The question:

The Obligation to Investigate Violations of the Right to Life Reloaded: How Far Does it Go in Times of Armed Conflict?

Introduced by Gabriella Citroni

The right to life has been referred to as ‘the supreme right’ and ‘the most important of all human rights’. It has further been observed that it is ‘basic to all human rights’, given that its enjoyment is ‘essential for the exercise of all other human rights. If not respected, all rights lack meaning’.

The pivotal role played by this fundamental right – which is recognised as non-derogable in the major international human rights treaties – has prompted the development of a rich international jurisprudence, extensive scholarly analysis, as well as the adoption of relevant soft law legal instruments. States’ obligations vis-à-vis the right to life have been spelled out in detail, both in terms of the duty not to arbitrarily deprive anyone of his or her life, and in terms of so-called positive obligations.

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4 Inter-American Court of Human Rights (IACHR) Villagrán Morales and others (Street Children) v Guatemala (19 November 1999) para 144.
including that of conducting effective investigations into an alleged violation.

After a period where the case law on the right to life has been regarded as relatively settled, the past two years have seen the resurgence of a vibrant debate and several international human rights mechanisms have deemed it fit to initiate the process of assessing existing standards and revising previously adopted documents. Notably, in 2015 the African Commission on Human and Peoples’ Rights issued a general comment on Article 4 of the African Charter on Human and Peoples’ Rights. In the same year, the Human Rights Committee launched a procedure – currently ongoing – to issue a new general comment on the right to life; and the UN Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions opened a thorough process of revision of the UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (‘the Minnesota Protocol’). International human rights courts have also been called to reconsider their previous jurisprudence on the right to life.

One of the most debated subjects in the context concerns the extent and implications of the States’ obligation to investigate violations of the right to life, in particular in times of armed conflict. This also requires an in-depth analysis of the inter-play between international humanitarian law and international human rights law. These topics are certainly

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not new, however, there is more to be said and a number of issues call for further study. Is the States’ obligation to investigate alleged violations of the right to life somewhat mitigated in times of armed conflict? If so, under what conditions and with what consequences? Does the situation change when the conflict comes to an end? What is the role played by avoidance doctrines against this background? Would an integrated application of international human rights law and international humanitarian law answer the previous questions or would grey areas remain? In particular, is it possible to find a solution to these conundrums that is feasible and realistic enough, without letting the States’ off the hook completely and fostering impunity?

Luca Gervasoni and Gloria Gaggioli try to answer these questions in the present zoom-in. The former explores the latest jurisprudential and normative developments concerning the obligation to investigate alleged violations of the right to life in times of conflict, with a particular focus on international human rights law. On her part, Gaggioli focuses on this obligation pursuant to international humanitarian law, evaluating whether there is any clash between the two regimes or whether rather they can positively and realistically interact in a way that is more conducive to the highest level of protection of the right to life.

In the light of the above-mentioned ongoing process of revision and jurisprudential re-assessments concerning the right to life, these contributions seem especially timely and hopefully they will further enrich the debate and inspire new ideas, with the aim to find effective responses that are both theoretically sound and practically workable and sustainable.

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