneva Convention came into being on 22 August 1864, in the wake of a conflict between the French and the Piedmontese, and the establishment of the Red Cross in 1863 under the leadership of Henri Dunant. This first convention is composed of 10 articles which define the standards applicable to the rescue of war victims and those who come to their aid. In the wake of this, other conventions were formalised, in particular: the 1906 Convention for the Protection of the Wounded at Sea and the 1929 Convention for the Protection of Prisoners of War. During the Second World War, the world faced new atrocities (we think of the Bataan March in the Philippines, the concentration camps in Germany, the bombings in the United Kingdom, etc.). All these new ways of waging war inevitably challenge the international community, which is becoming aware of the new realities of the conflict which, from 1939 to 1945, claimed as many civilian victims as military personnel. Thus, in August 1948, in Stockholm, a conglomeration of countries met for talks on the possibility of adding new conventions. On 12 August 1949, the various diplomats present finally agreed on the updating of the existing conventions and the need to add certain texts: This is the birth of the Geneva Conventions of 1949 and their additional protocols. Comprising 429 articles. The first convention, consisting of 64 articles, protects wounded or sick soldiers in time of war on land; the second convention, consisting of 63 articles, protects wounded or sick soldiers at sea; the third convention is applicable to prisoners of war and consists of 143 articles; the fourth finally deals with the protection of civilians in occupied territory. It has 159 articles.One of the cardinal features of these conventions is **Article 3 common to all four conventions**, which covers situations of non-international armed conflicts such as traditional civil wars, internal armed conflicts which extend to other States and internal armed conflicts in which a third State or a multinational force intervenes alongside the government. It requires humane and humanistic treatment for anyone in the hands of the enemy; it calls on the parties to the conflict to bring into force all or part of the Geneva Conventions, etc. It also requires that all parties to the conflict be treated humanely and humanistically.[6]

Sociology of the Contemporaneity of the Geneva Conventions: A faulty application?

[5] These argumentative elements are taken from www. perspective.usherbrooke.ca

[6] There are also Additional Protocols to the Geneva Conventions which come up after the outbreak of the wars of national liberation. In 1977, two additional protocols were adopted, I and II (non-international conflict situations). Protocol III came into force in 2005 and deals with the creation of the Red Crystal.

The world has been shaken by conflicts since the treaties were signed: Ukraine, Syria, Iraq, Yemen, Lake Chad Basin, the Sahel region, the Horn of Africa, etc. The world is shaken by conflicts since the signing of the treaties. The Geneva Conventions have been successful, particularly in the protection of children (the child soldier phenomenon in the Congo), and more generally in the legal codification of the law of war. This leads Françoise Bouchet-Saulnier to say that they make International Humanitarian Law "a complete law", which "provides a sufficient framework"[7]. They allow for exceptional humanitarian work. Unfortunately, the results have not been as exceptional as the work. A "realistic" approach will allow us to reveal the clash between the Geneva Conventions and the actual implementation.

The weakness of the Geneva Conventions is mainly linked to their poor application in the field. For, in truth, there is a gap between the texts and the practice. It is constantly being violated. What is most alarming is that this violation of the Geneva Conventions is increasingly being committed by the major powers. One would think that International Humanitarian Law is being interpreted and applied at the whim of the major powers. Let us remember the thousands of dead, including civilians, who were bombed in Syria (at Raqqa) by a coalition led by the United States. In Somalia, according to an Amnesty International investigation, we have witnessed one of the most serious humanitarian crises, with atrocious violations of human rights and international humanitarian law as a result of the US strikes. In southern Sudan, sexual violence is plausible. In 2018, the United Nations Mission in Afghanistan (UNAMA) reported 10,993 civilians killed or injured. Examples are legion. We therefore realise that the conventions, as far as their implementation is concerned, can be seen as a failure. This leads Tirana Hassan, the director of the Crisis Response Programme at Amnesty International, to say that "world leaders have abandoned civilians to the ravages of war”[8]. The failure to protect civilians is the ontological substance of the Geneva Convention,considerably reduces the pacifying momentum that structured the letter of this humanitarian text. Where are the guardians of the humanitarian temple? Are the Geneva Conventions a recital of Law of the Strongest? **This invites us to note another weakness, the lack of instruments to punish the numerous violations of international humanitarian law and thus the Geneva Convention**. In view of the above, it can be said that the Geneva

[7]Françoise Bouchet-Saulnier, *Dictionnaire pratique du Droit humanitaire*, Paris, éditions la découverte, 2013.
[8]www.Amnesty.org, « ONU, 70 ans après les conventions de Genève » consulté le 12/01/2020 à 9 heures.

Conventions have improved over time but their application is still minimal. What are the prospects?

II- Prospects for the Geneva Conventions:

As mentioned earlier, the Geneva Conventions have faced many challenges over the past 50 years, undermining the trust placed in them to protect civilian parties to the conflict. This raises the question of the prospects offered by the Geneva Conventions in relation to the challenges they face. Some of these challenges are listed below.

New Weapons and Technologies of Warfare :

Humanitarian action is already set in a context in line with technological developments. The most recent conflicts have been marked by the use of remotely controlled weapons such as drones. Moreover, there is increasing talk of combat robots, equipped with artificial intelligence and capable of being used in times of war. The difficulty is the ability of these weapons to distinguish between civilian and military and, by extension, the ability of the Geneva Conventions to protect civilians from these new means of warfare.

The proliferation and multiplication of actors:

Many actors, alongside the traditional ones, are now involved in the theatre of operations, both those involved in the conflict and those who respond to it (terrorist groups, private military companies, transnational corporations, the army, etc.). This poses a difficulty: the ability of the Geneva Conventions to control all these actors differing both in their nature and their motivations. The cases of Libya and Afghanistan bear witness to this. *We are inevitably in a situation where inter-state warfare is the exception and the Geneva Conventions are more oriented towards this type of conflict, yet the most visible and bloody conflicts now pit non-state armed groups against each other*[9]. These groups have logic of action that surreptitiously escapes the disciplines imposed by Humanitarian Law even though these actors are concerned by the Geneva Conventions. At this point in time, how can we ensure the effective implementation of these humanitarian obligations in the event of violations by the bearers of asymmetrical wars? It is essential to give a voice to all parties to

[9] M. Sassoli, « taking armed group seriously : ways to improve their compliance with international humanitarian law », *International Humanitarian Legal studies*, Vol., 2010, p.6

the war, to bring them to the negotiating table. Recognition is inevitably the beginning of negotiations.

The qualification of "acts of terrorism"

Since September 11, 2001, there has been a certain amount of alarm among several governments. This has led them to classify as terrorist acts any act of war perpetrated against them by non-state armed groups. Armed conflict and terrorism are, however, different and are governed by different branches of law. Thus, qualifying an armed or unarmed group as "terrorist" legitimizes a certain amount of violence against the category that is labelled "terrorist" and hinders the action of the Geneva Conventions.

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Finally, the Geneva Convention has undergone a socio-historical evolution, particularly in terms of its legal framework, as the texts have evolved numerically and substantially. However, it is up to us to point out a certain discrepancy between the territories of the written word and those of lived experience. Indeed, the Geneva Convention suffers from poor implementation of its principles for two major reasons, namely the violation of the latter by the great powers which interpret Humanitarian Law as they wish and in line with their interests; and also and above all because of the blatant lack of sanctions for these violations. It could be said that the Geneva Conventions are a temple without a guardian or, at the very least, a temple with a dormant guardian. Sanction is and will always be one of the leavens of the Foucauldian discipline, guardian of the Law. Moreover, several challenges loom on the horizon of the law of war: the de-spatialisation of war and its ubiquitous character, the multiplication of actors in the "field" of war, the resurgence of new technologies, the reinterpretation of the principles of the Conventions, etc. The Geneva Conventions are a temple without guardians or, at the very least, a temple with a dormant guardian. Notwithstanding this bitter observation, the importance of the Geneva Convention and the Additional Protocols in the regulation of armed conflict and the protection of civilians and other actors should be highlighted. One cannot serenely proclaim *urbi and orbi* a recess of the latter. On the contrary, it must strive on a daily basis to adapt to the new forms of warfare, to be at one with the social conflict; to implement reliable, solid and impartial sanctions mechanisms to deal with the obstacles placed in its way; and to reflect on the means of taking action that is more PROACTIVE than REACTIVE.

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