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The use of nuclear weapons and human rights

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Abstract
International human rights law is an as-yet underused branch of international law when assessing the legality of nuclear weapons and advocating for their elimination. It offers a far greater range of implementation mechanisms than does international humanitarian law (IHL), and arguably strengthens the protections afforded to civilians and combatants under IHL, particularly in non-international armed conflict. Of particular relevance are the rights to life, to humane treatment, to health and to a healthy environment, associated with the right to a remedy for violations of any human rights.

Keywords: human rights, right to life, humane treatment, remedy, jurisdiction, *lex specialis*, radiation, burns, necessity, proportionality.

Introduction

Gone are the days when it could be said with any sincerity that international weapons law, the evolving branch of international law that regulates the development, production, stockpiling, testing, transfer and use of conventional weapons and weapons of mass destruction, comprised only international humanitarian law (IHL) and disarmament law. International environmental law and especially international human rights law both potentially apply to and control weapons, and in particular their testing, transfer and use. While the testing and transfer of nuclear weapons are beyond the scope of this article, it argues that constraints imposed on the use of force by international human rights law, and the accountability that the law foresees for any such unlawful use (which would include any future use of nuclear weapons), provide a valuable complement to the rules of IHL governing the conduct of hostilities.

Human rights law rules on the use of force

But does human rights law even govern the use of force? The response to this question might seem self-evident to many. Nonetheless, it is important to reaffirm, unequivocally, that this body of international law applies clear and strict rules to any use of force, particularly for law enforcement purposes. This is the case whether force is used within or outside a situation of armed conflict. If there is no armed conflict, or the force does not have the requisite nexus with an armed conflict, IHL holds no sway. So, human rights law must effectively control the behaviour of the State as it responds to unlawful violence, whether everyday criminal violence or that which is terrorist in nature.[1]

Human rights law's regulation of the use of force encompasses two core rules. First, any force used must be only the minimum necessary (the principle of necessity). Second, force used must be proportionate to the threat (the principle of proportionality).[2] These rules are cumulative, and violation of either means that human rights (in particular the right to life and/or the right to freedom from inhumane treatment) have been violated. Their application must, however, be "realistic" – indeed, human rights jurisprudence has shown that a "margin of appreciation" may be allowed to a State in exceptional circumstances, such as when it is confronting a terrorist attack[3] – and must effectively balance protection

1 The term "terrorist" is used here to mean one or more acts of violence committed against the general public with a view to provoking a state of terror and/or to changing government policy.

2 With respect to intentional lethal use of force, this is only lawful when "strictly unavoidable" to protect life – this is what the United Nations (UN) Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, has termed the "protect life" principle. See, e.g., Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns, UN Doc. A/HRC/26/36, 1 April 2014.

3 See, e.g., European Court of Human Rights (ECtHR), *Finogenov and Others v. Russia*, App. Nos. 18299/03 and 27311/03, Judgment (First Section), 20 December 2011 (as rendered final on 4 June 2012), para. 213, available at: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108231 (all internet references were accessed in November 2015).

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and security. Nonetheless, the rules are specific and clear both in their normative content and in their practical application. They are not mere aspirations.

Outside a situation of armed conflict – for instance, where a State opposes peaceful protesters against the regime, or where it counters armed opposition insofar as the violence is not regular and intense and/or the opposition has not coalesced into one or more "organized armed groups"[4] – any use of nuclear weapons by a State on its territory would inexorably contravene these rules. Use of nuclear weapons could never amount to minimum necessary force, and such a use of force would therefore violate international human rights law. IHL, of course, would simply not apply.

Thankfully, such a scenario is far-fetched, though it is not wholly implausible. In this regard, Ritchie refers to "strongman rhetoric" by Professor Colin Gray, an expert on international politics and strategic studies at the University of Reading, given in evidence to the United Kingdom's House of Commons Defence Committee in 2006:

> I certainly would not want terrorists and those who support them to say they can use weapons of mass destruction against Britain and we will do our best with conventional weapons to bring the roof down on their heads. I would like them to know they are messing with a nuclear power.[5]

Undeniably, one of the stated military rationales for retaining and eventually using nuclear weapons – to be able to respond to a threat of or an actual detonation by a terrorist group – could even be seen as an additional incentive to such groups to acquire nuclear material. Provoking an unlawful, cataclysmic response would be the group's deliberate intent.

A more likely scenario, however, is use of nuclear weapons in armed conflict as part of the conduct of hostilities. Here, the legal situation is more complex.

The application of human rights law to the conduct of hostilities

There are potentially two significant obstacles to the application of human rights law to the conduct of hostilities that must be addressed before the substantive content of the law is assessed: the first is the geographical limitations on the jurisdiction of human rights law, and the second is the material scope of its application. I will now deal with these two issues in turn.

4 International Criminal Tribunal for the former Yugoslavia (ICTY), *The Prosecutor v. Dusko Tadić*, Case No. IT-94-1-A, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 70.

5 Nick Ritchie, *A Nuclear Weapons-Free World: Britain, Trident, and the Challenges Ahead*, Palgrave Macmillan, Basingstoke, 2012, p. 89. See also Jerry Miller, *Stockpile: The Story behind 10,000 Strategic Nuclear Weapons*, Naval Institute Press, Annapolis, 2010, pp. 216–17; and see, e.g., Robert Ayson, "After a Terrorist Nuclear Attack: Envisaging Catalytic Effects", *Studies in Conflict & Terrorism*, Vol. 33, No. 7, 2010.

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Geographical limitations on the jurisdiction of human rights law

A potential obstacle preventing the application of human rights law to the use of weapons in armed conflict, including nuclear weapons, is the idea that physical geography acts to limit the law's jurisdictional reach. The United States has been a leading advocate of this position, asserting, with respect to the International Covenant on Civil and Political Rights (ICCPR) in particular, that the duty accepted by each State Party "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized"[6] means that only persons on its territory may formally enjoy the protection of human rights. The Human Rights Committee has explicitly rejected this position, both generally and with regard to the United States specifically.[7]

What is more, the International Court of Justice (ICJ) has also, albeit implicitly, rejected extraterritoriality as an element that would *ipso facto* bar the application of human rights law to the use of nuclear weapons in warfare. As the ICJ observed: "In principle, the right not arbitrarily to be deprived of one's life applies also in hostilities."[8] Thus, in adjudging that human rights law continued to apply to the conduct of hostilities in armed conflict, and given that the Court's 1996 Advisory Opinion on the threat or use of nuclear weapons (Nuclear Weapons Advisory Opinion) was only addressing situations of international armed conflict,[9] the ICJ must have accepted that there is no jurisdictional limitation to the reach of international human rights law, at least as it applies to the use of nuclear weapons.[10]

6 International Covenant on Civil and Political Rights (ICCPR), New York, 16 December 1966 (entered into force 23 March 1976), 999 UNTS 171, Art. 2(1).

7 See, e.g., Human Rights Committee, Concluding Observations on the Fourth Periodic Report of the United States of America, UN Doc. CCPR/C/USA/CO/4, 23 April 2014, para. 4.

8 ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996 (Nuclear Weapons Advisory Opinion), *ICJ Reports 1996*, para. 25.

9 The Court stated: "The terms of the question put to the Court by the General Assembly in resolution 49/75 K could in principle also cover a threat or use of nuclear weapons by a State within its own boundaries. However, this particular aspect has not been dealt with by any of the States which addressed the Court orally or in writing in these proceedings. The Court finds that it is not called upon to deal with an interna1 use of nuclear weapons." *Ibid*., para. 50. Of course, a nuclear weapon could be detonated within a State's own borders during an international armed conflict, but the far likelier scenario is the launching or dropping of such weapons onto another State's sovereign territory.

10 Admittedly, the ECtHR took a markedly different approach in the *Banković* case, holding that the bombing, from the air, of a Serbian television and radio station by NATO forces did not fall within the scope of the Convention for the Protection of Human Rights and Fundamental Freedoms, 213 UNTS 222, 4 November 1950 (entered into force 3 September 1953) (European Convention on Human Rights, ECHR). ECtHR, *Banković and Others v. 17 NATO States*, App. No. 52207/99, Admissibility Decision (Grand Chamber), 12 December 2001, para. 75. As Louise Doswald-Beck has observed, however, in a later case, *Mansur Pad and Others v. Turkey*, which concerned the killing of persons in Iraq by a Turkish helicopter near the border between the two States, the ECtHR came to a different conclusion. Here the Court stated that it was "not required to determine the exact location" where the people were killed by the helicopter fire; the fact that they were the victims of the shooting meant that they were "within the jurisdiction of Turkey at the material time". Louise Doswald-Beck, "Human Rights Law and Nuclear Weapons", in Gro Nystuen, Stuart Casey-Maslen and Annie Golden Bersagel (eds), *Nuclear Weapons under International Law*, Cambridge University Press, Cambridge, 2014, pp. 440–441, citing ECtHR, *Mansur Pad and Others v. Turkey*, App. No. 60167/00, Admissibility Decision, 28 June 2007, paras 54–55.

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Material scope of application of human rights law

A number of States have, at least in earlier decades, sought to sustain the position that human rights apply only in peacetime and not during situations of armed conflict. On one level this argument is nonsensical, while on another it has been contradicted by jurisprudence. The absurdity of the position writ large can be seen in the fact that States engaged in armed conflicts must still prevent and repress ordinary crimes committed on their territory (at the very least, outside the confines of any area in which hostilities are actively being conducted between the parties to the conflict) as well as at other *loci* under their jurisdiction. Such law enforcement activities are clearly to be done in accordance with domestic criminal law as overseen by the State's obligations under international human rights law,[11] not by reference to IHL's far less restrictive rules of distinction and proportionality in attack.

Further, as the ICJ observed in its 1996 Nuclear Weapons Advisory Opinion, some have contended that a leading human rights treaty, the 1966 International Covenant on Civil and Political Rights, "was directed to the protection of human rights in peacetime, but that questions relating to unlawful loss of life in hostilities were governed by the law applicable in armed conflict".[12] The ICJ dismissed this argument in the following terms:

> The Court observes that the protection of the International Covenant of [*sic*] Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency. Respect for the right to life is not, however, such a provision. In principle, the right not arbitrarily to be deprived of one's life applies also in hostilities.[13]

Accordingly, therefore, the Court has accepted that, in principle, human rights law forms part of the *jus in bello*, the law applicable in armed conflict.[14] Thus, all the

11 More precisely, the international law of law enforcement is composed of three main elements:
- international human rights law, especially the rights to life, liberty and security, to peaceful protest (an umbrella right comprising a number of independent rights), and to freedom from torture and other forms of inhumane treatment;
- customary international law, derived from, *inter alia*, criminal justice standards, especially the 1979 Code of Conduct for Law Enforcement Officials and the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; and
- general principles of law, which reflect core principles of national criminal law across democratic nations.

See further Stuart Casey-Maslen (ed.), *Weapons under International Human Rights Law*, Cambridge University Press, Cambridge, 2014.

12 Nuclear Weapons Advisory Opinion, above note 8, para. 24.

13 *Ibid.*, para. 25.

14 See also in this regard ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, *ICJ Reports 2004*, para. 106.

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provisions of the ICCPR will potentially apply during armed conflict, subject to the possibility of derogation from full observance of some in a time of grave national emergency.[15]

The nature of the interrelationship between human rights law and IHL pertaining to the conduct of hostilities

If, however, it is now generally accepted that human rights law applies to the use of weapons in a situation of armed conflict, this is largely where broad agreement ends. The ICJ made its position clear in 1996 on how it appreciates the interrelationship between human rights law and IHL pertaining to the conduct of hostilities:

> The test of what is an arbitrary deprivation of life … falls to be determined by the applicable *lex specialis*, namely, the law applicable in armed conflict which is designed to regulate the conduct of hostilities. Thus whether a particular loss of life, through the use of a certain weapon in warfare, is to be considered an arbitrary deprivation of life contrary to Article 6 of the Covenant, can only be decided by reference to the law applicable in armed conflict and not deduced from the terms of the Covenant itself.[16]

What the ICJ is effectively saying is that the use of a weapon in the conduct of hostilities – at least in a situation of international armed conflict – will only violate human rights law if that use *also* constitutes a violation of the rules of IHL. If use does not violate IHL, it will not violate human rights law, as IHL is, allegedly, a more specific source of norms regulating the conduct of hostilities than is human rights law.

This use of the *lex specialis derogat legi generali* method of resolving a conflict of norms has been widely criticized. Christian Tomuschat has referred to the ICJ's statement as "somewhat short-sighted";[17] William Schabas has described the Court's approach as "clumsy at best";[18] and Noam Lubell has

15 Article 4(1) of the ICCPR states: "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."

16 Nuclear Weapons Advisory Opinion, above note 8, para. 25.

17 Christian Tomuschat, "The Right to Life – Legal and Political Foundations", in Christian Tomuschat, Evelyne Lagrange and Stefan Oeter (eds), *The Right to Life*, Brill, Leiden, 2010, p. 11.

18 William Schabas, "The Right to Life", in Andrew Clapham and Paola Gaeta (eds), *Oxford Handbook of International Law in Armed Conflict*, Oxford University Press, Oxford, 2014.

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deemed it "perhaps an inept approach".[19] Marko Milanović has called for *lex specialis* to be "abandoned as a sort of magical, two-word explanation of the relationship between IHL and [international human rights law], as it confuses far more than it clarifies".[20] But although the ICJ may be construed to have pulled back from this absolutist position in the later contentious case of *Democratic Republic of the Congo v. Uganda*,[21] since that jurisprudence did not concern specifically the use of weapons, arguably the view it expressed in its 1996 Nuclear Weapons Advisory Opinion remains authoritative insofar as the use of nuclear or other weapons in the conduct of hostilities is concerned.[22]

If the ICJ were correct in its earlier assertions, would this mean that human rights law could offer no added protection in addressing any future use of nuclear weapons in international armed conflict? Not at all. Aside from the vagueness of the practical content of its primary rules governing the conduct of hostilities when they are applied in practice, addressed below in relation to situations of non-international armed conflict, IHL also suffers from a woeful lack of implementing mechanisms, with the high threshold for prosecutions of war crimes under international criminal law (both legal and political) making accountability for violations of that important corpus of law grossly inadequate. Fortunately this is an area in which human rights law is relatively strong, and the United Nations (UN) Human Rights Council (for all its faults) and UN human rights treaty bodies and special procedures, as well as the regional human rights courts in Africa, the Americas and Europe, may each offer valuable opportunities to have alleged violations of international law investigated. An element of the right to life is a duty to investigate and, where relevant, to

19 Noam Lubell, *Extraterritorial Use of Force against Non-State Actors*, Oxford Monographs in International Law, Oxford University Press, Oxford, 2011, p. 240. More recently, in submitting an *amicus curiae* brief to the ECtHR with Professor Françoise Hampson, Lubell noted that "[t]he reference to *lex specialis* is unhelpful, which may account for why the ICJ did not include the final sentence in its quotation from para. 106 of the Advisory Opinion in the subsequent contentious case [*Democratic Republic of the Congo v. Uganda*, discussed below]. Whilst in general terms its meaning is clear, its specific meaning and application appears to be interpreted in a different way by every commentator. Use of this term has served to obfuscate the debate rather than provide clarification. It was designed to deal with a different situation – a vertical relationship between a general regime and specific regimes. … The relationship between LOAC/IHL and human rights law involves a different problem – the horizontal collision of two separate legal regimes. One is not a more specific form of the other." ECtHR, *Georgia v. Russia (II)*, 38263/08, Amicus Curiae Brief Submitted by Professor Françoise Hampson and Professor Noam Lubell of the Human Rights Centre, University Of Essex, 2014, para. 18.

20 Marko Milanović, "Norm Conflicts, International Humanitarian Law and Human Rights Law", in Orna Ben-Naftali (ed.), *Human Rights and International Humanitarian Law*, Collected Courses of the Academy of European Law, Vol. 19, No. 1, Oxford University Press, Oxford, 2010, p. 6.

21 ICJ, *Case Concerning Armed Activities on the Territory of the Congo* (*Democratic Republic of the Congo v. Uganda*), Judgment, 19 December 2005, *ICJ Reports 2005*, para. 216.

22 See, in this regard, Vera Gowland-Debbas, "The Right to Life and Genocide: The Court and an International Public Policy", in Laurence Boisson de Chazournes and Philippe Sands (eds), *International Law, the International Court of Justice and Nuclear Weapons*, Cambridge University Press, Cambridge, 1999.

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prosecute.[23] Implementing bodies for human rights law, such as the regional human rights courts in Africa, the Americas and Europe, may even, depending on the forum and the circumstances, lead to judgments that effectively mandate acts in reparation, with a view to satisfying the responsibility of States for such violations.[24]

It is fundamental to the notion of human rights that each victim of a human rights violation has the right to an effective remedy. The right to a remedy and reparation forms part of the corpus of customary law[25] and is arguably also a general principle of law.[26] The 1948 Universal Declaration of Human Rights saw the exercise of the right to a remedy purely in terms of national fora.[27] Today, however, the scope of the right is also well developed in international[28] and regional[29] human rights treaties, and has been clearly articulated by the various oversight and implementation mechanisms established under them. Mass claims, as would be expected in the event of nuclear weapon use, would demand extraordinary processes, but mass claims are not new.

23 In *Kolevi v. Bulgaria*, for instance, the ECtHR stated: "The obligation of States to protect the right to life … requires by implication that there should be an effective official investigation when individuals have been killed. … The investigation must be effective in the sense that it is capable of leading to the establishment of the relevant facts and the identification and punishment of those responsible. … While the obligation to investigate is of means only and there is no absolute right to obtain a prosecution or conviction, any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required measure of effectiveness." ECtHR, *Kolevi v. Bulgaria*, App. No. 1108/02, Judgment (Fifth Section), 5 November 2009, paras 191, 192.

24 According to Article 1 of the 2001 Draft Articles on the Responsibility of States for Internationally Wrongful Acts, elaborated by the International Law Commission and forwarded to the UN General Assembly, "[e]very internationally wrongful act of a State entails the international responsibility of that State". According to Article 31 of the Draft Articles:

1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.
2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.

25 In 2001, in its judgment in the *Cantoral Benevides* case, for example, the Inter-American Court of Human Rights (IACtHR) held that Article 63(1) of the American Convention on Human Rights (ACHR), 1144 UNTS 123, 22 November 1969 (entered into force 18 July 1978) (governing remedy and reparation), "embodies a rule of customary law that is one of the basic principles of contemporary international law as regards the responsibility of States. When an unlawful act imputable to a State occurs, that State immediately becomes responsible in law for violation of an international norm, which carries with it the obligation to make reparation and to put an end to the consequences of the violation." IACtHR, *Cantoral Benevides* case, Ser. C, No. 88 (2001), Judgment, 3 December 2001, para. 40. See also Dinah Shelton, *Remedies in International Human Rights Law*, 2nd ed., Oxford University Press, Oxford, 2005, pp. 27–29, 217.

26 See, e.g., IACtHR, *Velasquez Rodriguez v. Honduras*, Ser. C, No. 7, Judgment (Reparations), 21 July 1989, para. 25.

27 "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." Universal Declaration of Human Rights, UN Doc. A/810, Paris, 10 December 1948, Art. 8.

28 See, e.g., ICCPR, above note 6, Art. 2; International Convention on the Elimination of All Forms of Racial Discrimination, 660 UNTS 195, 21 December 1965 (entered into force 4 January 1969), Art. 6; and Convention against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment, 1465 UNTS 85, 10 December 1984 (entered into force 26 June 1987) (Convention against Torture), Art. 14.

29 Thus, the ECHR (Arts 13 and 41), the ACHR (Art. 25), the 1981 African Charter on Human and Peoples' Rights (Art. 7) and the 2004 Arab Charter on Human Rights (Art. 12) all codify the right to a remedy for victims of human rights violations. African Charter on Human and Peoples' Rights, 1520 UNTS 217, Nairobi, 27 June 1981 (entered into force 21 October 1986); Arab Charter on Human Rights, Tunis, 22 May 2004 (entered into force 15 March 2008), reprinted in *International Human Rights Report*, Vol. 12, 2005, p. 893.

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For example, although not a human rights organ, the UN Compensation Commission (UNCC), created to address Iraq's financial liability for its "unlawful invasion and occupation of Kuwait" in 1990, suggests how a human rights body might be able to address unlawful use of a nuclear weapon. The UNCC was established in 1991 as a subsidiary organ of the UN Security Council.[30] Security Council Resolution 687 had already "reaffirmed", *inter alia*, that Iraq, "without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss [or] damage, including environmental damage and the depletion of natural resources".[31]

The UNCC accepted claims from individuals, corporations and governments (as long as the claims were submitted by governments), as well as those submitted by international organizations for individuals who were not in a position to have their claims filed by a government. More than 2.6 million claims were submitted for a total of more than $350 billion in compensation; grounds included serious personal injury to an individual and the death of a spouse, child or parent as a result of Iraq's invasion and occupation of Kuwait.[32] A total of some $52 billion was awarded.[33]

In sum, where an act in the conduct of hostilities violates IHL, there is a reasonable chance that there will be one or more fora in which a corresponding violation of human rights law can at least be considered.[34] In the case of a nuclear weapon detonation in anger, the mass nature of potential claims should not be an insurmountable obstacle to satisfaction. Furthermore, if the use of a nuclear weapon was an act not only *in bello* but also *ad bellum*, there could also be distinct and separate liability under human rights law (as well as, of course, under public international law more generally) for a violation of the law governing the inter-State use of force.[35]

Human rights most likely to be violated by the use of nuclear weapons

As Louise Doswald-Beck has observed, "[t]he enormous destructive effect of a nuclear detonation, as well as the long-term radioactive effects, is likely to result

30 UNSC Res. 692, 20 May 1991.

31 UNSC Res. 687, 3 April 1991, para. 16.

32 UNCC, "The United Nations Compensation Commission", available at: www.uncc.ch. Thus, as Edda Kristjansdottir observes, such mass claims processes show that "where there is political will and some source of funds to pay compensation or property to restitute, the challenge of processing hundreds of thousands, or even millions, of claims in a relatively short amount of time is not insurmountably difficult". Edda Kristjansdottir, "International Mass Claims Processes and the ICC Trust Fund for Victims", in Carla Ferstman, Mariana Goetz and Alan Stephens (eds), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity: Systems in Place and Systems in the Making*, Martinus Nijhoff, Leiden and Boston, 2009, p. 169. See further Linda A. Taylor, "The United Nations Compensation Commission", in *ibid.*, esp. p. 213.

33 See UNCC, "Summary of Awards and Current Status of Payments", available at: www.uncc.ch/summary-awards-and-current-status-payments.

34 Having said this, it is a sad reality that IHL's inadequacies in humanitarian protection are exacerbated by a woeful lack of accountability mechanisms.

35 See, e.g., Stuart Casey-Maslen, "The Right to a Remedy and Reparation for the Use of Nuclear Weapons", in G. Nystuen, S. Casey-Maslen and A. Golden Bersagel, above note 10, pp. 463–465.

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in the finding of a violation of some or all" of a range of human rights.[36] In this regard, she cites *inter alia* the rights to life, to humane treatment, to a healthy environment and to the highest attainable standard of health.[37]

The right to life

The right to life is often described as "a fundamental human right; a right without which all other rights would be devoid of meaning".[38] Respect for the right to life is generally non-derogable under human rights treaties,[39] meaning, as the ICJ observed, that the right not arbitrarily to be deprived of one's life applies *in toto* also in hostilities.[40] This right is both a treaty and a customary norm, and at its core may even amount to a peremptory norm of international law.[41]

As well as, consonant with other human rights, obliging action to respect, protect, and fulfil its enjoyment, the right to life also has significant procedural elements associated with it. The European Court of Human Rights (ECtHR) has held that this includes a duty on the State to investigate alleged violations of the right to life:

> The obligation to protect the right to life under [Article 2], read in conjunction with the State's general duty under Article 1 of the [European Convention on Human Rights] to 'secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention', requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, inter alios, agents of the State …[42]

This applies whether such alleged violations may occur in the course of a law enforcement operation or a situation of armed conflict.[43]

36 L. Doswald-Beck, above note 10, p. 459.
37 *Ibid.*, pp. 444–459.
38 Report of the Special Rapporteur, above note 2, para. 42.
39 The exception that proves the rule is contained in Article 15 of the ECHR ("Derogation in Time of Emergency"). Article 15(2) states: "No derogation from Article 2 [which sets out and protects the right to life], except in respect of deaths resulting from lawful acts of war … shall be made under this provision." This exception is limited to situations of international armed conflict, as non-international armed conflicts fall within the scope of Article 2(2)(c): "action lawfully taken for the purpose of quelling a[n] … insurrection". See L. Doswald-Beck, above note 10, pp. 447 n. 60 and 451.
40 Nuclear Weapons Advisory Opinion, above note 8, para. 25.
41 See Report of the Special Rapporteur, above note 2, para. 42.
42 ECtHR, *Al-Skeini and Others v. UK*, App. No. 55721/07, Judgment (Grand Chamber), 7 July 2011, para. 163.
43 "[T]he procedural obligation under Article 2 continues to apply in difficult security conditions, including in a context of armed conflict. … It is clear that where the death to be investigated under Article 2 occurs in circumstances of generalised violence, armed conflict or insurgency, obstacles may be placed in the way of investigators and … concrete constraints may compel the use of less effective measures of investigation or may cause an investigation to be delayed. … Nonetheless, the obligation under Article 2 to safeguard life entails that, even in difficult security conditions, all reasonable steps must be taken to ensure that an effective, independent investigation is conducted into alleged breaches of the right to life." *Ibid.*, para. 164. See also, e.g., ECtHR, *Jaloud v. The Netherlands*, App. No. 47708/08, Judgment (Grand Chamber), 20 November 2014.

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Of course, States cannot reasonably be expected to investigate all alleged violations to the right to life during armed conflict. Some will not amount to arbitrary deprivation of life under IHL conduct of hostilities rules. Moreover, any use of nuclear weapons would place massive "obstacles" in the way of investigators, and constraints would surely "compel the use of less effective measures of investigation" and almost certainly cause investigation, at least at ground zero, to be delayed. But an investigation would still be required, and some form of investigation would still be feasible. No one could seriously argue that use of nuclear weapons would not require a detailed investigation under international law, including from a human rights perspective.

Substantively, the right to life also encompasses a duty to minimize recourse to lethal force in State law enforcement operations, both in the planning of operations and through the provision of appropriate medical assistance to anyone injured during their execution. It is further clear that the protection afforded by the right to life encompasses not only situations where the victim is killed; serious injuries resulting from the use of lethal force will also be covered. In *Benzer v. Turkey*, which concerned the bombing in March 1994 by the Turkish air force of two ethnic Kurdish villages in the south-east of the country, the ECtHR stated that the attack, "which caused these three applicants' injuries, was so violent and caused the indiscriminate deaths of so many people that these three applicants' fortuitous survival does not mean that their lives had not been put at risk." The Court was therefore satisfied that "the risks posed by the attack call for examination of their complaints" under the right to life laid down in the European Convention on Human Rights.[44]

The ECtHR held that the right to life of the three seriously injured victims of the bombing had been violated, both in substance and under the procedural aspects of Article 2.[45] This broad interpretation of the right to life is relevant for nuclear weapons not only because those who survive the initial detonation may nonetheless later die of the burn and blast injuries they sustain, but also because those in a very wide radius from the blast will also be subject to radioactive debris known as fallout.[46] Indeed, as has been noted, "the most fundamental difference between nuclear and conventional weapons is that the former release radioactive rays at the time of explosion".[47] The effects of radiation on the body are said to be prodromal, hematologic, gastrointestinal, pulmonary, cutaneous and neurovascular.[48]

44 ECtHR, *Benzer and Others* v. *Turkey*, App. No. 23502/06, Judgment (Former Second Section), 24 March 2014, para. 143.

45 *Ibid.*, para. 185.

46 Nuclear fallout refers to the particles of matter in the air made radioactive from a nuclear explosion. Some of these particles fall in the immediate area, and some get blown many thousands of miles by upper winds. When they eventually fall to earth, this is called fallout. See, e.g., Fun Fong, Cham E. Dallas and Lorris G. Cockerham, "In-Depth Medical Management for Nuclear/Radiological/Conventional Terrorism Agents", PowerPoint Presentation, undated, available at: www.powershow.com/view/17e3-NTY4Y/Medical_Effects_of_Nuclear_Weapons_powerpoint_ppt_presentation. See also L. Doswald-Beck, above note 10, pp. 450–451.

47 Statement of the Mayor of Nagasaki to Nuclear Weapons Advisory Opinion, above note 8, p. 36, available at: www.icj-cij.org/docket/files/95/5935.pdf.

48 F. Fong, C. E. Dallas and L. G. Cockerham, above note 46.

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The right to humane treatment

Fallout is also relevant to consideration of the right to freedom from cruel, inhumane or degrading treatment, as set out in the 1966 ICCPR,[49] the 1984 Convention against Torture,[50] and the three main continental human rights treaties.[51] While the material and personal scope of this right is in no way synonymous with the customary and conventional IHL prohibition against the use of means or methods of warfare of a nature likely to cause superfluous injury or unnecessary suffering, to the extent that nuclear weapons are of such a nature, this would certainly entail a violation of this human right. "Radiation adversely affects the immune system so that the injured will not recover in the way they could have from weapons without this effect. In addition to causing more deaths than otherwise, this prolongs suffering."[52]

Further, as Doswald-Beck also reminds us, upon the detonation of a nuclear weapon, people can be rendered blind from looking at the initial flash, and those not killed may suffer horrific burns.[53] It is well accepted that vision is our most important sense, perhaps accounting for 90% or more of our sensory input.[54] While other senses, such as hearing and touch, may facilitate post-blindness adjustment to one's life experience, none of them can come close to replacing sight.[55]

Burns caused by nuclear weapons may go beyond third-degree burns, in which all layers of the skin are destroyed, to fourth-degree burns, in which the injury extends into both muscle and bone. Both third- and especially fourth-degree burns can be fatal. Burns place a huge burden on medical resources, often requiring specialist treatment. These are all inevitable and therefore entirely predictable consequences from the use of a nuclear weapon. In most instances, such use will amount to a violation of the right to humane treatment.

The right to a healthy environment

Beyond the direct harm caused to individuals by a nuclear weapon detonation, the environment in which they live may be seriously – and almost permanently –

49 ICCPR, above note 6, Art. 7.
50 Convention against Torture, above note 28, Art. 16.
51 ECHR, above note 10, Art. 3; ACHR, above note 25, Art. 5; African Charter on Human and Peoples' Rights, above note 29, Art. 5.
52 L. Doswald-Beck, above note 10, p. 452, referring to US Department of Health and Human Services, Radiation Emergency Medical Management, "Nuclear Detonation: Weapons, Improvised Nuclear Devices: Categories of Medical Effects", available at: www.remm.nlm.gov/nuclearexplosion.htm#categories.
53 L. Doswald-Beck, above note 10, p. 452.
54 R. DeVour, "Possible Psychological and Societal Effects of Sudden Permanent Blindness of Military Personnel Caused by Battlefield Use of Laser Weapons", in Louise Doswald-Beck (ed.), *Blinding Weapons: Reports of the Meetings of Experts Convened by the International Committee of the Red Cross on Battlefield Laser Weapons, 1989–1991*, ICRC, Geneva, 1993, pp. 47, 52.
55 *Ibid.*

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affected. As the ICJ noted in its 1996 Nuclear Weapons Advisory Opinion, nuclear weapons

> have the potential to destroy … the entire ecosystem of the planet. … The radiation released by a nuclear explosion would affect health, agriculture, natural resources and demography over a very wide area. … Ionizing radiation has the potential to damage the future environment, food and marine ecosystem, and to cause genetic defects and illness in future generations.[56]

Two regional human rights treaties set out the right to a healthy environment directly.[57] More broadly, the right to the highest attainable standard of health is stipulated in a number of human rights treaties, including the International Covenant on Social, Economic and Cultural Rights.[58] Doswald-Beck cites a case before the African Commission on Human and Peoples' Rights that found a violation both of the right to a healthy environment and of the right to the highest attainable standard of health as a result of major damage to the environment in Ogoniland caused by the Nigerian National Petroleum Company working with Shell Petroleum Development Corporation.[59] The lack of care violated the State's obligation "to take reasonable and other measures to prevent pollution and ecological degradation".[60] The extent to which such provisions might apply to any use of nuclear weapons (as opposed, for instance, to their testing) is, however, unclear.

The conduct of hostilities in a non-international armed conflict

The majority of armed conflicts in the modern world are non-international in character. Unfortunately, this is also where IHL has relatively far less to say, at least in the relevant treaties. Indeed, Article 3 common to the four Geneva Conventions does not, by general agreement, regulate the conduct of hostilities at

56 Nuclear Weapons Advisory Opinion, above note 8, para. 35. See also Ira Helfand, *Nuclear Famine: Two Billion People at Risk? Global Impacts of Limited Nuclear War on Agriculture, Food Supplies, and Human Nutrition*, 2nd ed., International Physicians for the Prevention of Nuclear War, November 2013, available at: www.ippnw.org/pdf/nuclear-famine-two-billion-at-risk-2013.pdf.

57 The 1981 African Charter on Human and Peoples' Rights, above note 29, provides in its Article 24 that "[a]ll peoples shall have the right to a general satisfactory environment favourable to their development". The 1988 Additional Protocol to the ACHR in the Area of Economic, Social and Cultural Rights provides in its Article 11 that "[e]veryone shall have the right to live in a healthy environment" and requires that States Parties "promote the protection, preservation and improvement of the environment". L. Doswald-Beck, above note 10, p. 454.

58 International Covenant on Economic, Social and Cultural Rights, 993 UNTS 3, 16 December 1966 (entered into force 3 January 1976), Art. 12.

59 African Commission on Human and Peoples' Rights, *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, Comm. No. 155/96, Decision, 27 October 2001, paras. 50–54; see L. Doswald-Beck, above note 10, p. 455.

60 *Ibid.*

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all.[61] The 1977 Additional Protocol (II) to the Geneva Conventions (AP II),[62] which applies to non-international armed conflicts in States Parties where an armed opposition to the State regime effectively controls territory,[63] does include provisions specifically regulating the conduct of hostilities. It provides in its Article 13 as follows:

1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.
2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.
3. Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities.[64]

One might argue that use of a nuclear weapon in any populated area would predictably violate paragraph 2: while a nuclear weapon can be targeted with a high degree of accuracy, its effects cannot be controlled,[65] and its use would certainly spread terror among the civilian population (though whether this could be deemed to be its primary purpose as opposed to a clearly foreseeable consequence might be debated).

While the rule (also called a principle) of proportionality in attack almost certainly applies in all armed conflicts as a norm of customary IHL, just as the International Committee of the Red Cross's (ICRC) landmark study concluded in 2005,[66] this prohibition did not find its way into the final text of AP II, nor, with respect to non-international armed conflicts, into the 1998 Rome Statute of the

61 See, e.g., Nils Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, ICRC, Geneva, 2009, p. 28.

62 Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609, 8 June 1977 (entered into force 7 December 1978) (AP II). As of July 2015, 168 States were party to AP II, the most recent being Palestine.

63 AP II, Art. 1(1), stipulates that the Protocol applies to "all armed conflicts which are not covered by Article 1 of [the 1977 Protocol Additional (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".

64 AP II, Art. 13.

65 Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978), Art. 51(4)(c), provides that indiscriminate attacks are prohibited. "Indiscriminate attacks are: … (c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently … are of a nature to strike military objectives and civilians or civilian objects without distinction." Of course, the application of the Protocol to the use of nuclear weapons is contested by certain nuclear-weapon-power States.

66 Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. I: *Rules*, Cambridge University Press, Cambridge, 2005, Rule 14: "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."

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International Criminal Court.[67] Similarly, no prohibition against attacks on all civilian objects (namely, all objects which are not military objectives) is explicitly included in AP II, nor are such attacks included as a war crime in non-international armed conflicts in the Rome Statute.[68] Specific protection is, however, afforded to cultural property. The 1999 Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property enhances the Convention's protection by providing that cultural property can only be attacked if it becomes a lawful military objective and no feasible alternative exists.[69] Article 22 specifically applies the Second Protocol to non-international armed conflicts.[70]

Arguably, human rights law has much to bring to the protection of civilians in non-international armed conflicts. The difficulty in determining who is a lawful target under IHL is typically far greater than in an international armed conflict, as armed groups typically operate clandestinely when operating against the government. While in certain conflicts the members of non-State armed groups may wear uniforms and bear arms openly, this tends to be the exception that proves the rule. IHL, though, seemingly makes no distinction in the application of its primary rules on the conduct of hostilities between international and non-international armed conflict. The two most important primary rules are the rule on distinction in attack and the rule on proportionality in attack.[71] While their formulation as rules is clear and largely uncontested, their practical application is highly contentious, as the *Gotovina* case before the International Criminal Tribunal for the former Yugoslavia (ICTY) graphically demonstrated.[72]

In the *Gotovina* case, the ICTY Trial Chamber had found that, on 4 and 5 August 1995, Croatian army artillery units fired artillery shells and rockets at the so-called "four towns" in the Krajina,[73] and after carefully comparing the evidence on

67 Under the Rome Statute of the International Criminal Court, 2187 UNTS 90, 17 July 1998 (entered into force 1 July 2002), Art. 8(2)(b)(iv), the ICC potentially has jurisdiction over "serious violations of the laws and customs applicable in *international* armed conflict, within the established framework of international law" (emphasis added), including "[i]ntentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated".

68 *Ibid.*, Art. 8(2)(e).

69 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, 249 UNTS 240, 14 May 1954 (entered into force 7 August 1956), Second Protocol, 26 March 1999, Art. 6. The 1954 Hague Convention only required parties to a non-international armed conflict to respect cultural property.

70 Already under Article 16 of AP II, it was prohibited "to commit any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort".

71 Precautions in attack are not discussed here, as failure to respect them does not formally constitute an indiscriminate attack.

72 The Trial Chamber concluded – arguably incorrectly – that the attacks took place in the context of an international armed conflict. Indeed, the prosecution in the case appeared at times to argue implicitly that a non-international armed conflict was in progress in 1995. "The intensity of the conflict between these well-organized parties … varied but was sufficiently high to distinguish the 'homeland war' from 'banditry, unorganized and short-lived insurrections, or terrorist activities'." ICTY, *The Prosecutor v. Gotovina et al.*, Case No. IT-06-90, Prosecution's Public Redacted Final Trial Brief, 2 August 2010, para. 469.

73 Knin, Benkovac, Gračac and Obrovac.

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the locations of impacts in these towns with the locations of possible military targets, it concluded that they had targeted not only military objectives but also areas devoid of such lawful targets. As such, the Chamber found that Croatian forces had treated the towns themselves as targets for artillery fire, holding therefore that the shelling of the towns constituted an indiscriminate attack on the towns and an unlawful attack on civilians and civilian objects.[74]

In its pre-trial brief, the prosecution asserted both the unlawful nature of the attack and its "terrifying effect".[75] The defendants were convicted, and General Ante Gotovina was sentenced to twenty-four years of imprisonment for a series of crimes against humanity and violations of the laws and customs of war. He appealed against his conviction. The majority in the ICTY Appeals Chamber argued, wrongly in the present author's view, that the Trial Chamber had based its entire decision that the attacks were unlawful on the fact that all shells or rockets landing at a distance of more than 200 metres from a lawful military objective were deemed indiscriminate. The Appeals Chamber unanimously agreed that no such standard existed in IHL.[76] The majority of the Chamber could not "exclude the possibility" that the shelling was aimed at legitimate targets:

> The fact that a relatively large number of shells fell more than 200 metres from fixed artillery targets could be consistent with a much broader range of error. The spread of shelling across Knin is also plausibly explained by the scattered locations of fixed artillery targets … along with the possibility of a higher margin of error.[77]

This is potentially a significant protection issue for the civilian population, especially in relatively small towns like Knin. An *amicus curiae*, submitted by leading IHL lawyers concerned at Gotovina's conviction at trial, had asserted their understanding that assessing legality of attack effects requires some benchmark of acceptable error, and suggested a 400-metre standard:

> By substituting 400-meters as the benchmark for assessing attack effects in this case, the Appeals Chamber will send a powerful message that criminal responsibility for allegations of unlawful targeting decisions in future armed

74 See ICTY Chambers, "Judgment Summary for Gotovina *et al.*", The Hague, 15 April 2011, p. 3, available at: www.icty.org/x/cases/gotovina/tjug/en/110415_summary.pdf.

75 "Pursuant to Gotovina's order … civilian population centres in the Krajina were put under artillery fire, including Knin, Benkovac, Obrovac and Gračac. In each of these towns and in outlying villages, shells and rockets impacted civilian areas, causing civilian deaths and injuries, damage to civilian property, and a mass exodus of the civilian population. Civilians who were the object of the attack, as well as observers from multiple international organisations, uniformly described the terrifying effect of the attack." ICTY, *Gotovina et al.*, above note 72, para. 484. The prosecution further cited Croatian army reports wherein 130mm cannons were fired "at a residential area in Knin" and "in irregular intervals … at the general area of Knin". *Ibid.*, para. 507.

76 ICTY, *The Prosecutor v. Gotovina and Markac*, Case No. IT-06-90-A, Judgment (Appeals Chamber), 16 November 2012, paras 58–61.

77 *Ibid.*, para. 65.

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> conflicts will be imposed only when the totality of the evidence is genuinely sufficient to support such allegations.[78]

The Appeals Chamber did not make this determination. Indeed, what the Chamber failed to do – and it was for this failure, among other things, that the two dissenting judges, Agius and Pocar, criticized it so heavily – is to articulate the correct standard under IHL, as it was required to do under the mandate of the ICTY.[79] Judge Pocar raised three core concerns about the majority judgment: the failure to determine the standard (and whether that standard should be measured in metres); the basis for the correct legal standard ("Does the Majority consider that a legal standard can be established on a margin of error of artillery weapons?"); and the legal principles that the Trial Chamber should have applied ("Does the Majority consider that the Trial Chamber should have applied the principles of customary IHL in its analysis? If so, which exact IHL principles should the Trial Chamber have applied in assessing whether the artillery attack was lawful?").[80]

Thus, hopes that the *Gotovina* case would become the "*Tadić* of targeting law"[81] were tragically dashed, leaving the degree of care required by IHL when using artillery or aerial bombing a matter of conjecture. How, for example, would a court address an attack on a massive military base in a capital city that involved use of a "tactical" nuclear weapon? If the accuracy and control of effects required by the rule of distinction is unclear, how opaque is the rule/principle of proportionality?

I am, of course, not suggesting that use of a nuclear weapon in a non-international armed conflict would be lawful under IHL. But nor is it possible to say that it would be unreservedly unlawful. The ICRC has, to its credit, affirmed "the difficulty of envisaging how any use of nuclear weapons could be compatible with international humanitarian law".[82]

Concluding remarks

So where does this leave international law governing the use of nuclear weapons? Fragmented, arguably. While human rights law does not outlaw the use of

78 ICTY, *The Prosecutor v. Gotovina and Markac*, Case No. IT-06-90-A, Application and Proposed *Amicus Curiae* Brief Concerning the 15 April 2011 Trial Chamber Judgment and Requesting that the Appeals Chamber Reconsider the Findings of Unlawful Artillery Attacks During Operation Storm, 12 January 2012, para. 17.

79 "By not articulating the correct legal standard, the Majority falls short of correcting any legal errors in the Trial Judgement and clarifying the law the Trial Chamber should have applied when assessing the legality of an attack directed on civilians and civilian objects. It also fails to consider whether the artillery attacks on the Four Towns were lawful or not when the evidence is assessed in light of the principles of international humanitarian law." ICTY, *Gotovina and Markac*, above note 76, Dissenting Opinion of Judge Pocar, para. 13.

80 *Ibid.*

81 ICTY, *Gotovina and Markac*, Application and Proposed *Amicus Curiae* Brief, above note 78, para. 2.

82 See, e.g., ICRC, "Weapons: ICRC Statement to the United Nations, 2014", Statement, General Debate on All Disarmament and International Security Agenda Items, UN General Assembly, 69th Session, First Committee, New York, 14 October 2014, available at: www.icrc.org/en/document/weapons-icrc-statement-united-nations-2014#.VP1BMCmzXX5.

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nuclear weapons altogether, it at least offers a reasonable chance of accountability should, God forbid, these weapons ever be used in anger again. In addition, outside armed conflict, that branch of international law would unequivocally outlaw any use. The degree of care with regard to human life that human rights law demands in police or military operations for law enforcement significantly exceeds that which is required by the prevailing rules of IHL governing the conduct of hostilities (at least insofar as anyone understands the application in practice of the rules).

In a non-international armed conflict, human rights law would, I believe, go further than would IHL to make any use of nuclear weapons (at least on land) unlawful. Even were an attack in a populated area somehow deemed "discriminate", not only the readily foreseeable short-term catastrophe but also the medium- and long-term consequences of nuclear weapon use, in particular those resulting from fallout and the accompanying humanitarian plight, would inevitably infringe on a range of human rights. Such limitations on the use of force still amount to a "realistic behavioural approach",[83] but they take account of advances in weapons technology, in particular the greater precision of delivery that contemporary armaments offer (thereby reducing the need for wide-area weapons). Human rights law acts to ensure that humanitarian protection increases, not recedes, over time. Thus, it may be said that the static nature of IHL stands in stark contrast to the progressive dynamism of human rights.

83 See "ICRC and Human Rights Council: Complementary Activities, Respect for Differences", statement by Mr Peter Maurer, President of the ICRC, 22nd Session of the Human Rights Council, High-Level Segment, Geneva, 26 February 2013, available at: www.icrc.org/eng/resources/documents/statement/2013/ihl-human-rights-council.htm.

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