

## Legal Obligations of Warring Parties (Armed Combatants) to Internally Displaced Persons (IDPS) and Refugees during Armed Conflict: An Overview

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### Abstract

*This paper examines the protection of refugees or IDPs during armed conflict by the warring parties. Refugees are persons' that run away from their country due to fear of prosecution due to several factors. Asylum seekers also run away from their country due to fear of prosecution but they have obtained the status of refugee while internally displaced persons are person who have moved from their place of origin to another place within their country due to some factors. During armed conflict parties whom are not taking part of the hostilities are protected and are not supposed to be attacked by virtue of international humanitarian law. Such kind of people are referred as civilians. There are various principles which prohibit warring parties from violating them. The armed parties in a conflict must protect the civilians regardless of their origin. Refugees, asylum seekers and IDPs have been classified as part of the civilians hence they are protected and must not be attacked rather they should be protected by the warring parties and be allowed to access the various humanitarian relief without being prevented by the warring parties. Civilian objects must not also be protected meaning that refugee or asylum seekers or the IDPs property must be protected and no to be attacked by the warring parties. Therefore, this paper looks at the obligation bestowed at the Warring parties during armed conflict by different laws and possible recommendations in case of breaches.*

**Keywords:** Refugees; Asylum Seekers; Internally Displaced Person; Warring Parties; Civilians; Combatants.

### Introduction

The issue of “internally displaced persons” (or “IDPs”) is now recognized as a phenomenon and has become part, as one of the elements of humanitarian affairs, of the field of international politics. By “internally displaced person” or “IDP”, means a person who has been obliged to move within the borders of his or her own country because of an armed conflict or internal unrest.<sup>1</sup> Such people are above all civilians who, as such, are protected by international humanitarian law.

The 1951 Refugee Convention is the key legal document that governs the rights of refugees and Internally Displaced persons. Ratified by 145 State parties, it defines the term ‘refugee’ and outlines the rights of the displaced, as well as the legal obligations of States to protect them. Refugee, generally speaking, is a displaced person who has been forced to cross national boundaries and who cannot return home safely.<sup>2</sup>

According to Article 1 of the 1951 UN Refugee Convention, as modified by the 1967 Protocol, a refugee is defined as a person who ‘owing to well-founded fear of being persecuted for reasons of race, Religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality.’<sup>3</sup>

According to the United Nations High Commissioner for Refugees in its 1999 Statistical Overview, refugees are persons recognized under the 1951 Refugee Convention; persons recognized under the 1969 Organization for African Unity Convention on Refugee Problems in Africa<sup>4</sup> persons granted humanitarian or comparable status; and persons granted temporary protection.

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<sup>1</sup> Ingrid Detter, *The Law of War*, 2nd edn, Cambridge University Press, Cambridge, 2000, p.43.

<sup>2</sup> Eibe H. Riedel, “Recognition of Insurgency”, in Rudolf Bernhardt (ed.), *Encyclopedia of Public International Law*, Vol. IV, Elsevier, Amsterdam, 2000, pp. 54-6.

<sup>3</sup> Article 1 1951 UN Convention as modified by the 1967 Protocol.

<sup>4</sup> “The OAU defines as a refugee every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place

The relationship between displacement and insecurity is a double-edged sword. Refugees and IDPs are forced to leave their communities because of a lack of security, and they cannot return home or settle elsewhere until security is reestablished. At the same time, unresolved displacement can lead to any number of security problems. In some cases, refugees or IDPs are “spoilers” to peace processes.

### **Distinction of Refugee Law, International Humanitarian Law and Human Rights**

Refugee law is basically the cardinal law that protects refugees and gives out the duties and rights that refugees have. International humanitarian law is the law that regulates how war is basically conducted. It tends to protect all the civilians regardless of whether they are nationals’ foreigners, IDPs or refugees. They are all protected during the armed conflict provided they don’t take part of hostilities. While human rights law is a universal law that protects all persons regardless of the jurisdiction or what is happening provided, you are a human being. There these three laws are complementary to each other and one can’t be used in expense of the other.

### **Difference Between a Refugee and an Asylum Seeker**

Basically, the distinction between a refugee and asylum seeker is that a refugee is a person whom status has been confirmed hence been fully recognized by the hosting state while an asylum seeker is a person whom status of being a refugee has yet to be confirmed or granted in the host state. Both of them run from their country of origin by fear of being persecuted due to race, religion, nationality membership of a particular social group or political opinion. Therefore, in armed conflict all these persons are referred as civilians and they are protected by the law provided they don’t take any part in hostilities.

### **The Roles of The Warring Parties in an Armed Conflict**

Before 1949 the Geneva Conventions protected wounded, sick, shipwrecked and captured combatants. The “civilians’ convention” recognized the changing nature of warfare and established legal protection for any person not belonging to armed forces or armed groups. The protection also included civilian property. Such protection was later reinforced with the adoption of the Additional Protocols to the Geneva Convention in 1977.

International Humanitarian Law (IHL) provides that refugees and Internally Displaced Persons under the power of enemy forces must be treated humanely in all circumstances, without any adverse distinction<sup>5</sup>. They must be protected against all forms of violence and degrading treatment, including murder and torture.<sup>6</sup> Moreover, in case of prosecution, they are entitled to a fair trial affording all essential judicial guarantees because they are categorized as part of the civilian population whom are not taking part of the hostilities.

The protection of civilians extends to those trying to help them, in particular medical units and humanitarian or relief bodies providing essentials such as food, clothing and medical supplies. The warring parties are required to allow access to such organizations. The Fourth Geneva Convention and Additional Protocol I specifically require belligerents to facilitate the work of the ICRC (The International Committee of the Red Cross (ICRC)).

While IHL protects all civilians without discrimination, certain groups are singled out for special mention. Women and children, the aged and sick are highly vulnerable during aimed conflict. So too are those who flee their homes and become internally displaced or refugees.<sup>7</sup> IHL prohibits forced displacements by

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of habitual residence in order to seek refuge in another place outside his country of origin or nationality. See [http://www.unhcr.ch/refworld/refworld/legal/intrume/asylum/ref\\_afre.htm](http://www.unhcr.ch/refworld/refworld/legal/intrume/asylum/ref_afre.htm)

<sup>5</sup> See for example warnings that ISIS is smuggling fighters to Europe among migrants and refugees: <http://www.bbc.co.uk/news/world-africa-32770390>.

<sup>6</sup> Article 3 to the four Geneva Conventions of 1949

<sup>7</sup> *ibid*

intimidation, violence or starvation<sup>8</sup> hence becoming an obligation to the warring parties to the armed conflict. The parties must ensure that they don't use threat nor violence to the refugees or the IDPs and they must be feed rather than making the starve. The key example currently is what is happening to the Rohingya refugees whom have been affected from the recent conflicts in the state of Myanmar.

The warring parties are obligated to observe one of the most important principles underlying humanitarian law is that of distinction between the civilian population and combatants, and between civilian objects and military objectives<sup>9</sup>. We must recognize that IDPs or refugees fall under the category of civilians because they don't take part of the conflict. Attacks must be limited to military objectives, i.e., those objects which, by their nature, location, purpose or use, make an effective contribution to military action, and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

Mother obligation warring parties have towards the refugees or IDPS is none use of Indiscriminate attacks, warring parties are prohibited carrying out attacks that don't distinguish combatants and civilians when launching an attack, two other principles have to be respected: proportionality in the military action and due precaution before deciding the attack. Numerous factors have to be taken into account before launching an attack, for example, the military importance of the target, the density of the civilian population, the likely effects of the attack, including the possible release of hazardous substances, the types of weapon available and the accuracy, mode and timing of the attack especially in the case of a mixed target. In case of doubt about the nature of an object, it is presumed to be civilian and should not be attacked.

In a variety of contexts, regular armies, as well as paramilitary and rebel forces, continue to subject the civilian population to countless, unspeakable acts of violence<sup>10</sup>. The warring parties are prohibited issuance of threats and spread terror among civilians to reach their military and political objectives. Military operations are sometimes conducted on the basis that no mercy will be shown. Minorities are not always allowed to speak their own language, to practice their religion or to play their music, and are therefore profoundly affected in their cultural and religious identity. Ambulances are used for purposes other than their humanitarian function, i.e., to transport soldiers or arms. Medical personnel and units, as well as religious personnel, are occasionally targeted on purpose.<sup>11</sup>

Warring parties have the obligation to respect the principle of non- refoulement on both the IDPs and refugees. The principle of non- refoulement is applicable to refugees as will be aptly stated herein under. Non-refoulement is a French word meaning no forcing back and it is to the effect that a state is prohibited from expelling a legitimate refugee to his or her state of origin<sup>12</sup>

The principle of non refoulement constitutes the cornerstone of refugee protection. It is aptly envisaged under **Article 33 of the 1951 Convention**, which is also binding on State parties to the 1967 Protocol<sup>13</sup> Article 33 of the 1951 Convention provides:

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<sup>8</sup> In general, an act of violence, whether it takes place during conflict or not, can be defined as any act that inflicts physical, mental, sexual or other harm or suffering upon an individual or group, including threats of such acts, and that either results in or has the likelihood of resulting in injury, death, physical or mental disability, or deprivation

<sup>9</sup> Article 48 of Protocol I, Article :13 par. 2 of Protocol II

<sup>10</sup> International Council on Human Rights Policy. Ends and Means: Human Rights Approaches to Armed Groups. Versoix, Switzerland: ICHRP, 2000: 63

<sup>11</sup> “Antonio Cassese, International Law, 2nd edn, Oxford University Press, Oxford, 2005, at p. 125. See also Antonio Cassese, International Law in a Divided World, Oxford University Press, Oxford, 1986, pp. 81—5

<sup>12</sup> Oxford Learner's Dictionary of Law 7th Edition page 370

<sup>13</sup> Article 1(1) of the 1967 Protocol provides that the States party to the Protocol undertake to apply Articles 2-34 of the 1951 Convention

***“No contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”***

Therefore, the warring parties must not forcefully make the refugees nor to return if they are in fear of being in danger. This principle much that it has been emphasized under the refugee law, it is important to appreciate the aspect that is also well applicable under IDPs. They run away from their homes for fear of harm hence they should not be forced to go back yet they will be harmed or their life will be in danger. Therefore, all the armed parties whether under international armed conflict or non-international armed conflict.

As a possible means to enhance the protection of the wounded and civilians against the effects of hostilities, parties to a conflict have an obligation to create different kinds of humanitarian zones).<sup>14</sup> Experience shows that such measures are likely to be respected only if they are temporary and well defined. Nevertheless, in situations of increasing threats on civilians and lack of commitment of the parties to respect humanitarian law, security zones may be decided by the UN Security Council without the consent of the parties. This will now give an obligation to the warring parties to ensure that they do not attack the secured zones since they do not form part of the enemy’s objectives and it will be operated by the civilians.

It is the obligation of warring parties to respect the physical and mental integrity of the civilian population. All the parties to an armed conflict undertake to ensure, in particular, that every effort is made to clarify the fate of all those unaccounted for and to inform the families accordingly. At the end of active hostilities, at the latest, each party to the conflict shall search for those reported missing and relevant information be transmitted to the ICRC’s Central Tracing Agency or to the National Society. The remains of people who have died in detention or as a result of the hostilities shall be respected, as shall their grave-sites. The grave-sites shall be properly maintained and marked in such a way that they can be located 2nd recognized. The dead will be identified, their families informed, and the mortal remains returned to them.<sup>15</sup>

Non-state armed groups (and their members) also have an obligation to avoid harm to civilians when conducting hostilities and to respect human rights. However, international humanitarian law for armed conflicts to which at least one of the parties is not a state is more limited than that for armed conflicts between states.<sup>16</sup> common article 3 of the Geneva Conventions and Protocol II to these Conventions provide sufficient substantive grounds for these obligations and that situations not covered by them can be addressed by either international customary rules which binds all the parties to armed conflict or holding individuals criminally liable.<sup>17</sup> Many conventions do not explicitly impose obligations on non-state groups. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict is an exception in this respect. Article 4 of this Protocol forbids non-state armed groups from recruiting children or using them as combatants.

Under humanitarian law, specific rules concerning children have been added to the general obligation nude to the parties of a conflict to respect the civilian population. Some provisions are directly concerned with children’s honor, their well-being or their development.<sup>18</sup> In particular, the pasties to a conflict should provide all children, including those held in detention, with the care and the education they require and all

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<sup>14</sup> Article 23 of the First Geneva Convention, Articles 14 and 15 of the Fourth Geneva Convention, Articles 59 and 60 of Protocol I

<sup>15</sup> (Articles 69 and 70 of the Third Geneva Convention). Internees have the same prerogatives (Article 1 06 of the Fourth Geneva Convention)

<sup>16</sup> Lijnzaad and Zwanenburg, op. cit., pp. 561-562.

<sup>17</sup> AIV/CAVV, ‘Failing States: A Global Responsibility’, advisory report no. 35 (AIV) and no. 14 (CAVV), The Hague, May 2004, p. 21.

<sup>18</sup> Article 77 of Protocol I and Article 4, paragraph 3 of Protocol II

other needs that the children may need including good shelter and health. The death penalty shall not be carried out against a child who was under 18 at the time of the offence.

In situations of armed conflict, States, including the occupying powers, have, first and foremost the responsibility for protecting and assisting the populations under their control, and should organize and carry out necessary relief actions<sup>19</sup>. In addition, if civilians are suffering hardship because supplies essential to their survival and well-being are lacking, the warring parties should support and facilitate relief actions undertaken by humanitarian and impartial organization<sup>20</sup> States have consistently agreed, mostly through resolutions of the UN Security Council or its General Assembly, that all parties to a conflict are obliged to grant access for humanitarian aid to all people in need. During recent armed conflicts, warring parties placed obstacles in the way of humanitarian assistance for the civilian population. They thus have an obligation to ensure that they cooperate with humanitarian assistance organs in order not to disrupt the welfare of the civilian population.

### **Conclusions**

Conclusively it may be argued that it is essential that, in non-international armed conflicts, rebels, insurgents and other armed opposition groups fully respect the set of rules which apply in these situations, i.e., Article 3 common to the Geneva Conventions, Protocol II of 1977 and customary rules. In that regard, armed opposition groups are encouraged to declare publicly their commitment to live up to theft legal obligations. In addition, Article 3 states that “the Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.” It is regrettable that, in practice, this invitation to go beyond the fundamental principles contained in common Article 3 has rarely been translated into action. Both States and armed opposition groups should, therefore, endeavor to extend the body of applicable law to include, if at all possible, the entirety of humanitarian law. Therefore, it can be further suggested that it is the obligations of the warring parties to respond to calls to be brought together as soon as possible with the aim of achieving a ceasefire and making agreements about humanitarian access and the protection of the civilian population.

### **Recommendations**

Conflicts are inherently messy, complex and difficult to resolve. Despite existing laws belligerents regularly violate obligations intended to protect civilians. However, this should not be taken as an excuse to accept the devastating impact of conflict on civilians. It is not the absence of binding law that is causing protection problems, but a persistent failure to comply with the law, compounded by operational shortcomings. A number of courses of action, mechanisms and processes can improve the protection of civilians. While, ideally, new rules could be elaborated to enhance protection or clarify specific issues, there does not appear to be a willingness among states to engage in a treaty-making process, and in any case, there is no guarantee that any new instruments would be more protective than existing law. Therefore, the following are the recommendation in enhancement of protection of the civilians:

Engagement in and support of processes to elaborate guidance on the interpretation of existing law, or that provide policy guidance on the law’s implementation in practice

- i. Strengthening national institutions to carry out investigations and prosecutions of allegations of violations of ML. This includes enhancing judicial cooperation and assistance between states.
- ii. Elaborating guidelines on the obligations of parties to armed conflict and other states to investigate allegations of violations, and identify and share good practices in such investigations.
- iii. facilitating the interpretation of existing law in areas where it is not clear
- iv. Dissemination and training armed parties
- v. pursuing individual criminal and state responsibility

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<sup>19</sup> Rowe, Peter. “Freedom fighters and rebels: the rules of civil war.” *Journal of the Royal Society of Medicine* vol. 5,1 (2002): 3-4. doi:10.1258/jrsmM5.1.3

<sup>20</sup> Articles 23,59,60 of the Fourth Geneva Convention, Article 70 of Protocol I, Article 18 paragraph 2 of Protocol II

- vi. Establishing a mechanism for collecting information on violations of IHL
- vii. Consider making ad hoc use of the International Humanitarian Fact finding Commission when establishing fact-finding mechanisms.
- viii. Intensify dissemination of IHL to a broad range of audiences, including states and their armed forces, judges, legislators, the staff of international and non-governmental organizations and the general public, in peacetime as well as during conflict.
- ix. Incorporate IHL into military manuals and operational orders and directives and establish internal investigative and disciplinary mechanisms.
- x. Promote awareness of humanitarian principles to a similarly broad range of audiences.
- xi. Ensure that humanitarian principles, especially good practice, are shared more widely among humanitarian agencies.
- xii. Respect the distinct roles and responsibilities of states and humanitarian organizations. The Security Council must not use humanitarian action as an alternative to political solutions to conflicts. Conversely, humanitarian actors must not turn to the Security Council to resolve operational problems.

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