

The impact of international humanitarian law, international treaties and conventions on the protection of children and women during armed attacks

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Summary

In this study, we have discussed the protection of women and children in the light of the many conflicts and disputes that exist between countries or in the same state and what those segments of societies are exposed to, from tragedies and pains, although the effects of conflicts and wars are not limited to Women and children only, but they are the most affected and bereavement by this subject being considered the weakest in terms of physical composition, where this research is dealing with the importance of providing protection for these segments in international humanitarian law, the articles on the subject are mentioned in the protocols and treaties and that dealt with the following topics and Discussed:

Study problem

The problem of the study lies is an important question: Do laws and treaties guarantee an adequate protection for women and children in light of these many conflicts and disputes between some countries in the various parts of the world?

Study importance

The importance of study is the protection of women and children during armed conflict which through the tangible reality and the painful observations that the world is waking up to. Every day The tragedies of armed conflict are not confined to women and children only, but they are the most tragic and saddening of all groups.

Study hypothesis

The study is based on the premise that commitment to laws and treaties and adjusting them to commensurate with the current situation ensures that women and children during armed conflict are provided with the necessary protection.

Aims of study

The study aims to shed light on international humanitarian law, which in any case constitutes an obligation undertaken by States, including the inclusion of the concept of protection for women and children at the following levels:

1. Care given to women and children in families.
2. Care given to women and children upon displacement.
3. Immunity of detained children and women.

Introduction:-

International humanitarian law aims to protect victims of international or non-international armed conflict and provides protection to objects not related to the battle. The rules of this law are based in principle on the non-harmful distinction between victims. The law gives everyone basic guarantees in an attempt to preserve The minimum rights provided by the law concerned with human rights, but this does not prevent special treatment of groups considered the weakest in times of armed conflict of both types, including women, children, the wounded and the sick....etc.(1)

The principle of non-discrimination enshrined in the 1949 Geneva Conventions and the 1977 Additional Protocols to the Convention require that special treatment be accorded to women during armed conflict, so that women receive equal treatment similar to that enjoyed by men without prejudice to sex(2).

However, the equal treatment required by the Convention does not in any way preclude the granting of treatment to certain groups protected by the Convention on the basis of special consideration, so some women may require special treatment on the basis of due regard to their sex, such as pregnant women(3).

The legal protection afforded by international humanitarian law is therefore based on two basic principles: equality of treatment on the one hand and non-discrimination of victims on the other, recognizing that any detailed treatment existed only to take into account special situations that would have put women at greater risk if they had not received This transaction(4).

From this point of view, the research will be divided into three sections, the first concerned with the legal protection provided by international humanitarian law for women and children during armed conflict, whether this conflict is international or non-international in nature. Addresses the care given to women and children in families(5).

The first topic

What is civil protection for women and children?

The adoption of rules protecting the population from the effects of war is one of the greatest achievements of international humanitarian law. A full section of Protocol I in 1977 was

devoted to the protection of the civilian population and children and women are protected by these rules as civilians who are not taking part in hostilities. There are also special measures to protect children against the dangers of military operations and war may have potential effects on children when they increase their risk of landmines. In order to explain this, we will divide this topic into the following two demands

The first requirement: the protection of women and children from the effects of hostilities

The second requirement: protection granted when evacuation and displacement

The first requirement

Protecting women and children from the effects of hostilities

International humanitarian law attaches particular importance to protecting civilians from the dangers of hostilities. It always affirms that the right of the parties to a conflict to choose methods and means of warfare is not absolute, but is restricted by respect for civilian persons. Thus, the first protocol of 1977 contains a rule that is a basic guarantee of general protection from the effects of fighting, which states: The parties to the conflict shall distinguish between the civilian population and combatants, between civilian objects and military objectives, and thus its operations against military objectives. In order to ensure respect for and protection of the civilian population and civilian objects(6)

Based on this rule, a number of humanitarian principles governing the conduct of combatants have been established to protect the civilian population from the dangers of military operations. It goes without saying that adherence to these principles will achieve the general protection of women and children from the dangers of fighting as more vulnerable.

First branch

Protecting children from the effects of hostilities

A child needs special protection during armed conflict, as recognized in the Fourth Geneva Convention of 1949.

Protocol I of 1977 even gave special protection to children in situations of armed conflict. It states that: (a) Children must be given special respect and be protected against any form of indecent assault and the parties to the conflict shall be afforded the care and assistance they require, whether due to their age or for any other reason(4).

Protocol II also provided for Article 4/3, which states that "care and aid shall be provided to children to the extent that they need a mechanism to protect children during non-international conflicts

Protocol I, in Article 8/1, provides that cases of childbirth and newborn children shall be classified as wounded and sick as a category in need of protection.

Article 24 of the Fourth Convention affirms that children need special care(7)

Section II

Protecting women from the effects of hostilities

The Fourth Geneva Convention of 1949 is the first treaty devoted entirely to the protection of civilians during armed conflict. This protection is lacking during the two world wars. However, if the Convention includes protection of civilians from the abuse of enemy power, it is not subjected to the protection of civilians Hostility except in the narrow field, ie the protection of vulnerable groups of civilians only: - Women, children, the elderly(8)

Women should be removed from areas likely to be affected by armed conflict and placed in safe areas. Whether women are in the safe areas or in their areas of origin, relief supplies must be delivered to them because otherwise, malnutrition and hunger are the first to be affected(9) .

Protection granted upon evacuation and displacement

International humanitarian law prohibits forced deportation of civilians, but such deportation may be lawful when it is in the interest of the deported person, which is known as evacuation, and forced deportation may be unlawful. In particular, women and children are forced to flee their homes away from hostilities and go to safer areas within the country. Whether deportation is lawful or unlawful, one must enjoy the protection afforded by international humanitarian law(10).

The branches of this requirement will be as follows:

Subchapter I: Protection granted upon evacuation.

Subchapter II: Protection afforded upon displacement

First branch

Protection granted upon evacuation

The State which seizes children in its territory or the territories it occupies shall be obliged to place children in safe places away from hostilities, and to provide them with means of subsistence. Non-governmental organizations may not transfer them to the care of another country unless certain conditions are met. On the other hand, the issue of guardianship on separated children who have been evacuated raises many questions (11).

First: the evacuation conditions

1. The evacuation shall be limited to a period of time required by the circumstances of the dispute.
2. The occurrence of compelling reasons relating to the health, medical treatment or safety of children obliged the Detaining Power to transfer them to another State, such as the medical care necessary for the recovery of children or to facilitate their recovery cannot be provided in their State.
- 3 - Obtaining the approval of the evacuation by the parents of the children of their legal guardians in case of their presence.
4. This procedure shall be supervised by the Protecting Power in agreement with all the parties concerned, namely the party organizing the evacuation, the party hosting the children and the parties whose nationals are evacuated.
5. All parties to the conflict must take every possible case on a case-by-case basis so that children are not exposed to any danger during the evacuation process.
6. The party organizing the evacuation shall prepare a card for each child accompanied by a solar photograph and send it to the Central Tracing Agency of the International Committee of the Red Cross. This card shall include all information available to the child in terms of identity, health and family referral.
- 7 - That the evacuation does not lead to the prevention of the child during his time outside the country from education and religious and moral education (12).

Section II**Protection afforded upon displacement**

Children and women are often forced to flee their homes and travel long distances to escape enemy fire, making them the most vulnerable victims of hunger and malnutrition, lack of shelter, access to health and education services, and violence in all its forms, particularly violence and sexual exploitation.

Women and children make up the majority of internally displaced persons and refugees in the world, accounting for up to 80% of the population of the camps. Today, out of 150 people on the planet, one person has been displaced by armed conflict or human rights violations, some 40 million. More than half of that number are children, of whom seven million have become refugees in other countries (13).

In 2002, United Nations agencies with regard to health care for displaced persons and their partners were able to implement national immunization days to eradicate polio in Somalia, the Democratic Republic of Chad, Sierra Leone, Sudan, Afghanistan and other countries.

The second topic

Care for women and children from abuse of enemy power

Protection from the effects of hostilities established by international humanitarian law for civilians, including women and children, has been accompanied by the necessary protection from the abuse of enemy power when caught in the grip.

It is possible that the opposing party violates the principle of distinction between civilians and combatants, causing serious harm to civilian women and children. By making it one of its fundamental principles, and ensuring that women and children are protected upon arrest, appropriate to their privacy, taking into account their age and sex, as well as their protection from the death penalty.

The Prophet was the greatest (r) if he wanted to send a secret called them Vjshlm in his hands and then said (Sero Bismillah and for the sake of God and the religion of the Messenger of Allah (14).

The first requirement

The protection of detained children and women

International humanitarian law obliges any means in an international armed conflict to take firm measures in order to monitor protected persons, provided that the security requirements of that party require such measures to be taken. In that these individuals belong to organizations whose purpose is to create unrest or that they seriously threaten territory by other means such as acts of sabotage and espionage.

In addition, the Occupying Power may prosecute the persons concerned if they violate the national laws in force in the occupied territories or if they violate any decisions issued to ensure their security and safety. (15)

Consequently, many women and children have been deprived of their liberty in countries breached by armed conflict or civil war, and during such violent situations a person becomes extremely vulnerable and therefore in need of protection.

First branch

Protection of detained children

The use of detention or detention of children, even in peacetime, should be the last and inevitable measure of the shortest possible period of time. In the event that the authorities of the Detaining Power impose disciplinary sanctions on the detained children, they should take into account the age of the child in detention.

In addition, the Fourth Geneva Convention states in Article 132 that during the hostilities, the parties to the conflict shall endeavor to conclude agreements for the release of certain categories of detainees, including children. However, such agreements are not binding on the

parties to the conflict. These agreements are only an urgent recommendation addressed to the belligerent state because of the vulnerability of children, and in many cases humanitarian considerations have been a strong driver in reaching such agreements (16).

Also, some children were taken out of their lands and detained outside of them in violation of Article 76 of the Fourth Geneva Convention, which directed not to remove detainees.

According to a report on the Palestinian Law Society, the Israeli occupation forces arrested (87) children, including two girls, between (29 September 2000-31 January 2001).

Section II

Protection of detained women

The general situation of women in detention is extremely high, and the need for special protection is urgent. International humanitarian law Women detained under rules of protection to protect them during detention .In accordance with the same principle, we must start with due respect for the honor of women. With regard to disciplinary sanctions, Article 119 of the Fourth Geneva Convention refers to the principles of detailed treatment in general terms (the age, nationality and health of the detainee must be taken into account (17).

The second requirement

Take care of children and women from the death penalty

Since the end of the 1950s and the beginning of the 1960s, United Nations bodies have been scrutinizing the death penalty, and although there has been occasional slight movement towards the eventual abolition of the death penalty globally, there is no certainty that there has been coordinated progress in This trend, in fact, the application of the death penalty or the threat of its application finds a noticeable increase in recent times in many parts of the world, whether in time of peace or war, and it is estimated that we are concerned in the context of international and non-international armed conflicts, the instruments of international humanitarian law have referred to Not flown The issuance or execution of the death penalty for only two categories of vulnerable groups, namely women and children when they committed crimes related to the armed conflict (18)

According to the foregoing, this requirement will be divided into two sections. The first section deals with the care of children from the death penalty.

Take care of children from the death penalty

The care of children in armed conflict is essential for those under 15 years of age, but it is different in dealing with the death penalty. The Fourth Geneva Convention and its Additional Protocols limit the age of protection to 18, generally if the crime is committed by the child. However, he is exempted from this penalty as a child. This does not mean that he is exempted from the penalty completely, but is exempted from the execution of the death penalty. In this case, he shall be sentenced to life or temporary imprisonment as the case may be (17).

The Second Additional Protocol on Non-International Conflicts was more assertive in this regard than Additional Protocol I, as it stated that the death penalty may not be imposed at all, because the death penalty may not be carried out after a judgment has been issued as provided for in this Additional Protocol I. The death penalty for an 18-year-old at the time of an offense related to an armed conflict (such texts are based on the idea that a person who has not yet reached the age of 18 does not have full discretion, and recognizing the importance of his actions is often acting under pressure Or under their influence (19)

Section II

Take care of women from the death penalty

Article 68 of the Fourth Geneva Convention, when it states the conditions for the death penalty for an international armed conflict, stipulates that the convicted person must be at least eighteen years old at the time of the commission of the crime. The case of being convicted of pregnant women or mothers of young children, this situation referred to by the domestic laws of most countries of the world, but the first additional protocol came to compensate for the shortfall in the Fourth Convention, stressing that the death penalty may not be carried out on pregnant mothers and young children. Executable the agreement on the drafters of Additional Protocol I was easier than the agreement that the death penalty should not be handed down, but in reality it takes into account this limitation. The postponement of the execution of the death sentence of the pregnant mother except after birth has been amended in almost all countries of the world, whether in laws or in application (20).

The third topic

Care given to women and children in families

The Hague Convention on Land Laws and Customs of 1907 regulates the treatment of prisoners of war, but what is taken from this agreement is that it coupled with the return of prisoners to their homelands by the conclusion of a peace treaty, which was followed by allied and pivotal countries after the First World War. These include the enjoyment of the status of combatants by members of the regular armed forces, as well as the case of militias and volunteer units, provided that the following conditions are met: the command of a person responsible for a subordinate and a distinctive mark known remotely, to bear arms in a clear manner and to respect the laws and customs of war.

In international law, the legal status of prisoners of war is linked to that of the combatant himself, and the latter must meet certain conditions entitled to participate in hostilities and be treated as a prisoner of war when captured by the enemy, and for the purpose of informing the legal status of the combatant and the prisoner of war when they fall into the hands of the enemy. (20)

As for the second article of the same regulation, the inhabitants of the occupied territories, who face the enemy in a public body or a public exile, enjoy the status of a combatant. It is noteworthy that the said list requires the latter two conditions (leadership, responsibility, and

distinctive sign). Which I have required in militias and volunteer units. The reason for this is that the speed and urgency of defending the region do not bear the delay or delay until they are organized to wear a distinctive mark. According to this, the person here is considered a legal fighter and retains the advantage of regular warring armies and can conduct military operations (15).

According to Article 3 of the Regulation, non-combatants belonging to the armed forces, such as war correspondents and suppliers who fall into the hands of an adversary, are considered prisoners of war provided they have an armed ID card from their military authority.

The first requirement

Treatment of women and children prisoners

Since women and children who were not actively involved in armed conflict before the outbreak of World War I, there was no need at the time to provide them with special protection, taking into account the specificity of each, but it should not be understood that women and children were denied. Since the birth of international humanitarian law, women and children have enjoyed the same protection as adult men, and from 1929 onwards women have enjoyed special protection under international humanitarian law. In that year, the 1929 Geneva Convention While the third article referred to the existence of the treatment of women prisoners with all due regard to their gender, the fourth article referred to the prohibition of discrimination in the treatment of prisoners unless it was based on the military rank or gender. Etc (18).

As regards the special protection of child combatants, as a result of children in World War II playing different roles in the resistance movements in Europe, special protection was necessary for them, as indicated by the Third Geneva Convention of 1949 and the Additional Protocols of 1977.

It was the appeal of the International Committee of the Red Cross dated 9/1/1945 to the German, French and British governments (17).

The second requirement

General protection for women and children

As long as women and children in captivity must, in all circumstances, be accorded the same treatment as men and adults, they are entitled to the same degree of protection as those. Several provisions of the Third Geneva Convention and the Additional Protocols have regulated the general protection of prisoners in general, including women and children, and we will point out the most important of these provisions (8).

A general principle that protects prisoners of war is that prisoners of war may not be unnecessarily endangered pending deportation from a combat zone. If they are held in unusual circumstances, they may be disarmed here. The weapons of prisoners of war shall be released and all practical precautions shall be taken to ensure their safety. This shall include leaving the prisoners' family in possession of drinking water, food supplies, clothing and protective equipment (9).

Third requirement

Special protection for women and children

While one of the fundamental principles of international humanitarian law is equality of treatment between women and men, on the one hand, and children and adults on the other, it is not prohibited to discriminate on the basis of sex or age except within the limits of harm and equality. Equal treatment broadens the scope of another principle: “the existence of treatment of women with all due regard to their sex and treatment of children for all due consideration to their age”.

For children in detention, the Detaining Power shall take into account their age in providing the degree of responsibility that they owe, and the general rule in this issue is that the educational nature of the measures shall prevail over their punitive nature.

Finally, in all cases, the Detaining Power shall be obliged to liberate the prisoners of war and to repatriate them.

However, if there are strong reasons to fear that a prisoner who refuses to be repatriated could be subjected to cruel and unjust measures in his country that would determine his life or freedom as a result of being accused of treason or assisting the enemy in such circumstances. Alternative (6,5)

The refusal of the prisoners to return should be automatic and express their free will. It is not appropriate that the prisoners' state itself proposes that the prisoners remain in its territory.

With respect to children in captivity, the Detaining Power shall take into account their ages between (18-15) or under 15 years of age. There is no provision for repatriation during hostilities, however their age should be a motivation for the parties to the conflict concerned. To ensure that agreements are reached to provide for the early return of child prisoners to their homeland, inspired by the general rules dealing with the same subject as the rest of the prisoners, it is easier to disavow this obligation in the case of children under the age of fifteen(3,1).

Conclusion and recommendations:

The importance of research on the protection of women and children during armed conflicts stemmed from the tangible reality and painful observations that the world is awakening to its shakes. Their physical, psychological and mental structure, their great need for care and

attention, and their careers in life depend on the reunification of their families, and they attach the hopes of peoples to support their future and the vitality of their present.

Despite the progress made over the past decade in the global campaign to end the recruitment and use of child soldiers, a large number of children are still being used in armed conflict and placed on the front lines. To achieve the purpose of these international efforts, relevant actors, led by the ICRC, For the Red Cross: -

- Careful and continuous monitoring and reporting on the obligation of States to the provisions of the Optional Protocol.
- Support the activities of National Societies with all available means, means and mechanisms to influence states and armed groups to improve their domestic laws so that the minimum age for recruitment and participation in armed conflict is 18 years.
- Disseminate widely the rules of international humanitarian law, which in any case constitutes an obligation of States, including the inclusion of the concept of protection for women and children at all levels in the hierarchy of training programs and exercises of the armed forces and national security forces.

Develop international and national norms to ensure that women and children in armed conflict are provided with the same protection as women and children in peace.

- Inclusion of international humanitarian law in universities and specialized institutes, encouraging scientific research and studies, holding seminars in this field, and preparing campaigns to raise awareness of the general population, women, children and adolescents in particular in schools, orphanages, children's clubs and others
- Eliminate double standards in international humanitarian issues and seek a rigorous formula to ensure that international bodies are freed from the control and pressure that may lead to full discharge and mistrust. This requires serious international will to pursue a purely humanitarian objective.
- To take effective measures to curb the trade in light weapons and to prevent its access to countries where armed conflicts are emerging.

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