THE POSITION OF WOMEN AND CHILDREN IN THE INTERNATIONAL HUMANITARIAN LAW SYSTEM

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ABSTRACT

Humanitarian law, as a necessary form of law, can be applied to armed conflicts. It contains rules and regulations designed for addressing humanitarian issues caused by armed conflicts. It not only limits the right of the parties of conflicts to choose methods of hurting each other, but also supports war victims, disabled warriors, or civilians. Among the chief victims of human wars have been women and children. They are killed in the course of wars and bothered and harmed. They are employed as war soldiers, lose their houses and families, and are faced with the lack of education, health care and profound mental effects. Women and children, as a part of the population that highly needs to be protected against violence, sexual harassment, malnutrition, and armed conflicts, are usually forgotten at times of tension and armed conflict. They are in fact abused by military forces at such occasions. Although women and children are not the cause of wars, they are always the target of the most damages and diverse harms. They are mostly the target of violence and form the majority of refugees and the displaced.

Keywords: humanitarian law, women rights, children rights, international conflicts rights, international conflicts law, non-international conflicts law.

Introduction

Humanitarian law is the collection of rules and regulations aimed at determining the rights of humans during wars and armed conflicts. War is a social phenomenon that has challenged nations from the very long past. Hence, many documents have been formulated to regulate war time relations. The significance of this problem has attracted the attention of lawyers who are responsible for finding preventive measures. In spite of the international efforts made to reduce and prohibit violence, still it is practiced in the form of international and non-international armed conflict in all over the world. Today, armed conflicts are second most important international crises after terrorism. In this regard, women and children are among the vulnerable groups whose rights and freedoms are substantially neglected at such occasions. They are especially harmed in armed conflicts or emergencies, in which the countries are faced with disorders and chaos. Since these groups of people are vulnerable and cannot defend themselves, they are more prone to violence and violation of rights and freedoms compared to other groups. Although there are humanitarian documents and regulations for the protection of civilians against violence of armed conflicts and although these documents and regulations are applied to the protection of women and children against armed conflicts and emergencies, sufferings of women and children in such occasions necessitates the passage of an effective and special document that could defend the rights of women and children. The “Declaration on the Protection of Women and Children in Emergency and Armed Conflict” is one of the products of the efforts made by the international community in this regard. Hence, this research is aimed at introducing and analyzing the legal position of women and children, who form the majority of victims of armed conflicts, in the humanitarian law system. It is also an attempt to provide for more emphasis on the necessity of implementation of international documents formulated to prevent armed conflicts and protect women and children in such occasions.
Definition of International Humanitarian Law (IHL)

“Humanitarian law or the international humanitarian law is in fact part of the armed conflicts law, which is the collection of international rules for wartime. These rules are mainly protective and are designed to protect military and civilians, properties and civil targets. It also contains requirements that have to be met by people and violent countries during conflicts. However, another part of wartime law focuses on clarification of regulations associated with the following notions: the notion of war, the legal meaning of acts of retaliation, determining the scope of conflicts, acceptable wartime weapons, instruments and devices, military occupation (except for humanitarian laws), and neutrality (Ziayi Bigdeli, 2009: 556).

“Human rights: Although the term “human rights” is widely supported, it is hard to define it. In general, human rights are the collection of basic and inalienable rights essential for supporting human life.” (Rebecca Vallas, 2008: 279).

The aforementioned definition implies that the main objective of this branch of international law is to support human, humanity and human dignity. Human rights and international humanitarian law (IHL) are two of the important branches of (general) international law. Both these branches are based on respect for human and his innate dignity. Agreements in the international humanitarian law as well as agreements in human rights are not based on acts of retaliation unlike other international agreements. These two branches of law have mutually influenced the evolution of one another. For instance, the human rights have influenced the formulation of protocols submitted to Geneva Convention. The international humanitarian law has also contributed to the Convention on the Rights of the Child. Moreover, the two laws have supplementary administrative domains. That is to say, human rights can be applied to both wartime and peace. The international humanitarian law is not only limited to international or non-international armed conflicts as well. It is applicable to peace time, when it should be developed and taught to people. These two branches of law share common regulations and rules that are applicable both in wartime and peace time. Some of the regulations include prohibition of torture, prohibition of cruel behavior, prohibition of causing harm to the dignity of people, etc.

Necessity of Respecting International Humanitarian Law

The international humanitarian law is of great importance to the international community. The reason is that no international agreement has been valued by governments the same as passage of the conventions and related dual protocols. The best proof for the importance of these agreements is the appreciation of countries and their passion for signing them. After implementation of regulations in the international humanitarian law the world has witnessed the success and impact of such agreements and even civil wars and international conflicts in some areas of the world have been responded with rapid reaction of countries. Invasion of Kuwait by Iraq and civil wars during the reign of Taliban in Afghanistan are examples of such conflicts.

The notion of global peace, which is currently pursued in the form of globalization (not economic globalization), has its roots in the philosophy, faith and culture of nations. Perhaps intellectuals and scholars believe that global peace, as a human ideal, can be actualized within the framework of international humanitarian law (Antony P. & Rogers Paul Malherbe, 2008: 38).

It seems that although international humanitarian law and Geneva Conventions (1949) and its protocol have been widely welcomed by countries, at most occasions when governments find their power at risk they easily violate humanitarian laws and used their own constitutions to survive internal conflicts. For instance, crimes committed after 1949 and 1977 as well as crimes currently being committed in Syria, Kongo, occupied territories, and Bahrain are examples of such violations. However, if international humanitarian law is incorporated or embedded into the constitutions of countries, their implementation is guaranteed. It is much better than arbitrary case trials established by some governments to meet their interests.

Position of Women in the International Humanitarian Law

At wartime all people (men and women) inevitably leave their homes. They are wounded or killed at
these times and can hardly make subsistence even after war. On the other hand, in regional wars the life of women is inappropriately affected by conflicts between opposing groups. Therefore, their experiences mainly differ from those of men in such eras. While the majority of men are either killed or wounded during war, women become the victim of sexual harassment, rape and AIDS. They have to hold a fetus in their wombs which is the product of rape. In the course of conflicts, women also experience another form of violence by losing their relatives or remaining unaware of the conditions of their families. 

International Documents Associated with Women’s Rights in Conflicts

Contracts and conventions signed to prevent war and protect victims of wars and civilians are considered part of the wartime law. The following are a number of such contracts with dates which are associated with the topic of this manuscript.

A: Protocols on protection of victims of international armed conflicts:

Section four of part 2 of chapter 2 of the protocol refers to protective measures that can be directly made to protected women and children. 

B: Protocols on protection of victims of non-international armed conflicts:

These protocols had been signed by 17 countries by 1981. These protocols do not allocate a section or article to women but they include paragraphs that refer to civilians and women. 

The 4 Geneva Conventions (1949) and their two supplementary protocols (1977), which are dedicated to humanitarian law, contain a total of 560 articles. 42 articles out of the 560 refer to women in different way and state notions associated with violence against women.

In article 3, which is common among all of the conventions, there are various paragraphs that emphasize on the importance of respecting human rules and prohibition of harming the lives and physical entity of people. They also refer to cruel behaviors, torture, and damage to the dignity of individuals.

The “Convention on the Prevention and Punishment of the Crime Genocide” is among the international documents addressing violence against arrested women or women in civil and international armed conflicts. It is also applied to violence against refugee and displaced women as well.

In international armed conflict the cases of pregnant women or women with little children, who are for any reason arrested and imprisoned, shall gain the highest attention. It is the principle that was mentioned considering the need for supporting women the same as civilians. Therefore, writers of the protocol formulated this protocol in an attempt to make sure that pregnant women and women with babies are immediately released.

1- According to this convention, female prisoners of war (POW) who are either pregnant or the mother of babies and little children are given residence in impartial countries.

2- According to this convention, when it is not possible for normally pregnant women, or prisoners suffering from women diseases or pregnancy disorders to reside in impartial countries, they are allowed to return to their countries.

The third convention contains measures and bonds, which are based on the following principle: “Women should be treated with the respect that their gender necessitates”. It also states that “In camps where women and men prisoners of war live together,
women should be provided with separate residences".  

When it is stated that in camps where women and men prisoners of war live together, women should be provided with separate residences, it should be noted that health facilities are of greatest importance because they are necessary to maintain the hygiene and health of camps. Such facilities shall be organized to be decent, elegant and adequate.

The convention states that “a female POW should not be punished with punishments harder than a female member of armed forces punished by officials for a similar crime. No female POW should be ever punished harder than a male member of armed forces punished by officials for a similar crime.”

Moreover, according to this convention “female POWs punished by disciplinary or criminal penalties should be kept in camps other than those used for male POWs. They should also be subjected to immediate supervision as well.”

The first protocol includes an act that is similar to the act referred to articles 25, 97 and 108 of the third convention. According to this act “women whose freedom is limited as a result of armed violence shall be kept separate from men in camps. They should be subjected to immediate supervision as well.”

The first protocol also asserts that women who are arrested and imprisoned “should be kept in camps separate from men. They should also be subjected to immediate supervision except for the time their families are in the same camp as well.”

It seems that the second supplementary protocol does not specifically support women the same as victims of non-international armed forces. It generally refers to civilians and covers this group of individuals. On the other hand, the majority of victims of internal conflicts are women. Moreover, article 88, which is included in paragraphs 2 and 3 of the third convention (1949), states: A female POW should not be punished with punishments harder than those determined for a male member of the armed force punished by officials for a similar crime. It seems that the term POW, or more specifically female POW, implies that military use and direct participation of women in conflicts is authorized. Unfortunately, it is contradictory to the objectives of the Geneva Conventions which are basically aimed at supporting women. In addition, the Geneva Conventions and their supplementary protocols do not refer to examples of violence against women. However, raping women and girls is widely used as a method of war. Instances include sexual harassment of women in the former Yugoslavia, Rwanda and most internal conflicts, especially in Africa. Fortunately, in articles 7 and 8 of the statute of the International Criminal Court, examples of violence and crime against women are mentioned. These articles introduce these crimes, which are committed in international and internal conflicts, as examples of war crimes.

Position of Children in the International Humanitarian Law

Children have always been the chief victims of human wars in the course of history. They are killed, tortured and bothered. They lose their families and homes and suffer from lack of education and health, which leave profound effects on them. Children, as a part of the population that highly needs to be protected against violence, sexual harassment, malnutrition, and armed conflicts, are usually forgotten at times of tension and armed conflict. They are in fact abused by military forces at such occasions.

Children employed as soldiers by military forces are forced to commit violent crimes that leave incurable and inevitable effects on their souls. These soldiers witness the most horrible crimes, murder, wreckage, under the age of 18. Since they are

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9 Article 25, paragraph 4 of the third convention, 1949
10 Article 29, paragraph 7 of the third convention, 1949
11 Article 88, paragraphs 2 and 3 of the third convention, 1949
12 Articles 97 and 108 of the third convention, 1949
13 Article 57, paragraph 2 of the first supplementary protocol, 1977
14 Article 5, paragraph 2 of the first supplementary protocol, 1977
15 http://dadgar-sadigh.blogfa.com=23-02-2013
affected by such cruel environments they become agents of more horrible crimes in the future.  

**Prohibition of Using Children in Armed Conflicts**

The Convention on the Rights of the Child states:

1- Countries supporting the convention are obliged to respect the regulations of international humanitarian law that concern children at times of armed conflict.

2- Countries supporting the convention commit to take any practical measure to ensure that people under 15 do not directly take part in conflicts.

3- Countries supporting the convention are obliged to refuse to employ people under 15 in the armed forces. In employing those who are over 15 and under 18, these countries give the priority to the older applicants.

4- Countries supporting the convention are obliged to commit to the international humanitarian law in supporting civilians at times of armed wars. They are also required to take all of the practical measures to ensure the safety and security of children affected by consequences of war.

- The first 1977 protocol attached to the Geneva Conventions (August 12, 1949):

It is dedicated to the support for victims of international armed conflicts.

Moreover, article 77 states on the support for children: If children are arrested or imprisoned for any reason, they should be kept separate from adults unless their families accompany them similar to the case described in paragraph 3 of article 75.

Article 3, which is common among Geneva Conventions, is the main source of non-international armed conflicts laws. In the case of all non-international armed conflicts (especially in the case civil wars, colonial conflicts, and religious wars) occurred on the land of one of the committed parties, each party is obliged to apply the regulations mentioned in this convention.

- The second 1977 protocol that is attached to the Geneva Conventions (1949):

It focuses on the support for victims of non-international conflicts.

According to this protocol, should be protected and provided with the following cares:

a) They should benefit from education, religious and moral teachings as their parents wish. In case they lose their parents they should be educated by discern of their overseers.

b) All of the measures necessary to gather temporarily separated families should be taken.

c) Children under 15 should neither be employed by the armed force nor participate in conflicts.

d) The special support for children under 15 that is dictated by this article should be available even if the children participate in war or become prisoners of war.

e) In case of necessity measures should be taken with the consent of parents or legal overseers of children to temporarily move them to more secure areas in the country. It should also be ensured that they are accompanied by a supervisor who is in charge of their health.

Moreover, death penalty does not apply to criminals who commit a crime when they are under 18 or pregnant women or their mothers.

Apparenty, contents of paragraph 1 of article 4 (under the “C” and “D” sections) have unknowingly provided for abuse of children and the requirement (military use) in conflicts because according to section “D”, if children are directly involved in war


17 Article 38 of the Convention on the Rights of the Child, 1989

18 Article 4, paragraph 1 of the second 1977 protocol attached to the Geneva Conventions of 1949. It is focused on the support for victims of non-international conflicts.

19 Article 6, paragraph 4 of the second 1977 protocol attached to Geneva Conventions of 1949. It is dedicated to the support for victims of non-international conflicts.
they need to be supported. Hence, the criminal immunity of children has made commanders implement their criminal wartime plans by taking advantage of children. Although the use of children under 15 is considered a crime, article 6 of paragraph 4 of the second protocol have pave the ways for this crimes. Therefore, according to this article, criminals under 18 are not sentenced by death penalty. In other words, persons who commit crimes during conflicts are immune to prosecution or punishment if they age between 15 and 18. Hence, since commanders do not violate article 4 they are free from criminal responsibly and since the criminals are under 18 they are immune to punishment as well according to article 6. Although the protocol attached to the Convention on the Rights of Children (2000) has increased the lower age limit for participation in armed conflicts to 18, the statute of the International Criminal Court, which secures the implementation of the international humanitarian law, has an article that negates the effort. The reason is that according to article 8 of the statute, recruitment of people under 15 is considered a crime. In most of the countries engaged with internal conflicts, especially armed conflicts, children are briefly trained and equipped with weapons and explosives. Not to mention that girls are even exposed to sexual harassment as well.

Conclusion

Recently, the attention paid by the global community to the position and support of women and children in armed conflicts has considerably increased. However, similar to other fields of humanitarian law and human rights there are obstacles in the way of realization of this objective. In spite of significant changes made to the attitude of the international humanitarian law toward women and children, women and children are still the target of most damages. Women and children are those who are hurt and victimized in wars while they have no say in the start or finish of the wars. Considering the security of support for women’s rights in conflicts, it should be said that fortunately the statute of the International Criminal Court has introduce sexual harassment (which is the most prevalent form of violence practiced against women in conflicts) as a human crime. There is a paragraph in the document which directly refers to rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence. In other words, all of the contents of humanitarian law documents are applied to all of the persons involved in armed conflicts including women and children. However, the notion of support for women and children in the humanitarian law refers to a special support for these groups. Fortunately, article 8 of the statute takes support for children and women in account. The article guarantees implementation of humanitarian laws. It seems that currently it is possible to increase the support for women and children in armed conflicts through contractual rights. It should also be noted that the support relies on alternation of the attitude toward women and social structure of societies. It in fact necessitates reformation of beliefs and polices adopted toward women as human creatures and not creatures for enjoyment, acts of war or advancement of war strategies.

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