

ePathshala
पाठशाला
A Gateway to All Post Graduate Courses

MHRD
Govt. of India

An MHRD Project under its National Mission on Education through ICT (NME-ICT)

Subject :
Human Rights and Duties

Production of Courseware
e-Content for **Post Graduate** Courses

Paper : P-8 Human Rights in times of Armed Conflict
Module : U-1 M-7 Treatment of victims and Recourse to innocent parties

मान दिव्यम विद्यते



Development Team

Principal Investigator:	Prof. (Dr.) YSR Murthy, Executive Director, Centre for Human Rights Studies, OP Jindal Global University
Paper Coordinator:	Rohini Sen, Assistant Professor and Assistant Dean (International Collaborations), JGLS
Content Writer:	Rohini Sen, Assistant Professor and Assistant Dean (International Collaborations), JGLS
Content Reviewer:	Professor (Dr.) Gurjeet Singh, Professor and Dean, Faculty of Law, Guru Nanak Dev University, Punjab

Description of Module	
Subject Name	Human Rights and Duties
Paper Name	Human Rights in times of Armed Conflict
Module Name/Title	Treatment of victims and Recourse to innocent parties
Module Id	7
Pre-requisites	
Objectives	
Keywords	

 **Pathshala**
पाठशाला
A Gateway to All Post Graduate Courses

Treatment of victims and Recourse to innocent parties

MODULE OVERVIEW

This module will provide a detailed discussion about the recourses available to the victims of armed conflicts. It will also talk about the protection granted to the innocent parties and their remedies in case of breach of such protection under the International Humanitarian Law.

Further, the module lists in detail the people who fall into the category of protected persons/innocent parties and gives examples on how in various cases IHL has worked towards the protection of such innocent parties.

OBJECTIVE

The objective of this module is to make the readers understand the importance of International Humanitarian law in treating the victims of armed conflict. This module also works towards developing an understanding of the types of rights and remedies available to the innocent parties like children and women in case harm is caused to them as a result of the conflict.

INTRODUCTION

The Charter of the United Nations states “All Members shall refrain from the threat or use of force against the territorial integrity or political independence of any state”.¹ This means that all the members of the United Nations are to refrain themselves from indulging in any activity which may harm the ‘territorial integrity’ and ‘political independence’ of any state.

¹Article 2(4), The Charter of Unites Nations

These guidelines are not necessarily followed. Wars and conflicts are bound to happen. Whether it is the war or conflict between two independent states or within the confines of an individual state, the fact is that these incidents cannot be absolutely deterred. However international institutions like the United Nations and the Red Cross seek to minimise the loss caused by armed conflicts. In the contemporary wars and conflicts, innocent civilians majorly constitute the victims and at times have been deliberately targeted. The most vulnerable amongst them are women and children, who are killed, raped and sexually abused, kidnapped and enslaved, and children, who are taken and forced to



become soldiers. In the 1980s, the Ethiopian army would kidnap boys of 15 or younger from the villages and the poorest quarters of the cities, as well as from schools to engage them in the activities of war.² The survivors of these atrocities are displaced and they end up taking refuge in camps. More deaths of the innocent take place because of the indirect effects of armed conflict i.e. disease, malnutrition, and famine. The ever-increasing number of wars has demonstrated the need to strengthen the protection of victims of international and non-international armed conflict. Civilian protection has been the main motive of the United Nations peacekeeping mission since the end of cold war. But instances of mass violence, like the genocide in Rwanda in 1994 put a doubt on the ability of the United Nations to protect non-combatants.³

Figure 1: Image of destruction caused by the Korean War.

The gist of the basic principles of International Humanitarian Law with regards to victims and innocent parties can be summarised as follows⁴-

² Martin Macpherson, 'Child Soldiers: The recruitment of children into armed forces and their participation in hostilities', Quaker Peace and Service Report, UK, updated September 1992 : 17

³ Lisa Hultman & Jacob Kathman, 'United Nations peacekeeping and civilian protection in Civil war', Midwest Political Science Association, 2013: 2

⁴ 'International Humanitarian law and protection of war victims'

1. Non-combatants: Persons who are not, or are no longer, taking part in hostilities shall be respected, protected and treated humanely. Appropriate care without any discrimination should be given to them.

2. Captured combatants: Captured combatants and other persons whose freedom has been restricted shall be treated humanely. They shall be protected against all the acts of violence, in particular against torture. They shall enjoy the fundamental guarantees of a regular judicial procedure.

3. No unnecessary suffering: The parties to a conflict have a limited right to choose the methods or means of warfare. No unnecessary suffering shall be inflicted.

4. Distinction between civil and military target: In order to spare the civilian population, armed forces shall at all times distinguish between the civilian population and civilian objects on the one hand, and military objectives on the other. Neither the civilian population as such nor individual civilians or civilian objects shall be the target of military attacks.⁵

While the above stated general principles apply to all kind of warfare, there are specific principles and conventions for internal armed conflicts and international armed conflicts.

TREATIES AND CONVENTIONS

The main conventions that deal with the protection of victims and the innocent parties of war are as follows-

(i). **ARTICLE 3**(common to all 4 conventions of 1949): All people who are not taking part in hostilities should be treated humanely.

(ii). **4 th CONVENTION (1949)**

The fourth Geneva Convention of 1949 governs the treatment and protection of civilians in times of war. Part I and part II contain the general provisions for the protection of civilians. Provision for neutralised zones, protection of wounded and sick, family news, child welfare etc have been taken care of in this part. The third part talks about the status and treatment of protected person vis a vis

<<https://www.icrc.org/eng/resources/documents/misc/57jm93.htm#6>>

⁵*l.d.*

aliens in the territory of the parties to a conflict⁶, in occupied territory⁷, regulation for treatment of internees⁸, information bureau and central agency⁹.

(iii). PROTOCOLS ADDITIONAL TO GENEVA CONVENTION (1977)

PROTOCOL I

Additional Protocol I of the Geneva Conventions, 1977 is relating to the protection of victims of international armed conflicts. The whole protocol is divided into six parts. Part IV entails the protection provided to civilians. The first section from article 48 to 67 talks about the general protection to the civilians against the effects of hostilities. The second part (article 68 -71) gives specific relief to the civilian population. The last section (Article 69-71) deals with the treatment of a person in the power of the parties to a conflict. It has provision for the protection of women, children and journalists.¹⁰

Article 48: Distinction between civilian population and combatants and civilian objective and military objective.

PROTOCOL II

Article 3 common to all four Geneva Conventions of 1949 was the only provision applicable to non-international armed conflicts before the introduction of the additional protocol II. The aim of the present Protocol is to extend the essential rules of the law of armed conflicts to internal wars. Part IV of the protocol (Article 13-18) talks about the protection of the civilian population in times of internal armed conflict. Civilians can be defined as those people who are not, or are no longer the part of armed forces¹¹. The protocol also includes protection of the civilian population (article 13), protection of the objects indispensable to the survival of the civilian population (article 14), protection of works and installations containing dangerous forces (article 15), Protection of cultural objects and of places of worship (Article 16), Prohibition of forced movement of civilians (Article 17) and Relief societies and relief actions (Article 18).

(iv). PRINCIPLES AND GUIDELINES

In 2005, the United Nations general assembly adopted The Basic Principle and the guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law

⁶ Article 35-46

⁷ Article 47-78

⁸ Article 79-135

⁹ Article 136-149

¹⁰ Article 79

¹¹ *Blaškić case* in 2000, the International Criminal Tribunal for the Former Yugoslavia

and Serious Violations of International Humanitarian Law (referred to as the “Principles and Guidelines”). They reflect the current state of international law on remedies and reparation for the victims of armed conflicts.

The Responsibility to Protect doctrine was adopted by the United Nations general assembly in 2005. Under this heads of the states and the government unanimously agreed that “each individual state has the responsibility to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity”. The international community has the responsibility to assist the state in the fulfillment of the above responsibility. In case the state “manifestly fails” to protect its citizen from the above mentioned crimes, the international community should take actions to protect the civilians through the Security Council and in accordance with the Charter of the United Nations.

In contrast with the existing protocols, the ‘responsibility to protect’ is relatively new. R2P is just a proposed norm and is not a law. Civil society organizations, states, regional organizations, and international institutions all have a role to play in the R2P process.

PRACTICES

Before moving further let us see who all are covered by the International Humanitarian Law under the category of protected persons. The treaties and conventions of the IHL protect those in need. The IHL gives the status of protected person to children, civilians, missing persons, prisoners of war and detainees, refugees and displaced persons, women, wounded sick and shipwrecked.¹² The practices towards these protected persons are categorised into the protection given to them and the remedies available.

I. Protection

Children: Apart from the status of civilian or combatant, the International Humanitarian law recognises the vulnerability of children and grant the special protection under the law.

(I). Children carrying arms and directly or indirectly taking part in the armed conflict had become a serious humanitarian issue especially in Africa. Apart from playing a direct role as child soldiers, innocent boys and girls are used as cooks, porters, messengers, spies and for sexual purposes.¹³ These

¹²<https://www.icrc.org/en/war-and-law/protected-persons>

¹³ ‘Louder than words: An agenda for action to end use of child soldiers’, Child soldiers international, 2012.

roles are sometimes intentionally taken because no other resort is left to sustain the livelihood. The 1977 Additional Protocols to the Geneva Conventions prohibit the recruitment and participation of children under the age of 15 in hostilities. In international armed conflicts, the first Additional Protocol also requires military recruitment of 15 to 18-year-olds to prioritise the oldest.

(ii) The children who are not involved in armed conflict are supplied with medical help, food and clothing. Orphaned and separated children are meant to be identified, protected and provided with special facilities to ensure their physical security. Also, those children who are detained are to be treated humanely according to the provisions of the conventions.¹⁴

CIVILIANS: IHL ensures that civilians are treated humanely in all the situations. They must be protected against all forms of violence and degrading treatment, including murder and torture. Moreover, they are entitled to a fair trial in case of prosecution.

The protection of civilians extends to those trying to help them, in particular, medical units and humanitarian or relief bodies providing essentials such as food, clothing and medical supplies. The Fourth Geneva Convention and Additional Protocol I specifically requires the parties to a conflict to facilitate the work of the ICRC.¹⁵

While IHL protects all civilians without discrimination, certain groups are singled out for special mention. Women and children, the aged and sick are highly vulnerable during armed conflict. So too are those who flee their homes and become internally displaced or refugees. IHL prohibits forced displacements by intimidation, violence or starvation. The state must also help the civilian in tracking and bring back the displaced and lost family members of the civilian population.

REFUGEES AND DISPLACED PERSON: First of all, it is important to understand who refugees are. According to the **1951 Convention relating to the Status of Refugees**, a refugee is someone who:

(A).Has a well-founded fear of persecution because of his/her

- Race,
- Religion,
- Nationality,
- Membership in a particular social group, or
- Political opinion;

¹⁴'Children protected under International Humanitarian Law'

<<https://www.icrc.org/eng/war-and-law/protected-persons/children/overview-protected-children.htm>>

¹⁵'Civilians protected under International Humanitarian Law'

<<https://www.icrc.org/eng/war-and-law/protected-persons/civilians/overview-civilians-protected.htm>>

- (b).is outside his/her country of origin; and
- (c).Is unable or unwilling to avail him/herself of the protection of that country, or to return there, for fear of persecution.

The refugees are protected under the Fourth Geneva Convention and the additional protocol I. International humanitarian law guarantees access for relief and humanitarian organisations to refugees and IDP (Internally displaced people) in situations of armed conflict. Parties to a conflict must facilitate the supply of relief materials such as medicines, food, blankets and tents.¹⁶



Figure 2: The 1951 refugee convention

WOMEN: Women are one of the most vulnerable groups of a conflict. They must be protected from the sexual violence which includes rape, forced prostitution and other forms of sexual crimes which also constitute war crimes. The general provisions of IHL also forbid women being taken as hostages and used as human shield.¹⁷With the provision for food, clothing, medical assistance, evacuation and transportation, IHL further requires that expectant mothers and nursing mothers be treated with special care.

¹⁶'Refugees and displaced persons protected under International Humanitarian Law'

<<https://www.icrc.org/eng/war-and-law/protected-persons/refugees-displaced-persons/overview-displaced-protected.htm>>

¹⁷'Women protected under International Humanitarian Law'

<<https://www.icrc.org/eng/war-and-law/protected-persons/women/overview-women-protected.htm>>

II. Reliefs available to the victims

In order to ensure the success of international Humanitarian law, it was essential to make provisions for proper enforcement of the law. According to The Basic Principle and the guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law-

Principle 8: Victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.¹⁸

Principle 9: A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.¹⁹

Principle 11-23 covers the various types of relief available to the victims of the gross violation of the Human Rights Law and the serious violations of the International Humanitarian Law. These can be summarized as follow

¹⁸Principle 8, The Basic Principle and the guidelines on the Rights to a Remedy and Reparation for victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

¹⁹*I.d.* at Principle 9



Restitution: (Principle 19) Restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.

Compensation: (Principle 20) *Compensation* should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

Physical or mental harm; Lost opportunities, including employment, education and social benefits; Material damages and loss of earnings, including loss of earning potential; Moral damage; Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

Rehabilitation: (Principle 21) *Rehabilitation* should include medical and psychological care as well as legal and social services.

Satisfaction: (Principle 22) *Satisfaction* should include, where applicable, any or all of the following:

- Effective measures aimed at the cessation of continuing violations;
- Search for the disappeared, abducted, bodies of those killed, and assistance in the recovery, identification and reburial of the bodies according to the cultural practices of the families and communities;
- Public apology, including acknowledgement of the facts and acceptance of responsibility;
- Commemorations and tributes to the victims;

Guarantee of non-repetition: (Principle 23) *guarantees of non-repetition* maybe provided in cases by-

- Ensuring effective civilian control of military and security forces;
- Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;
- Strengthening the independence of the judiciary;
- Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;
- Promoting mechanisms for preventing and monitoring social conflicts and their resolution;

CRITIQUES

Application: The protection of civilians provided by the Geneva Conventions and Additional Protocols is extensive. The problem of the past 50 years has been application. Neither States nor non-State armed groups have respected their obligations adequately. Civilians have continued to suffer excessively in almost every armed conflict.

In some conflicts civilians have been specifically targeted and subjected to terrible atrocities, ignoring the very basis of the Geneva Conventions, respect for the human person. It is for this reason that the

ICRC continues to press States to respect and ensure respect for the principles of IHL, especially the protection of civilians.²⁰

Refugees flow: Regrettably these rules have been ignored in many recent conflicts putting both refugee populations and IDPs in danger. The ICRC has consistently called on States and non-State armed groups to respect and ensure respect for international law and the basic principles of humanity when dealing with civilians. Only through respect for the rules of armed conflict can refugee flows and internal displacement be prevented; similarly, if people have to leave their homes, they can only be protected if IHL is complied with.²¹

CASE STUDIES

SIERRA LEONE

In the Sierra Leone civil war (1991-2002), the atrocities and violence inflicted on the citizen was huge. A large number of child soldiers were abducted and inducted into the rebel army by the rebel group Revolutionary United Front (RUF). The victims of the war have ghastly accounts of their encounter with the war

In 2010, the President of Sierra Leone formally apologised to women victims of his country's 10-year armed conflict. This apology forms part of efforts to distribute modest compensation, rehabilitation and other benefits to eligible victims. Also the victims of gross human rights violation were paid compensation averaging USD 80 per victim as a part of various programmes aimed at reparation of the victims of the conflict.²²

KOSOVO

In another situation of Kosovo war (1998-1999), various reports say that the victims are not being adequately compensated. The Kosovo war was fought between the forces of Federal Republic of Montenegro and Serbia and the Albanian rebel army. For Serbia, the ethnic group of Albanians posed

²⁰'Civilians protected under International Humanitarian Law'

<<https://www.icrc.org/eng/war-and-law/protected-persons/civilians/overview-civilians-protected.htm>>

²¹'Refugees and displaced rights of International Humanitarian Law'

<<https://www.icrc.org/eng/war-and-law/protected-persons/refugees-displaced-persons/overview-displaced-protected.htm>>

²² 'Sierra Leone victims receive compensation' <<http://www.iom.int/cms/en/sites/iom/home/news-and-views/press-briefing-notes/pbn-2012/pbn-listing/sierra-leone-victims-receive-compensatio.html>> accessed on 10/11/2014

a huge threat due to their desire for independence from Serbia. During the war, thousands of people were injured and killed by the security forces.

However, even after 14 years of the conflict, the scale of rehabilitation and compensation is very low. While the Serbian government denies the commitment of the crime, Kosovo government is not fulfilling its obligation towards the victims.²³ The rehabilitation work that is being going on is run by the non-governmental sectors with the assistance of international donors and limited support of the government. A number of problems remain unaddressed and victims uncompensated.



²³Thana, Eliza;Benina Rizvanolli-kusari; Besim kusari, 'Faceless and Forgotten victims', Mediterranean Journal of Social Sciences, October 2013.