

Jan Römer

Killing in a Gray Area between Humanitarian Law and Human Rights

How Can the National Police of Colombia Overcome the Uncertainty of Which Branch of International Law to Apply?

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Overcome the Uncertainty of Which Branch
of International Law to Apply?



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*In love and gratitude,
to my mother
and my father*

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Chapter 1

Introduction

Abstract Armed forces operating in particular in a non-international armed conflict are often confronted with the problem that they cannot classify a targeted group as one that is or is not party to the conflict. This doubt can be called a gray area. It leads to a legal uncertainty in which it is unclear whether an operation is governed by international humanitarian law or the international law of human rights. The problem is relevant when lethal force is resorted to: is killing legal under international humanitarian law or human rights standards?

In this thesis, two aspects are taken into account in order to resolve this problem. First, whether international law itself provides a ruling, according to which it is clearly defined which branch regulates the operation, is analyzed. Second, the requirements of the use of lethal force are compared. This comparison is first realized on an abstract level – the ruling of killing is analyzed in international humanitarian law and in human rights standards – and on a concrete level – various operations carried out by the National Police of Colombia are assessed. In the assessment, it is questioned which particularities and elements the police operation must have in order to meet the requirements of killing in each branch of law. The aim of the illustration is to find concrete conclusions about the differences between IHL and human rights, but also about their similarities. If they are rather similar, it would not matter if a certain branch of law regulates the Colombian police operation, for the requirements would be similar under the other branch.

A. Content and Questions Addressed

I. Killing: A General Problem in International Law and Its Relevance to the Colombian Case

In 2000, the Israeli government officially admitted to following a policy of killing terrorists as a means of preventing acts of terrorism. The US Government has not

admitted to such a policy, although it has been willing, at times, to kill in order to prevent acts of terrorism that targeted its citizens.¹ Since then, the question of lawful killing in international law has become a major issue, particularly for human rights defenders, the legal doctrine, and various international organizations' human rights bodies, such as the United Nations and the Organization of American States. Moreover, on 13 December 2006, the Israeli Supreme Court ruled on the Israel Defence Force's praxis of targeted killing.

The discussion of lawful killing is related mostly to Israel and the USA in their fight against terrorism. Legitimate killing is not often discussed in other contexts. However, it is important to do so. For example, in 2007, the military and police forces in Colombia officially killed 2,703 members of different "guerrilla groups," "self-defence groups," and "criminal bands".² In 2008, another 1,564 members of these groups were officially killed by the military and police.³ These figures are high and should be of grave concern.

II. Legal Framework

Different branches of international law can be applied when analyzing the legality of killing. International humanitarian law (IHL) applies to special situations, namely that of armed conflict. In cases that are not considered armed conflict, only international law of human rights applies.

III. The Gray Area Between IHL and Human Rights in Cases of Armed Conflict

In the case of armed conflict, both branches of international law might be applicable, and therefore, the question arises of which to apply. This can lead to considerable difficulties since the branches differ. One fundamental difference is that humanitarian law requires that humanitarian concerns and military necessity be balanced. The primary goal of military necessity is to achieve the submission of the enemy at the earliest moment possible, with the least possible expenditure of personnel and resources. Military necessity justifies all force that is not prohibited by international law. Thus, killing can be considered to be such a necessity. Conversely, the use of

¹For example, on 3 November 2002, an unmanned aerial vehicle, operated by the US Central Intelligence Agency, launched a missile at a car of suspected terrorists that was travelling through the Marib province of Yemen, killing six people.

²Source: Colombian Ministry of Defence, Logros de la seguridad democratica – Junio 2008, p. 50 ff.

³Source: Colombian Ministry of Defence, Logros de la seguridad democratica – Cifras preliminares 2008, p. 50 ff.