

Legal Protection Of War Victims In International And Non-International Armed Hostilities: A Scholarly Exposition Into The Four Geneva Conventions of 1949 And Two Additional Protocols Of 1977

Nwanolue, B.O.G, FRHD¹ Victor Chidubem Iwuoha^{2*}

¹Senior Lecturer, Department of Political Science, Anambra State University, Igbariam Campus, Nigeria

²Department of Political Science, University of Nigeria, Nsukka, Nigeria

* Email: chidubemiwuoha@gmail.com

Abstract

The motive of every war has always been to actualize socio-economic and political interest. Attendant, the ugly implications of these are gross violations of the international law governing armed hostilities, such as the four Geneva Convention of 1949, Two Additional Protocols of 1977, e.t.c. Several lives are lost and the properties of all kinds are destroyed. Women, children, the ship wrecked, the sick, the wounded e.t.c., often fall victims of war and a times, are treated unfairly. Hence, it is the task of this paper to x-ray the legal protections of war victims in armed hostilities and level of observance, as contained in international law of armed conflicts. Data for this paper were generated mainly from secondary and primary sources, such as textbooks, journals, official documents from United Nations e.t.c. Indeed, it was found that the four Geneva Conventions of 1949 provide effective legal protections for women and children during armed hostilities, but with weak instruments for execution. Again, the wellbeing of the sick, the wounded, prisoners of war and the shipwrecked are also provided for in the two additional protocols of 1977, with little or no enforcement capabilities in contemporary armed conflicts.

Key words: Protection, War Victims, Armed Conflicts, Geneva Conventions, Prisoners of War

Introduction

Since history, certain efforts have been made to strengthen the protection of victims during armed conflicts. Women, children, the wounded, prisoners of war, the ship wrecked and civilians in general, are more often prone to maltreatments of all kinds in the context of international and non- international hostilities. According to Boissier, (1985:23), under the customary international humanitarian law, such scenarios are not only injurious to humanity but run counter to the very intelligible existence of some international conventions and standards that govern armed conflicts of all kinds, especially as regards the protection of war victims during hostilities. Prominent among which include the Geneva Convention of 1949, Two Additional Protocols of 1977, 1950 European Convention on Human Rights, 1948 Universal Declaration of Human Rights, 1980 United Nations Declaration on War Victims, to mention but a few.

In this direction, some studies carried out in recent times have identified one hundred and sixty-one (161) rules of customary international humanitarian law that strengthen the legal protection for victims of armed conflicts. Bothe, et al (1982:57), asserts that it is the result of more than eight years of research and consultation and has significantly influenced some provisions of international conventions on legal protection of war victims. According to them, the study was undertaken at the request of the 26th International Conference of the Red Cross and Red Crescent in December 1995. In addition to treaty law, customary law is one of the main sources of international humanitarian law (IHL). In fact, until the codification of humanitarian law, which started in 1864 with the adoption of the first Geneva Convention, custom was the main source of humanitarian law for centuries. Whereas treaties are written conventions, customary international law is derived from the practice of states and is unwritten. A rule is deemed customary and as such binding on all states, if it is based on widespread, representative and virtually uniform practice supporting the rule. The difficulty lies in the identification of customary international law and this explains why states sought the assistance of the ICRC in this identification process (Cassese, 1984:12).

From the foregoing, it is obvious that the customary international laws, as well as the treaty law, are measure umbrella that shed the legal protections of war victims in any armed conflicts. However, the unresolved questions here that boggle the mind of scholarship are:

- ❖ Does the continued existence of the four Geneva Convention of 1949 effectively provide legal protections for women and children during armed hostilities?
- ❖ Also, what is the fate of the sick, the wounded, prisoners of war and the shipwrecked on the phase of the two additional protocols of 1977 in the contemporary armed conflicts?
- ❖ Finally, what remains the fate of civilians in terms of displacement and economic difficulties in the phase of non- international armed conflicts?

All these are salient issues that underscore this paper and will be addressed accordingly.

Historical Evolution of Protection of Victims in Armed Conflicts

The effort to protect war victims is as old as conflicts themselves. Such efforts materialized in antiquity and the middle Ages in all regions, civilizations, and religions. The first international treaty adopted was aimed to protect soldiers wounded on the battlefield. Durand, (1984:65), emphasizes that it came at the initiative of Henry Dunant, a young Swiss, who after the battle of Solferino, in 1859, witnessed firsthand the misery of forty thousand wounded and the inadequacy of the army health services. On his return to Geneva, Dunant published-“A Memory of Solferino”, in which he proposed that warring parties conclude agreements in order to ensure assistance to the wounded and sick. He also proposed the creation of voluntary associations for the same purpose in each country, which later became the Red Cross societies. With the cooperation of four of his compatriots, in particular General Alfred Dufour, Dunant organized the first non-governmental conference in 1863 to promote some of his ideas.

A year later, the Swiss Federal Council, in the views of Solf and Roach, (1987:55), invited twenty-five (25) states to participate at a diplomatic conference; it adopted on August 22, 1864, the first Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. They further maintain that after an unsuccessful attempt in 1868 to adapt the convention to maritime warfare, the International Peace Conference of 1899 in The Hague adopted the Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention, as did the later conference in 1907. The first 1864 Geneva Convention was revised in 1906 and again in 1929, when a new convention, related to the treatment of prisoners of war, was also adopted. The emphasis here remains a convention to ensure the protection of civilian populations. The International Committee of the Red Cross (ICRC) in the words of Bothe, et al (1982:56) presented the draft of such a convention to the 15th International Red Cross Conference held in Tokyo in 1934, with the hope that the new convention would be adopted in 1940. However, the advent of World War II in September 1939 altered these plans they further assert. The ICRC's appeal to warring nations to apply the Tokyo draft on the basis of reciprocity met with no success. Civilians thus remained without appropriate legal protection during World War II.

Development of the Geneva Conventions was the main task of the postwar ICRC. The draft of these instruments was presented to the XVII International Red Cross Conference in Stockholm in 1948, and the ICRC's subsequent Diplomatic Conference, meeting in Geneva from April 21 to August 12, 1949, adopted the four Conventions. (Pictet, 1952:92). If World War I provided the impetus for the revision and codification of the 1929 Conventions, and World War II that for the revision and new codification of rules in 1949, the nature of conflicts after 1945 required the development of new legal provisions. The rules elaborated in 1949 were not sufficient to ensure the protection of the victims in a growing number of civil wars and wars of national liberation. Technological developments in the means and methods of warfare also required new legislation.

After discussion at several Red Cross conferences—in Vienna (1965), Istanbul (1969), and Tehran (1973)—and the International Human Rights Conference in 1968, according to Fleck, (1995:83), the Swiss Federal Council convened a diplomatic conference on the reaffirmation and development of international humanitarian law applicable in armed conflicts. After four sessions, this conference adopted the two protocols of 1977.

Geneva Conventions on the Protection of Victims of War

The Geneva Conventions are the essential basis of international humanitarian law applicable in armed conflicts. They evolved from rules of customary international law binding on the entire international community. Cassese, (1984:92), relates that when the codification of international law started in the second part of the nineteenth century, most of these rules were included in international treaties, beginning with the 1864 Geneva Convention and the 1899 and 1907 Hague Conventions. With contemporary wars continuing to produce disastrous effects, the Geneva Conventions signed on August 12, 1949, and two additional protocols adopted on June 8, 1977, are the most important treaties for the protection of victims of war. The treaties adopted include:

- The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Convention I)
- The Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Convention II)
- The Geneva Convention Related to the Treatment of Prisoners of War (Convention III)
- The Geneva Convention Related to the Protection of Civilian Persons in Time of War (Convention IV)
- Protocol I Relating to the Protection of Victims of International Armed Conflicts
- Protocol II Relating to the Protection of Victims of Non-International Armed Conflicts.

The 1949 Geneva Conventions are a rare example of quasi-universal treaties; by the end of April 2004 some 191 states were signatories to them. The states party to Protocols I and II number 161 and 156, respectively. (Green, 2000:103).

Provisions Common to the Four Geneva Conventions of 1949 and Protocol I of 1977

The Conventions and Protocols are applicable in the case of declared war or any other armed conflict arising between two or more parties from the beginning of such a situation, even if one of them does not recognize the state of war. Fleck, (1995:56) emphasizes that they also apply to all cases of partial or total occupation, even if such occupation meets with no armed resistance. The application ceases at the general close of military operations. Protected persons benefit from the provisions until final release, repatriation, or settlement. He further opines that the addition of Protocol I extended the provisions' application to wars of national liberation, that is, to the armed conflicts in which peoples are fighting against colonial domination and alien occupation, and against racist regimes in the exercise of their right of self-determination, as enshrined in the United Nations (UN) Charter and the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations.

The so-called Martens Clause, which dates back to the 1899 and 1907 Hague Conventions, specifies that in cases not covered by the Conventions, Protocols, or other agreements, or in the case where these agreements have been denounced, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, the principles of humanity, and the dictates of public conscience. (Kalshoven and Liesbeth, 2001:63). Accordingly, the Conventions and Protocols are applied under the scrutiny of a protecting power, that is, one or more neutral states appointed to safeguard the interests of the parties to the conflict. The International Committee of the Red Cross assists the parties in designating a protecting power. An organization that offers all guarantees of impartiality and efficacy may be designated to fulfill the duties incumbent on protecting powers.

The Conventions and Protocols include important provisions to sanction violations of the humanitarian rules. They include administrative and disciplinary sanctions as well as sanctions against "grave breaches" (i.e., war crimes) enumerated in the corresponding articles of each Convention and in the Protocols. Governments are required to enact legislation to provide effective penal sanctions for individuals committing or ordering any grave breaches. Osiel, (1999:39), maintains that they must search for those persons alleged to have committed such acts or who have ordered their commission. Military commanders must prevent breaches, suppress them, and if necessary report them to the authorities. The principle of universality obliges a state either to summon the accused to its own courts or to extradite him or her to the state requesting extradition.

Protection of the Wounded, Sick, and Shipwrecked

The first and second Geneva Conventions include almost identical provisions on the protection of persons and property: the first applying to the armed forces on land, the second to armed forces at sea. Persons needing medical care and refraining from any act of hostility shall be respected and protected. Wounded, sick, and shipwrecked combatants who are captured become prisoners of war. Plant, (1992:40), provides that the Conventions and Protocols also ensure respect and protection for the medical and religious personnel of the parties to a conflict, whether military or civilian. But the issue lies with the extent to which these rules are observed during armed conflicts. Protocol I also provides that no one may be punished for performing medical procedures compatible with medical ethics, regardless of the beneficiaries of this activity. Conversely, no one may be compelled to carry out acts contrary to the rules of medical ethics. Military or civilian medical establishments, units, and vehicles may not be attacked or damaged, or hindered in the exercise of their functions. In the words of Playfair, (1992:32), they are protected, but such protection ceases if they commit acts harmful to the enemy after a warning setting a reasonable time limit has expired and after such a warning has gone unheeded. The Conventions and Protocol I also protect medical transportation.

He further maintains that a distinctive emblem, that is, a Red Cross or Red Crescent on a white background, must be displayed on the installations and mobile equipment of medical units, on medical transportation vehicles, on hospital ships, in hospital zones and localities, and on the person, clothing, and headgear of all medical and religious personnel. ICRC and their duly authorized personnel are permitted to use the emblem of

the Red Cross on a white background at all times. Reprisals against protected persons and objects are strictly prohibited.

Protection of Prisoners of War

Any combatant who falls into enemy hands is a prisoner of war. According to Plant, (1992:36), the status of prisoners of war is governed jointly by Article 4 of the Third Geneva Convention, and Articles 43 and 44 of Protocol I. Article 43 provides the definition of armed forces as follows: "forces, groups, and units under a command responsible to their party to the conflict for the conduct of its subordinates, subject to an internal disciplinary system that, among other things, shall enforce compliance with the rules of international law applicable in armed conflicts".

A further obligation is for a combatant to distinguish him or herself from the civilian population by wearing a uniform or distinctive sign recognizable at a distance during military operations. Nevertheless, according to Article 44, paragraph 3, of Protocol I, in exceptional cases of a specific nature, a combatant may be released from this duty. However, in such situations, these combatants must distinguish themselves by carrying arms openly during the engagement and during any period when they are visible to the adversary while engaged in a military deployment preceding the launching of an attack in which they are to participate. Patrick, (2006:29), states that, the 1977 Two Additional Protocols arose in response to guerilla wars, where uniforms are often lacking. Spies and mercenaries are not entitled to the status of prisoner of war.

Prisoners of war fall into the hands of the enemy power and not the actual individuals who captured them. They must be treated humanely and they are protected by the rules of the Third Convention (1949). As for potential sources of information, the prisoners are obliged to give only "surname, first name and rank, date of birth, and army regimental, personal or serial number, or failing this, equivalent information." (Kalshoven, and Liesbeth 2001:48). If captured in a combat zone, based on their views, the prisoners must be evacuated to camps situated outside the area of danger. The Convention regulates prisoners' living conditions, food, clothing, medical treatment, the type of work they may be required to do, relations with the outside world (in particular, correspondence with their families), and the right to receive individual parcels or shipments. The prisoners are "subject to the laws, regulations and orders in force in the armed forces of the detaining power." They may be submitted to penal and disciplinary sanctions. They may be put on trial for an offense committed prior to capture, notably for war crimes.

Also, seriously wounded or sick prisoners may be transported back home during a conflict, or released on parole, but they may not serve in the armed forces of their homeland subsequently. The detention of prisoners of war lasts in principle until the cessation of active hostilities, after which they "shall be released and repatriated without delay." In Protocol I of the Geneva Convention of 1977, most of the rules on the protection of civilians were included in the Hague Convention and customary rules of international law. Part IV of Protocol I address this issue in defining a civilian as "any person not belonging to the armed forces." In case of doubt, an individual is considered to be a civilian. The civilian population and individual civilians are protected against dangers arising from military operations. They shall not be the object of attack. The prohibition includes attacks launched indiscriminately. Reprisals against civilians are also prohibited.

Similarly, Fleck, (1995:84), relates that a civilian object is anything that is not a "military objective" (i.e., objects that 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 existing at the time, offers a definite military advantage). He further asserts that Civilian objects shall not be the object of attack or reprisals. Special protection is provided to certain categories of civilian property:

- Cultural property, historical monuments, works of art, or places of worship that constitute the cultural and spiritual heritage of peoples
- Objects indispensable to the survival of the civilian population
- Natural environment, protected against widespread, long-term, and severe damage
- Works and installations containing dangerous forces, the release of which could cause severe losses among civilians

General Protection Afforded by the Fourth Geneva Convention

Several provisions of the 1907 Hague Convention and the Fourth Geneva Convention (1949) concern the general protection of the civilian population against the effects of hostilities. As indicated in Article 4, the Fourth Convention concentrates on those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a party to the conflict or occupying power of which they are not nationals. Part II of the Geneva Convention addresses the general protection of populations against certain consequences of war and covers "the whole of the population of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and [is] intended to alleviate the sufferings caused by war." (Solf and Roach 1987:83.)

The 1977 Protocol significantly extends protection to specific categories: the wounded and sick; hospitals and hospital staff; land, sea, and air transportation; consignments of medical supplies, food, and clothing; protection of children, women, and families; provision of family news; and protection of refugees and stateless persons, including journalists.

The Fourth Geneva Convention (part iii) deals with the two major categories of the civilian population: those who are in the territory of the enemy and those who are in occupied territory. Section I includes common provisions for these two categories: Article 27 declares that Persons protected are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Protection is granted without any adverse distinction. Special protection is granted to women. Protected persons will have the ability to make applications to the protecting powers, the ICRC, the National Red Cross or Red Crescent societies of the country where they reside, and any other organization that might assist them. Physical or moral coercion, pillage, and the taking of hostages are strictly prohibited.

Two additional sections of the Convention address the issues of aliens in the territory of a party to the conflict and the treatment of civilians in occupied territories. The rules concerning treatment of internees—outlined in Section IV—are very similar to those concerning the internment of prisoners of war. Additional Protocol I, Article 75, was an important later provision. It specifies that persons who fall under the power of a party to a conflict and who do not benefit from more favorable treatment under the Convention and the Protocol shall be treated humanely in all circumstances and shall benefit from fundamental guarantees without discrimination of any kind.

Non-international Armed Conflicts

The Geneva Conventions were designed for application during international armed conflict, as defined in Common Article 2. According to Durand, (1984:89), for the first time in 1949 the efforts of the ICRC and some states led to the adoption of the first provision of international law dealing with non-international armed conflicts. This provision, Common Article 3, applies to all internal conflicts occurring in the territory of one of the parties to the Convention. Its scope of application is large, but the substantive, material protection it affords is limited to the minimum. The article specifies only the minimum humanitarian treatment to be provided to the victims of conflicts. It distinguishes two categories of protected persons: those taking no active part in the hostilities, including members of the armed forces who have laid down their arms, and those felled by sickness, wounds, detention, or any other cause. They shall in all circumstances be treated humanely, without any adverse distinction made on the basis of race, colour, religion, sex, birth, wealth, or any other similar criteria.

The following acts with respect to protected persons are, and shall remain, prohibited at all times and in all places:

Violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture.

Taking of hostages.

Outrages upon personal dignity, in particular, humiliating and degrading treatment.

The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. (Basic Rules of the Geneva Conventions and their Additional Protocols, 1983).

Further, the Common Article 3 also provides that a humanitarian organization, such as the ICRC, may offer its services to the parties to a conflict and that these parties should further endeavor to bring into force, by special agreements, all or part of the Conventions' other provisions. In terms of the application of this article, it provides that such shall not affect the legal status of the parties to a conflict. Common Article 3 was for several decades the only provision addressing internal conflicts and civil wars, including the wars of national liberation that took place in the 1960s. During the period following World War II the majority of the conflicts were non-international. It was therefore quite obvious that improving the protection of the victims of these conflicts had to be the major objective of the new codification efforts occurring in the mid-1970s. It was only owing to the ICRC and a few delegations that Additional Protocol II was adopted during the very last session of the 1974 to 1977 Diplomatic Conference, albeit in reduced form.

Protocol Two of the Geneva Convention purpose was to develop and supplement Article 3 without modifying its existing conditions of application. It was imperative to maintain the humanitarian minimum guaranteed by this article in all circumstances. It applies only when a conflict takes "place on the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol," internal disturbances and tensions, such as

riots, isolated and sporadic acts of violence, and other acts of a similar violent nature being excluded. (Donald, 2008:78).

Declaration on the Protection of Women and Children in Emergency and Armed Conflict

Conscious of its responsibility for the destiny of the rising generation and for the destiny of mothers, who play an important role in society, in the family and particularly in the upbringing of children, and bearing in mind the need to provide special protection of women and children belonging to the civilian population, the General Assembly of the United Nations Organization made the following Declaration on the Protection of Women and Children in Emergency and Armed Conflicts and calls for the strict observance of the Declaration by all Member States:

1. Attacks and bombings on the civilian population, inflicting incalculable suffering, especially on women and children, who are the most vulnerable members of the population, shall be prohibited, and such acts shall be condemned.
2. The use of chemical and bacteriological weapons in the course of military operations constitutes one of the most flagrant violations of the Geneva Protocol of 1925, the Geneva Conventions of 1949 and the principles of international humanitarian law and inflicts heavy losses on civilian populations, including defenseless women and children, and shall be severely condemned.
3. All States shall abide fully by their obligations under the Geneva Protocol of 1925 and the Geneva Conventions of 1949, as well as other instruments of international law relative to respect for human rights in armed conflicts, which offer important guarantees for the protection of women and children.
4. All efforts shall be made by States involved in armed conflicts, military operations in foreign territories or military operations in territories still under colonial domination to spare women and children from the ravages of war. All the necessary steps shall be taken to ensure the prohibition of measures such as persecution, torture, punitive measures, degrading treatment and violence, particularly against that part of the civilian population that consists of women and children.
5. All forms of repression and cruel and inhuman treatment of women and children, including imprisonment, torture, shooting, mass arrests, collective punishment, destruction of dwellings and forcible eviction, committed by belligerents in the course of military operations or in occupied territories shall be considered criminal.
6. Women and children belonging to the civilian population and finding themselves in circumstances of emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence, or who live in occupied territories, shall not be deprived of shelter, food, medical aid or other inalienable rights, in accordance with the provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration of the Rights of the Child or other instruments of international law. (Declaration on the Protection of Women and Children in Emergency and Armed Conflict proclaimed by General Assembly resolution, 1974).

Key Issues Surrounding International Humanitarian Law

The International Humanitarian Law lays down the minimum protection and standards applicable to situations where people are most vulnerable in armed conflicts. It aims to prevent situations that might exacerbate vulnerabilities, such as displacement and destruction of civilian property. In the views of Kelvinson, (2003:77), International Humanitarian Law (IHL) demands of belligerents that they respect the distinction between combatants and noncombatants, attack only military targets, and use only the degree of violence proportionate to their military requirements, all the while taking due care to protect civilians and civilian infrastructure. Regrettably, the practices of belligerents in war lag well behind legal requirements, and the global "culture of protection" of civilians called for by Kofi Annan is still a distant prospect. In short, civilians are in dire need of protection and assistance in situations of violence around the world. The engagement by aid agencies in the protection of civilians is based on 'humanitarian principles', which derive from IHL and at once establish the nonaligned (neutral, impartial, independent) role of humanitarian agencies in situations of violence, and protect the "humanitarian space" required by agencies to assure the safety and welfare of civilians. But the nature of war is changing - with conflicts increasingly inter-relatedly, involving non-state actors and including the deliberate targeting of civilians - and this has led some observers to question the relevance, or at the least the applicability, of IHL. (Osefo, 2005:32).

The United Nations has also welcomed the inauguration of the International Criminal Court, as part of the protection equation: providing for the prosecution of war criminals, and thus an end to impunity, in order to serve as a deterrent to those who would violate the rights of civilians, and others, in wartime. However, the execution of these rules lies the worry of this paper, as stated earlier. Humanitarian law has ample provision for dealing with modern warfare, according to ICRC President Jakob Kellenberger. The challenge is to have those provisions respected and put into practice by all. But what are the barriers to this, how can they be overcome

and IHL be made to work better for civilians, and what are the implications for humanitarian workers and agencies aiming to protect civilians?

Strengthening Legal Protection for Victims of Armed Conflicts

An open debate on the protection of civilians in armed conflict was held on 9 December 2005. Green, (2000:57) affirms that a draft resolution submitted by the United Kingdom (UK) met opposition, particularly within the Super Power Five (SP5). As a result it was agreed that negotiations should be progressed at the bilateral level and among the Super Power Five (SP5) before a text came back to all Council members. According to him, for many Council members it was frustrating that the Council was having difficulties agreeing on language relating to the "responsibility to protect", especially since that concept had been endorsed by the Heads of State so recently in the September 2005 Summit Outcome Document. However, a new draft was set to address all of the key issues relating to civilians, including:

- The reaffirmation of the responsibility to protect, which will be kept in an operative clause. This is the main achievement of the new draft, which seems to have overcome Russian and Chinese reluctance to have this principle reaffirmed by the Council. It seems that the new approach first gained Chinese acceptance and then Russia's support. (Grazzperh, 2008:119).
- The draft reaffirms the importance of continuing the Council's practice of ensuring that all UN Peacekeeping mission mandates should have provisions aimed at protecting civilians in their mandates. New is the provision that the protection of civilians, particularly those under imminent threat, would be given priority in the decisions about the use of available resources. The Council also directly expresses its intention, for the first time, of ensuring that those protection mandates be implemented. (Nogglar, 2009:84)
- The Council reiterates the necessity to allow full unimpeded access to humanitarian personnel to conflict areas (a principle already mentioned in previous resolutions on the protection of civilians).
- The Council, in resolution 1296 (2000), emphasized the importance for humanitarian organizations to uphold the principles of neutrality, impartiality and humanity in their humanitarian activities. The new draft extends this provision to "all", which implicitly also includes state actors.
- Finally, the Council reaffirms its readiness to respond to situations where the deliberate targeting of civilians and the commission of flagrant violations of international humanitarian and human rights law in situations of armed conflict constitute a threat to international peace and security. This provision, already contained in resolution 1265 (1999), while initially resisted by the US during consultations, now seems widely accepted.

But the new draft also inevitably presents some compromise on various points of contention:

- There is no specific reference to the International Criminal Court (ICC). Justice and reconciliation mechanisms mentioned include national, international and "mixed" criminal courts and tribunals and truth and reconciliation commissions. However, the text does not exclude the ICC and it emphasizes that states have a responsibility to comply with their relevant obligations to end impunity (relevant to those who have ratified the Rome statute - currently nine members of the Council).
- The Russian proposal to include a provision on the prohibition of torture in occupied territories did not materialize. It seems, however, that a general condemnation of torture against civilians in armed conflict will be reaffirmed in the draft resolution.
- The new text addresses in general terms the issue of safeguards for internally displaced persons (IDPs). But there is no clear mention of the international community's duty to assist and support states to fulfil their responsibilities with regard to IDPs. The text only refers to "other persons protected under international humanitarian law". It seems that there remains some dispute as to whether IDPs are covered by international humanitarian law or whether that would infringe on the principle of non-interference in the domestic affairs of a state (Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, 1978).

War Victims and Circumstances of Displacement and Economic Hardship

Displacement is the most common consequence of armed conflict and women are the most affected civilian population. Draper, (2008:43), posits that the United Nations High Commissioner for Refugees estimates that women and children comprise 70-80% of the world's refugee and internally displaced population. In flight, as well as upon arrival in an urban shantytown or refugee camp, women commonly experience violence and abuse at the hands of warring parties, opportunistic civilians or those who are supposed to be peacekeepers. Without a viable social or economic support network and often without male protection, displaced women are highly vulnerable to violence. For instance, in the Maela camp for internally displaced persons from the Rift Valley,

Kenya, women were frequently raped by security personnel when they left camp in search for food or for work as day laborers. One woman reported, “even though we knew this was likely to happen, we continued to do this work because our children were hungry and we had no choice.” (Bugnion, 2000:74).

On the other hand, the economic impact of armed conflict manifests itself in gender-specific ways. Women’s burdens in times of war become especially heavy as they take responsibility for household work and obligations, as well as supplement the finances of absent male relatives. As a result, women’s usual functions within the household become more difficult to carry out. If women are forced to become the sole provider for their families, the absence of an adequate infrastructure often leaves women unable to feed their families or find paid work. In periods of extreme hardship and faced with a chronic lack of resources in order to provide for their families, women may feel compelled to engage in work in the informal employment sector that place them at increased health and security risks.

Conclusion

From the foregoing discourse, it has been observed that the four Geneva Conventions of 1949 provide effective legal protections for women and children during armed hostilities, but with weak instruments for execution. Again, the wellbeing of the sick, the wounded, prisoners of war and the shipwrecked are also provided for in the two additional protocols of 1977, with little or no enforcement capabilities in contemporary armed conflicts. Equally, civilians do face challenges of displacement and economic difficulties in the present day armed hostilities. Concomitantly, these anomalies are traceable to the limitations of the treaty law which hampers legal protections of victims in armed hostilities. (Michaels and Adams, 2007:66). Treaties only apply to states that have ratified them. While the four Geneva Conventions of 1949 have been universally ratified, other treaties such as the 1977 Additional Protocols to the Geneva Conventions have not, and as a result, are not binding on a number of states involved in armed conflicts. That is why certain rules and provisions are not observed today. However, it follows that many of the rules contained in such treaties are part of customary international law and, as such, apply to all states and to all parties to a conflict.

Again, even though non-international armed conflicts represent the majority of contemporary armed conflicts, treaty law does not regulate them in sufficient detail. According to Picket, (1952:48), treaty law applicable to non-international armed conflict is limited to common article 3 of the four Geneva Conventions and the few articles of Additional Protocol II which contain only a very rudimentary regulation of the conduct of hostilities and humanitarian relief operations for example. Accordingly, the state practice has developed a more complete regulation of internal conflicts under customary law than in treaty law. In fact, one hundred and forty nine (149) out of the one hundred and sixty one (161) rules on legal protection of war victims are applicable to non-international armed conflicts. Further, it is vital to underline that in internal conflicts; both governmental armed forces and rebel forces are bound by customary rules and can be held accountable in case of non-compliance. Nevertheless, in order to determine which treaty law applies to a particular conflict, a prior characterization of the conflict as international or non-international is required and this is often difficult or subject to dispute. It therefore implies that many rules apply equally in international and non-international armed conflicts. For example, the prohibition of attacks on civilians, journalists or humanitarian relief personnel and the prohibition of forced displacement of populations apply in any armed conflict.

In order for customary law to have a practical impact on the ground it must be known and used not only by academics but by all those dealing with International Humanitarian Law. This includes military lawyers, government officials and national and international courts and tribunals that are required to enforce International Humanitarian Law. Finally, enhanced legal protections of war victims should be a matter of unavoidable necessity and a subject of prime interest to the United Nations, regional organizations and international community at large. Protection of lives and properties during international and non international armed conflicts, according to Phinneh and Robberts, (2010:96), should be of utmost importance to the 21st century world organizations, whose policy configuration is geared towards practical minimization of armed hostilities among nation states. With these, maximum peace and security would be actualized at the centre stage of world politics.

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