

“No friends but the mountains”

Kurdistan’s armed conflict

Law of armed conflicts



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Why I have chosen this topic

"If you wish to do a good deed, consult no one"

It was not difficult for me to choose this topic for the paper. I knew the existence of Kurdistan after doing this study, and I have been interested in it because of three main reasons. Firstly because Kurdistan is a stateless nation fighting to be recognized as a different community, with national identity, history, culture, language and traditions. The situation of it is similar than what we've lived in my homeland, Catalonia (or the Catalan Countries, if we think also of Valencia and Balear Islands), especially in the XX century, under the Primo de Rivera's dictatorship in the 20's and then under the fascism state of Franco from the 40's to the 70's. Even today that Franco's regime seems to be alive in many things. Secondly because the PKK has mixed the national liberation with the social liberation, being a revolutionary movement against the imperialist powers of foreign nations. And finally because of the gender equality: I was really surprised to know the important role of the woman in Kurdish society. Despite being a nation of the Middle East, woman participates actively not only in the army (they are one third part of the guerrillas) but also in politics.

Finally, of course, the current situation in the region also impresses me. The Islamic State attacks against the Kurdish regions in Iraq and Syria was also a factor to choose it, because it's something happening now and something that we can watch in the media every day. Also I must say that I found that topic original and interesting because I thought that not many people would know anything about it, unlike Palestine-Israel or OTAN's bombing or other famous armed conflicts.

Research methodology

"Do what your teacher says but not what he does".

My research goal is to approach to the complex struggle of Kurdistan, also known as the "Kurdish question", focusing on the situation in Turkey, where it lives approximately the half of the total Kurdish population. Mainly, the conflict in Turkey involve, on one hand, the Kurdistan Workers Party (PKK in Kurdish abbreviations), and on the other hand, the Republic of Turkey, especially the government of the state.

There are two principle research questions which I want to answer to. Firstly, as PKK is considered a terrorist group, not only by the Turkish state, but also by the United States and the European Union, I want to answer to the question that if the clashes between the Turkish security forces and the PKK can be classified as an armed conflict or not. Secondly, as International humanitarian law divides the armed conflicts between "international" and "internal" or "non-international" conflicts, and in this case the Turkey vs. PKK conflict is internal, I want to know which international legal framework must be used in this situation.

Introduction

What is Kurdistan?

The song of my land

*Are the long routes of the centuries,
Is, endless, life of Peoples,
I found miraculous relics,
Of your beautiful language, oh, my People,
Watching the blue sky,
Of your water and your pure heaven.*

*Many prayers, so many cries,
Many words unknown to our ears,
The night was long and grey horizon,
But how wonderful is the sunrise.*

*That flute plays rhythms,
Soft falling like pearls,
More beautiful than those who sleep on the night of the seas,
In the high lands of this land,
Kurdish word!, you alone are not ephemeral*

Alí Termuki (1590-1653)¹

5,000 years ago, the Sumerians had a word which meant something similar to mountain, *kur*, and with the suffix *ti*, creating the word *kurti*, it defines what were the Kurds: *mountain people* or *mountain tribe*. Later, were the inhabitants of Anatolia, the Luwians, who referred Kurdistan as *Gondwana*, meaning *land of villages*, and during the reign of Assure the Kurds were named as *Nairi*, which meant *people by the river*². Since then, the Kurds have been living in settlements and fighting against the attacks received from external powers and empires, especially after 1925 when the modern state of Turkey was created, led by Mustafa Kemal Atatürk.

But, what is really Kurdistan? Kurdistan is the biggest stateless nation in the world regarding demographic terms; its population is about 30 or 35 million people (approximately one or two million living in Diaspora), dependent the sources, and they are the fourth largest ethnic group in the Middle East following Arabs, Persians, and Turks³. The nation is divided into different states of the Middle East with a total area of approximately 392,000 km²: 190,000 km² in Turkey, 125,000 km² in Iran, 65,000 km² in Iraq, and 12,000 km² in Syria. As we have seen in the etymology of the word Kurd and the names used to refer to Kurdistan in the past, it's easy to imagine the topology of

¹ Jacqueline Samali, *Ser kurdo, es un delito? Retrato de un pueblo negado*, Editorial Txalaparta S.L, Paris, 1995

² Abdullah Ocalan, *War and peace in Kurdistan*, 2nd edition, International Initiative "Freedom for Abdullah Ocalan – Peace in Kurdistan", Cologne, 2009

³ Ross Dayton, *Identity and conflict: PKK vs. Turkey (1984-present)*, Florida International University, Florida, 2013

the land: It is a very mountainous zone with important rivers and a big number of settlements and villages, it has forests and important natural resources such as water and oil, which together with its geographical situation turns Kurdistan to geostrategic zone which has been disputed by different powers throughout history, and still is today. The social structure is based on clans, and a very hierarchical society due to the property of the land which is concentrated in few hands. This turns Kurdistan to an economically self-sufficient zone which kept isolated to the transformations occurring in the world. The quasi-feudal structure links to the lack of a Kurdish nationalist project and this hindered the construction of a nation-state. Kurdistan has an extreme continental climate, so summers are hot and winters cold. Precipitations are very few in the plains but important in the mountainous zones (more than 3700 metres), where is usual to snow. This characteristic allows Kurdistan to have one of the biggest reserves of water in the Middle East. In fact the two main rivers of the region, the famous Tigris and Euphrates, born in the Turkish Kurdistan crossing the entire region and ending in the Persian gulf.

Nowadays, the region is also called *cradle of civilization* because is in that zone where is said that the Neolithic started, as it have good fields to develop agriculture. Therefore, Kurdistan's history is full of battles, discovering, disputes and other historical events which marked turning points throughout the past. Assyrians, Arabs, Mongols, Ottomans or Mesopotamia and other big civilizations have settle in Kurdistan in different periods of history, giving a symbolic importance to the region. So, according to its history, the nation is plural and diverse and indeed it have Arab, Armenian, Assyrian, Azeri, Jewish, Ossetian, Persian, and Turkic communities. But although this diversity, Kurdistan still has its own language, the Kurdish, which belongs to indo-European family of languages and it has different dialects, mainly Kurmanji and Sorani. Kurdish it is only officially recognized in Iraq, and also in Armenia as a minority language. Kurds are often bilingual because they speak Kurdish but also the official languages of the states which they belong to, such as Arabic, Persian and Turkish.

They have a rich culture and traditions preserved for many years. Music plays an important role in Kurdistan's culture, and there a lot of folkloric songs which are played and singed in public or familiar events, like weddings. Also they have its musical instruments and they wear typical clothes, both men and women, being often coloured in the case of women. They have their own dances too, which they use to practice in birthdays, festivals or ceremonies. The principal dance consists in form a round dancing with a single or a couple of figure often added to the centre of the circle. The dances are one of the main factors of distinction between Kurds from other Muslims.⁴ Regarding religion, most of the Kurds are Muslim, belonging to the Sunni school. But there are a lot of other religions practised in Kurdistan, for example Yazidism and Yarsanim, and also Zoroastrianism. Also some Kurds are Christians or Jews. Unlike in other parts of the Middle East, the hegemonic religious tendencies are moderate so it doesn't exists a conflict between different religions right now,

⁴ *Kurds, Kurdistan*, Part 4. Dances and music, The Encyclopedia of Islam, C.E. Bosworth, E. van Donzel, B. Lewis & CH. Pellat, Vol. V, KHE-MAHI, Leiden, E.J. BRILL Publishers, 1986

especially in Iraq Kurdistan, which is set to be an example of multi-religious coexistence.⁵

Over the years Kurdish people, most of them organized in rural tribes, have resisted to be assimilated to any of the empires or external forces which have tried to dominate its land and its natural resources, annihilating their personality and identity. This process has been compounded by the fact that, as has been said, for historical reasons Kurdistan is divided in four different states, forming four independent entities or regions. These regions are the Northern Kurdistan, which is the unofficial name for the south-eastern part of Turkey; the unofficial part of the western Iran called the Eastern Kurdistan; the western Kurdistan, also called Rojava, located in the north of Syria and *de facto* an autonomous region since the Syrian Civil war started; and finally the Southern Kurdistan in Iraq, also known as Kurdistan Region, which is a Parliamentary democracy with a regional assembly and its own army and political institutions. Both territories form what is known as "Great Kurdistan", the entire nation which has been claimed by the Kurdish movement and is nowadays totally divided.

Description of a conflict or problema

Background

"The mouth is not a hole in the wall that can be covered with clay"

The "Kurdish Question" has deep historical roots, but it is true that the most recent antecedents are linked to the falling of the Ottoman Empire and the creation of Turkey. The ongoing conflict nowadays is consequence of several historic events which affected different states and international actors. First of all we only have to take a look to characteristics of Kurdistan: it is a community with a national identity, it covers a big area in a geostrategic and conflictive zone, it is a crowded nation, in it there are natural resources, and it is surrounded by big empires and cultures. Therefore, the circumstances were perfect for armed conflicts. Efforts by the Kurds in the broader region, which encompasses the Kurdish populations in Syria, Iran and Iraq, to move towards self-determination, political representation, freedom from discrimination, and recognition of their identity as an ethnic group, have continuously been marred by oppression and violence.⁶ Also have been in Turkey, where I'm going to focus on as is the neuralgic centre of the conflict. Policies pursued since the establishment of the Turkish Republic, which draw on the Kemalist ideology in their attempts to build a national Turkish identity and society, have clearly failed in resolving the Kurdish Question.⁷

⁵ Documentary "Kurdistan; paraíso de 7 tribus." Directed by Israel del Santo, 2010

⁶ Kerim Yildiz and Susan Carolyn Breau, *The Kurdish Conflict: International Humanitarian Law and Post-conflict Mechanisms*, Oxford: Routledge, Oxford, 2010

⁷ Kerim Yildiz, *Turkey's Kurdish Conflict: Pathways to Progress*, Insight Turkey Vol. 14 No. 4, 2012

The main problem and the cause of the struggle are not simple and can be analysed by different perspectives (national, historical, socio-economical, geostrategic etc.). In my point of view the refusal to recognize the Kurdish identity is the key point to understand the conflict. After the fall of the Ottoman Empire the Turkish nationalism started to emerge. Between 1919 and 1923, when Turkey was in war with Greece, Mustafa Kemal Atatürk reached in uniting Turks and Kurds using the religion as an aggregator. At that time the Kurdish elites supported the alliance with the Turks because they believed that the ethnic plurality and respect for difference would continue in the future, as it had been in the Ottoman Empire. But in 1923, when the Republic of Turkey was established, the Turkish elites try to eliminate all the minorities, not only the Kurds, also the Circassians, Albanians, Bosniaks, and Georgians. The attitude of Turkey about the existence of Kurdistan was intolerant and violent because they considered that the only existence of Kurdistan was the greatest threat to the Turkish nation-state. So, as we can see the construction of this nation-state was based in the total denying of the existence of Kurdistan. The aim of the Turkish nationalism was to create a homogenous society without different ethnic groups or nations recognized inside the Turkish state. So the first goal was to assimilate Kurds to become Turks, marginalising unassimilated Kurds in the public sphere.

The language was one of the most important battlefields for eliminating the Kurdish identity because the language is one of the most genuine elements of a culture and it represents a world's view. Also the language can be the main representation of a national community and often is a way to create collective conscience. Furthermore the language is very linked to the personal identity of one person as it is one of the first things that you learn when you born. So the Turkish State started a "linguicide", a linguistic genocide, to eliminate the Kurdish language. In 1925 the language was prohibited in all the south-eastern provinces of Turkey and even the word "Kurd" was banned from public discourse. Some letters which don't exist in Turkish but yes in Kurd, like the Q, W and the X, were banned, and the government fined the peasants selling food in the markets for every Kurdish word they pronounce. Also in the schools the education was only in Turkish and, in fact, the state separated Kurdish students from their homes and forced them to stop speaking their mother language. Another strategy developed by Turkish intellectuals was to discredit all the things related to Kurdish language, history and culture with the objective of attacking and weak Kurdish identity. They referred the Kurdish language as "broken Persian," a primitive language with no grammatical rules and a limited vocabulary of 400 words. Kurds, according to the Turkish version of history, descend from the same tribe as the Turks but were isolated in the mountains and lost their mother tongue; consequently, the Kurds were labelled as "Mountain Turks".⁸ In fact a Kurd is an "uncivilized person" regarding the Oxford Turkish-English dictionary.

After all this happened, the dignity of the Kurds was totally injured, so it was the start of a kind of political nationalism. The Kurds rebelled in three occasions (1925, 1930 and 1937) against Turkey, but the rebellions were suppressed by the state. The struggles were so hard because the military force of Turkey was much bigger than the

⁸ Özcan, A. K., *Turkey's Kurds: A Theoretical Analysis of the PKK and Abdullah Öcalan*, Routledge Advances in Middle East and Islamic Studies, London, 2006

Kurd one. This Turkish military responded with artillery attacking the villages, burning them and carrying mass deportations of civil population. Repressive measures taken against Kurds were dramatic, including massacres of people. Kurdish activists were forced underground from 1938 to the 1960s due to the state's devastating repression; this era in Kurdish politics became known as the decades of silence.⁹

PKK: the born of the National Liberation Movement

"A small key opens big doors."

New times were coming and the growing of Kurdish movement in Iraq, led by Barzani, together with the creation of the Turkish Workers Party (a legal socialist political party), created an environment in Turkish Kurdistan to restart the popular organization of the resistance against denying and assimilation. The Kurdistan Democratic Party of Turkey (TKDP) created in 1965 was the first nationalist Kurdish party in Turkey since the last rebellions in 1938¹⁰. Between the sixties and the seventies the situation in Turkey was politically unstable, and there were two coups d'état in only 10 years. Meanwhile, Abdullah Ocalan, a young Kurdish working class studying in Istanbul Law faculty, was preparing to be in the future leader of the PKK. Ocalan transferred after the first year in Istanbul to Ankara University to study political science and started to join the leftist's movements in this city. Shortly he was closed in the prison some months for his activism in the student movement. The young Kurds living in urban areas, which were participating of the leftist organizations, start to realise that Kurdistan needed its own political structures, and met Ocalan in several occasions. They were fascinated by the intelligence, analytical capacity, way of communication, and determination of Ocalan. In 1976 Ocalan's followers, grouped around his person, started a recruitment of new activists using a clear message: Kurdistan is a nation, therefore it should be independent, for this is needed an armed revolution, and this revolution might start right now. Finally, in November 1978 after a few years organizing themselves, travelling in the south-eastern Turkish regions (the Kurdish part) and making ideological construction from the Marxist-Leninism theory, the PKK (Worker's Party of Kurdistan) was created.

After the military coup in 1980, most of the PKK members moved to Syria and Lebanon where they received military training and support from the Palestinians groups. Ocalan noticed that to gain more support he should deal with other Kurdish leftist groups - with which the PKK have had confrontation in the past, even killing some of their members each other- so he met with other Kurdish leaders and they agreed to make deal for starting an offensive attack. Also the work developed in Europe, especially in Germany, by PKK militants was so succeeding, as they create cultural clubs and social centres to expand their ideology and collect money. The Israeli invasion of Lebanon in the summer of 1982 had made the situation in the Bekaa [training camp of PKK

⁹ Klein, J., *Turkish responses to Kurdish identity politics: recent developments in historical perspective. The Kurdish Policy Imperative*, Royal Institute of International Affairs, London, 2010

¹⁰ Marcus, Aliza, *Blood and belief. The PKK and the Kurdish fight for Independence*, New York University, New York, 2007, p. 20

militants in Lebanon] unstable. And Syria, while a good place for taking refuge, was not appropriate for launching attacks. The terrain between Turkey and Syria was too flat, and anyway, Damascus did not want PKK militants fighting from its territory.¹¹ So Ocalan made an agreement with Barzani, the leader of the most important party in Iraqi Kurdistan (the KDP), to settle the PKK members in a camp controlled by Barzani's troops, at that moment in war against Saddam Hussein regime. While in Lebanon PKK militants learned how to make bombs, in the mountainous zone of Iraq (near the Turkish border) they trained how to survive as a guerrilla force.

Beginning of violence

"It is more difficult to contend with oneself than with the world"

On August 1984 the PKK troops were ready and the armed struggle began. It wasn't a direct war, or even a war, the PKK knew that the Turkish army was much more powerful. Their strategy was to make short attacks in the villages, killing the guards and, at the same moment spread the information that the Kurdistan liberation war has started, gaining support of the population. We can name this propaganda war.

But in these early 1980's the PKK faced an internal crisis due to some critics against the position of Ocalan, who was acting as a dictator, having a lot of power and deciding most of the things of the party. After that, the internal dissidence was understood as a threat to the consolidation of the war and some PKK members were summarily killed by the Ocalan's loyal. Another problem was added to these internal battles, the Turkish state reacted sending a lot of soldiers and creating military outposts. Maybe one of the harder measures taken by Turkey was the creation of a civil militia: Kurdish villagers armed and paid by the Government to fight the guerrillas. Also the repression of Turkey inside the country was growing up. Many PKK members or people accused of supporting or helping its actions, were held in prison, mainly in Diyarbakir military prison, located in the non-official capital of the Turkish Kurdistan, the city of Diyarbakir. The conditions were brutal and torture was usual. In fact some PKK militants burned him in the prison, an action which served to alert to infernal conditions of the facility. After that, some pressure from Europe facilitated to improve the situation in the prison. But prison was also a battlefield for the PKK, they organized themselves into committees inside the building, teach history of Kurdistan and explained to all prisoners what was happening outside.

In the second half of the 80s, the PKK intensified its attacks in the villages of the village guards, killing also innocent people. Also they stroked schools and hospitals arguing that were used as military facilities. Despite this provoked an increasing public opinion against PKK in Turkey, in the Kurdish lands the PKK gained popularity and their actions gave strength to Kurdish, who started to move forward to nationalist positions and support armed fighting. But of course the attack on civilians was giving a bad image of the PKK, and although the number of guards declined a lot, the tactics must be

¹¹ Marcus, Aliza, *Blood and belief. The PKK and the Kurdish fight for Independence*, New York University, New York, 2007, p. 69

changed, so the PKK accepted in public the mistakes and stopped attacking civilians. In 1986-1987 Iran permitted PKK to establish camps in its own territory. Both countries, Turkey and Iran, are Muslims but Iran is a theocracy and Turkey a secular state, and the first is in the NATO and the second one is the enemy with the US. Iran was interested in receive information about the US military bases in Turkey, which PKK militants can offer.

The struggle intensifies

“Expect the worst from your enemy so that you won't be disappointed”

In the 90's the armed conflict increased, and the number of deaths and combats was much higher. The PKK's strength and influence reached a lot, and new generations of young people join the party in the early 90's. Also inside the Turkish Kurdistan there were important riots in the cities, for example in Diyarbakir. Attacks inside Turkey launched from the other side of the shared border increased, so Turkey started a contra offensive launching some operations in the northern Iraq in 1992, using air strikes and also invading the zone with land soldiers. In March 1993, the PKK start a ceasefire because the Turkish President, Turgut Özal, exposed a reform package for Kurdish regions. But the President died in April before starting the negotiations so the plan stopped and the combats continued. In 1995 there was a military Turkish Winter Campaign to cut off the PKK from their winter supplies. In the same year Turkish forces attacked PKK in Northern Iraq, in an Operation called Operation Steel. The Operation was not really successful because the PKK forces withdraw before the Turkish army arrived. In the spring and summer 1997, during the Iraqi Kurdish Civil war, the Turkish army allied with the KDP (Iraqi Kurdish party in good relations with Turkey) attack against the PKK. On September-October Turkey started another operation, Operation down, and did another intervention to support KDP against PKK. Finally in 1998, almost 40.000 Turkish troops take part in the Operation Murat, the largest military action in the history of the Republic of Turkey, attacking the PKK.

In February 1999, Abdullah Ocalan was captured in Kenya by the Turkish forces. Kurdish protests break out over the world against the arrest, which was done without respecting the international legal framework. Some bombs were detonated these years killing a lot of civilians, but PKK refuse being the author of the terrorist attacks. Anyway Turkey considered PKK author of the bombing attacks. In September 1999 the PKK declared a unilateral 10 year ceasefire, certifying the end of the first insurgency.

XXI century

“Stairs are climbed step by step”

In February 2000 the PKK made an official and formal declaration to end the war. Two years later, in 2002, the PKK finished its activity and created a new political organization: the Kurdistan Freedom and Democracy Congress (KADEK). But the Constitutional Court of Turkey decided unanimously to ban the party, a decision hardly

criticised by the Kurdish movement, who did not understand why if PKK has abandoned the armed fight Turkey still not recognize the Kurdish purely political parties. After that, in 2003, KADEK and the Kurdish Parliament merged into a new organization named KONGRA-GEL. In January 2004 the PKK and all its organizations were added to the U.S. list of terrorist organizations, and also did the EU in the next year. These last events provoked that, in June 2004, the hardliners of the PKK, led by Murat Karalyian, won the control of the party and declared the end of the ceasefire and start the second insurgency.

The guerrillas made some attacks to the Turkish army, but also there was an important increase of terrorist violence in the cities and tourist areas which were claimed responsible by The Kurdistan Freedom Falcons (TAK). In 2007 hundred of Turkish troops cross into Iraq on a “hot pursuit” attack to the PKK camps, after the Parliament allow it. Also Turkey declared a three-month martial law in Kurdish areas near the Iraq border and bans civilian flights to the area. In 2008 there was another incursion of Turkish military into northern Iraq. Since then, more attacks using terror methods have occurred in the crowded cities of west Turkey and also some guerrilla warfare in the mountains of the eastern part. But these last years started some negotiations between the guerrilla and the government, including a role for the leader of the PKK, Abdullaw Ocalan.

Overview of applicable rules of international law

“Fear an ignorant man more than a lion.”

The law of armed conflicts is the branch of international law concerning rights and obligations in armed conflicts. From a classic approach, we can divide it into two different ways to regulate the wars and armed conflicts. Firstly the *jus in bello*, which regulates the conduct of forces when engaged in war. Secondly the *jus ad bellum* regulates the conduct when an armed conflict is going on, and includes crimes against peace and of war of aggression. Although, this distinction seem to have disappeared by the time, and for example the Additional Protocol I of 1977 stated that this distinction is artificial nowadays.

Before viewing the applicable rules of international law in this case we have to be sure that we are talking about a real armed conflict because is the only way, or even the best one, to analyse the conflict from a legal point of view. Despite the fact that the PKK is considered a terrorist organization by Turkey (and also by the United States and the European Union) it is clear that the situation in south-eastern region of the state, the Kurdish area, isn't peacefully at all. So first of all we will comment if there is or not an armed conflict in Turkey taking for reference common article 3 of Geneva Conventions, the Roma Statute of the International Criminal Court¹², the Additional Protocol II (although is not ratified by Turkey) and also the doctrine about that issue.

¹² Roma Statute of the International Criminal Court. Rome, 17 of July 1998

If we conclude that there is an armed conflict then we can start to analyse which are the rules applicable in this case. There are two main legal texts which are considered the more important sources in the law of armed conflicts. On one hand the Hague Conventions of 1899 regulates the way in how can be the hostilities conducted so "determines the rights and duties of belligerents in the conduct of operations and limits the choice of means in doing harm."¹³ In the preamble of this text we can find the "Martens clause" which is considered part of the law of armed conflicts since then. On the other hand there are the Geneva Conventions, which are probably much more complete and useful than the Hague one. There are four Geneva Conventions and three Additional Protocols. As the ongoing conflict in Turkey is supposed to be a non-international armed conflict, the only applicable rule of the Geneva Conventions is the common article 3 of the Geneva Conventions. The applicability rests on the interpretation of the term "armed conflict", as we have been said. About the Additional protocols, Turkey hasn't signed anyone of them, so can't be applied in this case; despite there is Additional Protocol, the number II, which regulates specifically non-international armed conflicts. Generally states are only bound by the convention obligations they have ratified. However, they are also considered to be bound by customary international law¹⁴

Legal analysis of conflict or problem according to international law Rules

"Deal with your friends as if they will become your enemies tomorrow, and deal with your enemies as if they will become your friends tomorrow"

There is an armed conflict?

Introduction

Common article 3¹⁵ defines an internal armed conflict as "an armed conflict not of an international character occurring in the territory of one of the High Contracting Parts". PKK defend the existence of an armed conflict and has expressed its agreement to abide by the laws of armed conflict by a statement to the United Nations delivered in Geneva on 24 January 1995: *"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."* Although, Turkey has never accepted the existence of an internal armed conflict in respect of the south-eastern regions -the Turkish Kurdistan- and always has considered the PKK a terrorist organization. In the same year, the 16 of august 1995, the *chargé d'affaires* at the Turkish embassy in the US wrote a letter to the director of Human Rights Watch Arms saying that PKK is a "terror organization" which "systematically resorts to methods of terrorism to further its aims and indiscriminately

¹³ Pictet, Jean, *Development and Principles of International Law*, Oxford University press, Oxford, 1985

¹⁴ Øhlenschläger Buhl, Keneth, *Legalization of Civil Wars: The Legal Institutionalization of Non-international Armed Conflicts*, Denmark, 2009

¹⁵ Common article 3 to the Geneva Conventions, 12 of August 1949

commits human rights violations against civilians through terrorist acts". Also he added "This is in no way a conflict between the Turkish and the Kurdish peoples or two armed groups which can be characterized as an internal armed conflict [...] it also cannot be characterized as an armed struggle by a certain people against a tyrannical or colonial administration in the exercise of the principle of self-determination."

First of all is noted that it is very difficult to establish what an armed conflict is. There are no global definitions for the situations when a riot or insurgency rises up to an armed conflict. The 1949 Geneva Conventions don't contain such a definition; this absence has been promoted by the states, which preferred not to define something that could be negative for its interests in the future. Customary international law neither has an accepted definition for this term. For the International Community, the existence or not of an armed conflict depends on the positions that states take when there is a situation of violence anywhere. They vote in the Assembly or the Security Council of the UN to recognize the existence of an armed conflict, but the reality is that states where the violence occurs never accept this situation. States involved in this type of conflict refer to the insurgency as a terrorist, most of the times, so its violence is named as "antiterrorist operations" "counterinsurgency" or "counterterrorism". Nevertheless, the lack of a clear definition in the international treaties or customary law doesn't mean that it can't be a criteria to analyse these situations. Legal literature and practice of states are the main references that can be used.

Analysis

Firstly, there is a principle in common article 3 which not for being obvious must be ignored: the existence of two or more parties (the article says that it is applicable to "each Party to the conflict"). In general there are no difficulties to recognize the state Party, represented by the official military force, but it's not so easy with the non-state actors. This non-state actor must fulfil some characteristics to become a subject capable to begin an armed conflict. This armed group needs a "certain level of organisation and command structure, as well as the ability to implement international humanitarian law."¹⁶

Secondly, intimately related with the last sentence, there is a definition in the legal literature which is very complete and summarizes the criteria of the existence or not of an armed conflict. "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.

¹⁶ L. Moir, *The law of internal armed conflicts*, Cambridge University Press, Cambridge, 2002 quoted in "The situation in south-east Turkey: Is it an armed conflict for the purpose of international humanitarian law?" of Susan Breau.

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.”¹⁷The main idea of this text is the intensity of the conflict: civil disturbance with the police intervention, riots by political violent and organized groups, can't be considered an armed conflict, it is necessary that to employ the armed forces against the insurgents. Also we can add the definition of the Statute of the International Criminal Court which states that the article about it “applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.” Finally must be noted that the Additional Protocol II of the Geneva Conventions of 1977¹⁸, although is not ratified by Turkey, adds two more elements to the definition: territorial control and ability to carry out sustained military operations.

So, let's see if the conflict in Kurdistan can fit in these definitions above.

The PKK is an ethnic insurgency group embracing guerrilla warfare and terror as a method. In 15 of August of 1984 the PKK launched an attack to some villages of the Turkish Kurdistan, and since then sustained violence between military forces of Turkey and this organized group, the PKK, have been ongoing; despite some ceasefires of the PKK. Turkey has used, apart from the security and intelligence forces, approximately 250.000 soldiers of its regular army in this conflict. Here we must include all the village guards which were involved in the struggle as militias paid by the government.

The internal organization of the PKK is hierarchal and very complex; Ocalan has been the decision-maker and it still is the political leader of the party. We can divide the PKK between the political apparatus (ERNK, Liberation Front of Kurdistan) and the army apparatus (ARGK, Kurdish People's Liberation Army). But the PKK has had different structures and subdivisions until its creation, especially in the armed field. Chronologically, the military units include the HRK (Kurdistan Independence Unit), the ARGK and finally the current HPG (People's defense Unit). The PKK has brother organizations in the neighborhood countries of Turkey, which also participated in the hostilities, for example the YPG (People's Protection Units) in the Syrian Kurdistan. The PKK has a lot of subordinate organizations working in different social sectors and issues like religion or gender. The party takes its decisions in the congresses, which take place every four years. Also there are some sporadic conferences about the strategic goals of the organization. The General Secretariat serves as the decision maker between congresses. As we can see the PKK has a certain level of organization (in fact, it has a lot) and a command structure. The strength of the PKK had its peak in the 90's, and it was about 15.000 guerrilla's fighters and approximately 50.000 sympathizers in Turkey. The counterinsurgency operations by the Turkish military reduced the PKK's

¹⁷ D. Schindler, *The Different Types of Armed Conflicts According to the Geneva Conventions and Protocols*, Recueil des cours, Volume 163/ii, 1979, p. 147, quoted in “*The situation in south-east Turkey: Is it an armed conflict for the purpose of international humanitarian law?*” of Susan Breau.

¹⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 of June 1977

strength to roughly 4.000 to 5.000 guerrillas in 2012.¹⁹The strategy of the PKK is a protracted war, inspired in the “theory of people’s war” of Mao Tze Tung, and similar to the Cuban Revolution, when the insurgency attacked the urban centers from the rural areas. Of course the violence has reached the intensity of an armed conflict: There have been 30.000-40.000 deaths since 1984, mostly PKK guerillas. Also there have been 3 millions of Kurdish refugees and almost 3.000 villages destroyed, some of them burned by the Turkish military forces.

About the training and strategy of the PKK in the battlefield, we can note the influence and contacts with other armed groups. “In reality, we were finished as an organization after 1980. We had no strength in Europe, in Turkey we were in prison. But in Syria we could gather ourselves together. The minute we got money we used it to send people to. From the Palestinians we learned things. We learned about making demonstrations for martyrs, about ceremonies. We did a lot of reading on a people’s war, we also had armed training. They gave us clothing, cigarettes. We owe the Palestinians something.” explained PKK militant Selahattin Celik. The Democratic Front of Liberation of Palestine was the main ally to PKK in the 80s, they both were Marxist-Leninist parties and the Palestinians had experience in training other revolutionary groups in guerrilla warfare, as they have done with the Nicaraguan Sandinistas, Greek communists or Iranian leftists.

For this study, insurgency is taken at its broadest definition. “Briefly, insurgency is the violent struggle by a non-governmental armed group against its government, with the intent of overthrowing the current regime, expelling an interloper, gaining greater rights, or obtaining independence. [...] We generally address terrorism as a tactic and draw a subjective distinction between insurgent and terrorist organizations.”²⁰ PKK has been considered terrorist in a way to not accepting the existence of the armed conflict, but the reality shows that PKK (and not only the PKK) is the non-state actor which organizes the Kurdish insurgency in the south-eastern regions of Turkey. Insurgency can use terror tactics but this doesn’t make it terrorism. Insurgency requires, for example, the active or tacit support of the population, which exists (and is necessary to survive for the PKK) in the Turkish Kurdistan, as we have seen. In conclusion, we can say that PKK is not a terrorist organization, although it has used some terror tactics, what actually is, as we said it on the top of this section is a insurgency group embracing guerrilla warfare which created an armed conflict in Turkey.

Which are the applicable rules?

If we accept that the Kurdistan’s conflict is a non-international armed conflict in a legal sense then we can start to comment which rules can be applied. First of all we should

¹⁹ Mustafa Cosar Ünal, *Counterterrorism in Turkey. Policy choices and policy effects toward the Kurdistan Worker’s Party (PKK)*, Routledge, 2012 p. 12 and 13

²⁰ Cengiz çandar, “*Leaving the mountain. How may the PKK lay down arms?*” *Turkish Economic and Social Studies Foundation*, Istanbul, 2012, p. 25

refer to the preamble of the Hague Conventions (II) of 1899²¹. Since the appearance of this preamble and the Martens Clause, contained in it, this regulation has been considered part of the laws of armed conflict. We reproduce here the paragraph of this clause:

“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.”

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.²² This development has crystallized, *inter alia*, to the Common article 3 to all four Geneva Conventions of 1949, the most important international regulation of internal armed conflicts. This article is not much complete, it’s just a minimum; in fact when the Geneva Conventions were written, it was very difficult to include any rule about non-international conflicts to the Geneva Conventions. The article contains two of the main rules of Law of armed conflicts. Firstly about the human treatment and no-discrimination of the persons which are not taking part in the hostilities. It states that these people, including members of armed forces which have laid down the arms, “shall in all circumstances be treated humanely”. Also, concerning the same persons, the article prohibits four acts: violence to life, in particular murder and torture; taking hostages; any attack to personal dignity, as humiliation or degrading treatment; and finally the existence of the rule of law if will be any execution. Secondly, the article states that the wounded and sick shall be collected and cared for.

Furthermore, the *just in bello* has established three main concepts which represent the primarily rules to apply: Necessity, Distinction and Proportionality. The goal of these principles is try to reduce the effects to civilian people and to avoid deaths of these civilians. In the case of Kurdistan it is clear that both parties have broken this rules, especially the Turkish forces, for example when they destroyed villages and civilian buildings.

The principle of necessity is a primarily rule of military targeting. It means that you can only use force when you’ll get a military advantage, so it is not allowed to do destructive acts which are not necessary. The second principle is the distinction. This is also another basic principle of law of armed conflicts. When you attack you must distinguish between the military and the civilian targets, not only people, also buildings and other objectives. The article 48 of the I AP 1977 is one of article where this principle is regulated. Also related to the principle of distinction, the article 51 paragraph 2 of the same text states that “acts or threats of violence the primary

²¹ Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 29 of July 1899

²² Susan C. Breau, *The situation in south-east Turkey: Is it an armed conflict for the purpose of international humanitarian law?*, Faculty of Law and Business, University of Surrey, Guildford, p. 8

purpose of which is to spread terror among the civilian population are prohibited.” Finally it exist the principle of proportionality. This means that the use of force used must be proportioned to the military objective, so the belligerent may apply only the amount and kind of force to defeat the enemy, but no more. For example if the attack will be against a military objective and it is dangerous for some civil life, the attack should be avoided. The mentioned article 51 I AP 1977 regulates also the proportionality. The article 57 gives some precautionary measures to avoid civilian casualties, for example “Do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects”, “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” or it states that “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”. 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.’²³

All these rules, especially those which are from the I AP 1977, are not ratified by the Turkish state, although these rules are argued to be customary by the Red Cross. In fact, the International Committee of the Red Cross made a study on customary international humanitarian law²⁴, a study which includes some regulations about the three principles commented above: distinction, necessity and proportionality. This study defend that all these rules are applicable to internal armed conflicts despite that the stat involved, in this case Turkey, hasn’t ratified the Additional Protocols.

Final conclusion

“Every bad has its worse”

To conclude we must say that the “Kurdish question” is a multidimensional problem in the Middle East, affecting different states and also the International Community. Kurdistan is a complex nation with a geopolitical importance fighting for a solution of historic problems with very deep roots. The ongoing conflict in Turkish Kurdistan it is a real armed conflict which Turkey will never recognize, as it did not recognize the existence of Kurdistan. The laws of armed conflicts, if applied, would have been very useful to reduce the damage caused, especially in the Kurdish party. Nowadays maybe is too late to apply these rules, but probably could be a way to establish a good environment for negotiations. The PKK are not just fighters for freedom, no one is, but is true that if we consider them terrorist we must consider the Republic of Turkey terrorist too. My conclusion is that this complex struggle will be solved by talking; there is no other option than negotiation supervised by the International Community.

²³ Susan C. Breau, *The situation in south-east Turkey: Is it an armed conflict for the purpose of international humanitarian law?*, Faculty of Law and Business, University of Surrey, Guildford, p. 11

²⁴ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (3 volumes), CRC and Cambridge University Press, Cambridge, 2005

Especially the UE should put some efforts if it really wants to find a solution for a state which is supposed to be in the European family in the future.

Personal opinion

“Freedom is never given but taken”

To be honest this study has been very stimulating for me. In fact I dreamed that I was in Kurdistan! I have read a lot of documents, analysis, history books, and newspapers, and watched a lot of documentaries of Kurdistan, the armed conflict and the PKK. I'm very happy for did this work, because now I know a lot of Kurdistan and its conflict, and also about the rules of non-international armed conflicts. Maybe I focused a lot in the facts and when I did arrive to the legal analysis I realised that I have used almost the half of the paper in background and explaining the conflict, which is very complicated. Also it must to be said that in this paper the facts were very important to get the situation: they allow to understand why the Kurdish organize an insurgency and not just terrorism, the internationality or not of the conflict can be also debated if we think in the nowadays conflict of the Syrian Kurdistan, the facts show the different moments and strategies of the PKK in relation with the armed conflict etcetera.

This months working in the issue have been an opportunity to dip in the roots of a small, and also big, nation of the Middle East. I tried not only to focus in the superficial aspects, so I dare to enter to the everyday life of a Kurdish, their culture and traditions. That's why I have chosen a Kurdish proverb for the title, and that's why I used Kurdish proverbs to reflect and to introduce every section, because I wanted to understand and show the Kurdish mentality and culture. At this precisely moment, the city of Kobane (in the Syrian Kurdistan), is in the day 103 of resistance against another enemy of the Kurds: the Islamic State. The Kurds are heroically fighting almost alone against one of the biggest threats to the peace and justice of the Middle East, and the world. They are fighting alone because they don't have more friends than the mountains.

Postdate: I had the luck to talk informally with the Kurdish representative in Brussels the last November but I have not been able to meet with him do a serious interview for this paper which could have been very interesting.



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1896

THE OTTOMAN EMPIRE IN ASIA.

Map Showing Where Many of the Worst Massacres Occurred, Such as Those at Arabkir, Kharput and Marash.