

An Analysis on Protective Measures Available For Innocent Civilians Trapped in War: Some Suggestions

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ABSTRACT:

“While the King indulges in war, the civilians die.”

-Bengali proverb

Oxford dictionary defines ‘War’ as “A state of armed conflict between different countries or different groups within a country”. War leads to the path of destruction. War not only takes away the life of millions of people but also left a disastrous effect on future generation for long time. Some suggests that war is a weapon to eliminate evil. Some warmongers also gave excuses in the favour of war as it is an instrument to wipe out evil. It is also opined that by some group that war is the ultimate choice to establish peace. That’s why question lies that if humanity and basic human rights breathed its last by the way of violence at war then how peace will be established. To restore human right if war is the need of the time then that should not be at the cost of innocent civilian’s mortem. This research will analyse present protective measures available for civilians trapped in the war and will try to provide better solutions.

Keyword: Peace, Warmongers, Humanity, ICRC

I. INTRODUCTION

India According to Hall- “When differences between States reach a point at which both parties resort to force, or one of them does acts of violence which the other chooses to look as a breach of peace, the relation of war is set up, in which the combatants may use regulated violence against each other, until one of the two has been brought to accept such terms as his enemy willing to grant.” This definition has judicial approval in Driefontein Consolidated Gold Mines Vs Janson- “War therefore is a contest between two or more states through their armed forces with the ultimate object of each contestant group vanquishing the other or others and imposing his own conditions of peace.” War sometimes divided as either just and unjust war or formal and informal war. But the fact is every bloodshed war spares neither civilians nor any member of any armed forces. It is very pathetic. I feel killing of innocent civilian community is the loss of humanity. Not only that but also war usually also damages socio economic condition of contacting countries and other associated countries interested counterpart. It is important to note that war usually another reason of increasing refugee crisis. Like every competition war also has winners and losers but every Head of the states needs to feel killing of any civilians will not glorify the taste of winning a war against enemy alien. I admit if innocent civilians are utilised in war or any member of armed forces in the veil of civilians is dangerous and may needs to be executed. But every nation state should take a pledge to inflict no harm or very less harm during armed conflict. That’s why all

states and U.N.O adopting legal measure and treaties with each other to protect civilians in armed conflict. International humanitarian law according to me is that branch of law which usually aimed at to secure protection and justice for the innocent and seeks to limit the consequences of bloodshed armed conflict.

II. PROTECTIVE MEASURES

There is a Bengali proverb- None afraid to put harm on unarmed exploited class but all surrendered on the feet of the powerful. That's why it has been said "For the sake of the Win of your King it is fair to sacrifice your life without any hesitation. Matter is about winning the War- that may be at any cost; may be at the cost of thousand of people's life and aspiration. In the introduction part, I have already mentioned elaborately the definition of War. In this article it is also necessary to describe the definition of the civilians and we need to know what law says about civilians. According to Oxford Dictionary civilian means who are not associated with or member of any armed forces or the police forces. A non military person is also called as civilian. In the era of monarch rule there was a continuing race between Kings across the Globe for enlarging its own kingdom by winning and accessing over other's territory and this tradition has been continuing in this century also. Both conflicted parties fighting against each other to win at any cost sometimes put evil into the innocent. According to the Human Rights Council II report in World War II 260,000 civilians died from chemical weapons due to winds carrying over the poisons. We have already witnessed Hiroshima Nagasaki atomic bombing in the time of World War II which leads to the massacre of millions of people. In Vietnam War we also witnessed killings of hundred unarmed civilians. In the War of Afghanistan from 2001- present day lots of civilians died. The List is herein before discussed:-

- 2001: 1,300 civilians killed due to US air strikes
- 2002: 3,200 Afghans died of starvation or illness due to the conflict with an additional 1,201 killed from air strikes
- 2003: Total of 3,600 Afghans killed to date on June 3, 2003 by US forces alone
- 2004: N/A
- 2005: 478 civilians killed due to US/NATO actions in the region
- 2006: 699 Afghans killed by insurgents, 116 Afghans killed by US airstrikes and 114 by ground fire by either US or NATO forces. Total estimate from HRW of 4,400 afghans killed.
- 2007: 950 civilians killed by insurgents. 321 by airstrikes, 113 by ground fire, 57 in crossfire, and another 192 deaths are from unclear circumstances
- 2008: 2,300 killed by insurgents, with 930 being suicide bombings. 1,620 were killed by either US or NATO forces.
- 2009: 2,412 civilians died from internationally led military forces

- 2010: 2,777 civilians were killed by US-led forces
- 2011: 1,167 deaths caused by anti-government elements and a further 1,462 deaths from direct war conflict
- 2012: First decrease in number of deaths since the UN began tracking the war death toll
- 2013/2014: International aid workers started to be targeted, 1,319 civilians were killed

[Sources- **‘Measures to ensure continued protection of civilians in war zones’ by Human Rights Council II**]

Geneva Convention related to the ‘Protection of civilian persons in time of war’ which was adopted on 12th August, 1949 and came into force 21st October, 1950. In Article 1 it has been decided that all contracting parties should respect present convention in all cost. It has also been decided:-

A) “..provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.” [Article 2]

B) “In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:-

- (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) Taking of hostages;
- (c) Outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) 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.

2. The wounded and sick shall be collected and cared for. [Article 3]

- C) The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of civilian persons and for their relief. [Article 10]
- D) The provisions of Part II cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the sufferings caused by war. [Article 13]
- E) Any Party to the conflict may, either directly or through a neutral State or some humanitarian organization, propose to the adverse Party to establish, in the regions where fighting is taking place, neutralized zones intended to shelter from the effects of war the following persons, without distinction:
- (a) Wounded and sick combatants or non-combatants;
 - (b) Civilian persons who take no part in hostilities, and who, while they reside in the zones, perform no work of a military character. [Article 15]
- F) The wounded and sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect. [Article 16]
- G) The protection to which civilian hospitals are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. [Article 19]
- H) Convoys of vehicles or hospital trains on land or specially provided vessels on sea, conveying wounded and sick civilians, the infirm and maternity cases, shall be respected and protected [Article 21]
- I) Aircraft exclusively employed for the removal of wounded and sick civilians, the infirm and maternity cases, or for the transport of medical personnel and equipment, shall not be attacked, but shall be respected while flying at heights, times and on routes specifically agreed upon between all the Parties to the conflict concerned. [Article 22]
- J) The Parties to the conflict shall take the necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition. [Article 24]
- K) Protected persons are entitled, in all circumstances, to respect for their persons, their honour, 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.

Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion. [Article 27]

- L) All protected persons who may desire to leave the territory at the outset of, or during a conflict, shall be entitled to do so, unless their departure is contrary to the national interests of the State. [Article 35]
- M) Protected persons who are confined pending proceedings or serving a sentence involving loss of liberty shall during their confinement be humanely treated. As soon as they are released, they may ask to leave the territory in conformity with the foregoing Articles. [Article 37]
- N) Protected persons who, as a result of the war, have lost their gainful employment, shall be granted the opportunity to find paid employment. That opportunity shall, subject to security considerations and to the provisions of Article 40, be equal to that enjoyed by the nationals of the Power in whose territory they are. [Article 40]
- O) Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive. [Article 49]

All total along with the Annex I and II this convention has 180 Articles. Peace keeping forces of United Nations usually render all necessary attention for protection of civilians. The Protection of Civilians mandate in peacekeeping is guided by a set of principles:

- Protecting civilians is the primary responsibility of governments;
- Peacekeepers with a mandate to protect civilians have the authority and responsibility to provide protection within their capabilities and areas of deployment where the government is unable or unwilling to protect;
- The protection of civilians mandate is a whole-of-mission activity, not only a military task, which embodies an active duty to protect;
- Protecting civilians is done in cooperation with humanitarian actors and with respect for humanitarian principles;

- The protection of civilians mandate is consonant with the principles of peacekeeping, including the consent of the host state, impartial mandate implementation, and the use of force only in self-defence or as authorized by the Security Council;
- The protection of civilians mandate is a priority mandate, pursuant to Security Council resolutions.

Protocol I is an amendment protocol to the Geneva Convention which contains all total 118 articles along with two Annex. The additional protections which are included in this Protocol I are:-

a) PROTECTION OF THE CIVILIAN POPULATION:-

- The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, which are additional to other applicable rules of international law, shall be observed in all circumstances.
- The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.
- Civilians shall enjoy the protection afforded by this Section, unless and for such time as they take a direct part in hostilities. [Article 51]. Under Article 51 attacks against the civilian population or civilians by way of reprisals are also prohibited.

b) PROTECTION OF OBJECTS INDISPENSABLE TO THE SURVIVAL OF THE CIVILIAN POPULATION:-

1. Starvation of civilians as a method of warfare is prohibited.
2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.

c) Under Article 56 attacks on dam, worshiping place, dikes, nuclear generating station are prohibited.

Protocol II which is the amendment protocol to Geneva Convention was sought for better implementation of International Humanitarian Law.

Jean-Marie Henckaerts and Louise Doswald-Beck in their book in 'International Committee of the Red Cross', 'Customary International Humanitarian Law' (Cambridge University Press, 2005) says:-

“The Hague Regulations are generally considered as corresponding to customary international law, binding on all States independently of their acceptance of them. The Geneva Conventions have attained universal ratification. Many of the provisions contained in the Geneva Conventions and their Protocols are considered to be part of customary international law and applicable in any armed conflict.”

There are some Conventions other than these where several policies formulated by the head of the state for implementing International Humanitarian Law and for the protection of civilians during armed conflict. Those Conventions are:-

The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction;

- The Convention on Cluster Munitions;
- The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction;
- The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction;
- The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects; and
- The Treaty on the Non-Proliferation of Nuclear Weapons.\

International Committee of the Red Cross (ICRC) is very well known for its significant role in rendering support for the war victims and civilians trapped in the Warzone. Yves Sandoz in his article “Mélanges Sahovic” published in the Yugoslav Review of International Law, 1996 believed that “ICRC acts as the guardian of International Humanitarian Law” as prescribed by the Geneva Convention.

III. SUGGESTION:-

In previous part I have mentioned the devastating effect of War on civilians from time immemorial and the world have witnessed after the adoption of Geneva Convention also the code and ethics of War has been broken every time by nation state. That’s why I have classified it by a timeline to introduce the type of war crimes already happened against those oppressed and exploited human. Once while attending a seminar in WBNUJS on March, 2018 I have learned from Professor (Dr.) Sandeepa Bhat of WBNUJS-“We all know the problems and that’s why we conduct seminar, symposium, call for papers in national and international arena to find out what should be done and seen to be done. So it is preferable to stress on finding out the solutions and it shall reflect in the research paper.”

The main concern is the action of powerful big states in warfare. They proved it by their action International humanitarian law is not as strong as needs to be strong. Some may opine that every other law may have some loopholes. But if there any loopholes in Municipal law then there are parliament where this can be cured; there is court to enforce it and punish the wrongdoers. In this case this branch of International law did not provide anything. There are no international law enforcement authorities who can force even big power to abide by the rules. Whenever I switch on BBC news from law school days I found that there will be a solution if both parties try to increase dialogue, meeting between them in very regular interval. These will decrease the tension between conflicting states and may decrease the chances of war drastically because prevention is always better than cure. Every steps need to be taken nationally and internationally to eradicate the chances of war.

Humanity is that subject which is not possible to be taught in any school and that's why attack on starving person, child, woman and other civilians are not only immoral but also it will not glorify any victory in war. This needs to be understand- a lesson for both governed and government.

Humanity and consciousness makes a human in the true sense of the term and that's why I think we should believe on what we see and perceive not on what perceived by others on religion and race and on their propaganda. God has made every human being with sufficient skill, power and brain. We should utilise our knowledge, intelligence not on what our religious, political leader said and if needs to listen to those then we should carefully apply our prudence with due diligence

There is a proverb- "united we stand, divided we fall." This attack on civilian is a very grave concern and needs to be addressed unitedly and we need to avoid blame game. Blame game is not good for great. Together we all can get rid of this issue. In the dawn of our civilisation, government was formed when we realise that there should be an authority vested with power to protect us and we need to form more strong authority globally to implement the law of humanity- nationally and internationally. A separate International Court can be formed to sort out this type of war crime and violence.

United Nations usually funded by the big state and that's why it has become reason of less adherence and respect on following International law. This is also a reason of International Law is getting weak day by day for non adherence of super power nations. This issue can be addressed if strict professionalism is adhered. If they can be convinced that breakdown of this or any International organisation will be practically a great loss for them either directly or indirectly; I don't think no nation state wants to harm themselves by initiating any kind of actions.

Every state either at war or being a buffer state in current situation should enact law in adherence with the principle of Geneva Convention and should take pledge to take this issue seriously because- "Humanity is lost means everything is lost." These issues can be solved day by day if every state holds the hands of other and

correct their own mistake by punishing the evil. Non performance of this humanity is itself a shame for those very modern civilised nation states irrespective of the invention of modern technology in every field of their life. To kill the innocent is nothing but a barbarian act and protections of civilians are ‘more than a moral responsibility’.

Peace keeping missions and other International organisation should be given adequate help, aid, infrastructure to carry out their noble objectives.