

Armed Conflicts and Its Impact on Human Rights

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Abstract

The United Nations (UN) has affirmed a corpus of international human rights of which the most significant legal formulation is the International Documents of Human Rights which encompasses the Universal Declaration of Human Rights (UDHR) 1948, etc. International lawyers consider the Universal Declaration to have the status of customary international law, establishing a common standard by which to judge states' actions to protect human rights from armed conflicts. The aim of this paper is to examine the impact of armed conflicts on civilian's human rights. The methodology adopted in this paper is purely a library based research focusing mainly on primary and secondary sources. The paper concludes that a new Human Rights Council should be established to coordinate and organize the work of UN, also, the Human Rights Council could establish a framework that would enable these organizations to consolidate their efforts and prioritize human rights strategies for peace and development, as well as should be the Human Rights Council to establishment new international convention to protect human rights from armed conflicts.

Keywords: International law, international humanitarian law, human rights, armed conflicts.

1.0 Introduction

Over the past 70 years, the United Nations has affirmed a corpus of international human rights of which the most significant legal formulation is the International Documents of Human Rights which encompasses the Universal Declaration of Human Rights (UDHR) 1948, the International Covenant on Civil and Political Rights (ICCPR) 1966, and the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966. International lawyers consider the Universal

Declaration to have the status of customary international law, establishing a common standard by which to judge states' actions. The global community has exerted an extraordinary amount of energy articulating these norms and codifying human rights principles in international law. This is a true progress: a yardstick has been developed to measure the degree to which nations uphold or violate the most basic human dignities. Yet, despite the global advancement in defining normative goals and rights, there has not been similar success in pushing states to implement human rights agenda. This has led to cynicism about the UN and other intergovernmental organizations. Human rights proclamations and declarations are not followed by significant action to alleviate suffering. As a result, human rights treaties and resolutions are often greeted with scorn and derision, as though, to recall Sartre, principles such as liberty, equality, and fraternity were little more than 'chatter, chatter'.¹

A part of the paper discusses the problem that lies in the fact that there are often direct conflicts between different claimed rights. The Third World States political systems often prioritize civil and political freedoms, claiming that human rights and freedoms and freedom are frequently manipulated by governing elites and ruling majorities to deny other collective human rights, including subsistence rights. Few actions are taken to meet the entire spectrum of rights articulated in the International Documents of Human Rights. To make human rights the cornerstone of domestic and foreign means determining the often difficult trade between human rights that must be made in order international society. There are conflicts between rights, and resolution of such conflicts might require the accommodation of different values. The metaphor of rights as trumps that overrides all competing considerations as only partially useful. In fact, real life is more complex. The

¹ Jean-Paul Sartre, 'Preface', in Frantz Fanon, *The wretched of the earth* (New York: Grove Press, 1963), p. 22.

United Nations, for example, has affirmed both the people's right to self-determination and the people's right to development. In the name of self-determination and freedom, an astounding quantity of military weapons systems have been purchased around the world. Yet these military expenditures consistently impede economic development. These nations appear to be denying their people the basic economic rights in the name of military preparedness to protect the right to self-determination and freedom.²

The aim of this paper is to address the impact of armed conflicts on human rights. This paper is divided into four parts excluding the introduction. The first part presents the concepts of armed conflicts and human rights. The second part focuses on the international responsibility of armed conflicts and its impact on human rights, as well as why do the citizens in the most militarized societies feel the least secured. The third part discusses the international protection to human rights from armed conflicts. The fourth part addresses the conclusion and some recommendations from the United Nations point to a means of achieving a better balance between conflicting sets of human rights claims and how do we in the Third World States incorporate these concerns into a coherent agenda.

2.0 Concepts of Armed Conflicts and Human Rights

Armed conflicts is also viewed as an international crime. However, the nature of armed conflict is suitable to commit the excesses on human rights, so that victims are not the joint forces in the armed conflict only, but has become the human rights of the people who have been violated, because of the armed conflict. This article is concerned with studying the impact of armed conflict on human rights, and the

² WILLIAM F. FELICE, "Militarism and human rights," *International Affairs Journal* No. 74, (1998): 25—40.

researcher found that it is necessary to address the concept of armed conflict and human rights.

2.1 Concept(s) of Armed Conflicts

When the international community fails to resolve international disputes by peaceful means, or when there is no willingness for the parties of the conflict to compromise safety armed conflicts arise.³ However, owing to the development of international conventions on human rights and call on the international community to make efforts and advancement in order to eradicate armed conflicts and their prohibition, the international community found that peace and security cannot be achieved unless there is no international force for the prohibition of armed conflicts, but at the same time the international community keeps the armed forces, knowing that the international community prevents the use of force to settle international disputes by peaceful means in order to achieve international peace and security.⁴

This article is specialized in the statement of the impact of armed conflicts on human rights, so the researcher addresses types of armed conflicts and the second part to identify the armed conflicts covered in the international protection.

2.1.1 Types of Armed Conflicts

There are two types of armed conflicts, the first type is called (External Armed Conflicts), and the second type is called (Internal Armed Conflict). The researcher addressed these types.

2.1.1.1 External Armed Conflicts

³ Ahmed Humaid Al Badri, "International Protection of the Environment during Armed Conflicts," Master Thesis, College of Law, University of Baghdad, (2013):16.

⁴ Suhail Naeem Al Fatlawi, "Encyclopedia of International Law," Culture and Publishing Institution, Jordan, No.1 (2009): 62.

The concept of external armed conflicts are: use of armed force by the warring parties, and one of them must be regular army and outside the borders of one of these two parties, and the conflict begins usually announce the war. On the other hand, armed conflicts is defined as: conflict, which is one of its person of member states in the international community as the state is a person of public international law.⁵

In the same context, some of the scholars of international law focused on the concept of external armed conflicts on the purpose of the establishment of the armed conflict by introducing them: armed fighting between the states, which aims to achieve its political, legal and economic aims.⁶ There is another concept of international external armed conflicts: the conflict through the use of armed force between states in order to give priority to power instead of law.⁷

The others scholars of international law explained the definition of external armed conflicts as: those conflicts that were established between two states or more, struggling with peoples against colonial or foreign occupation or against the crimes of racial discrimination, and subject to these conflicts to international rules and which stipulated in the Geneva Conventions as well as the first Protocol.⁸ According to the researcher, the most important forms of this type of conflict was the use of armed force, i.e. land, sea or air force, and aimed to achieve its purpose, whether it was a political or a legal or economic aim.

⁵ Ahmed Humaid Al Badri, *Ibid*, n 3, 17.

⁶ Christopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights," *The European Journal of International Law* Vol. 19 No. 4 (2008): 655- 724.

⁷ *Ibid*, 658.

⁸ A Call for Accountability and Protection: Yezidi Survivors of Atrocities Committed by ISIL, OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS UNITED NATIONS ASSISTANCE MISSION FOR IRAQ – HUMAN RIGHTS OFFICE. (August 2016): 1-22.

2.1.1.2. Internal Armed Conflicts

The armed conflicts that take place within the borders of the state in between the armed forces of the state and the armed forces outside the law practiced fighting under the leadership of its control over a specific part of the territory of the same State, to enable them to undertake military operations sustained and concerted called these conflicts (internal armed conflict). In addition, it is not considered a conflict internally if there were disturbances or tension within a specific state or when violence factor may be rare.⁹

On the other hand, there were rules of international humanitarian law for the internal armed conflict, for example, Article 1, paragraph 4 of the first Geneva Protocol of 1977 identified the internal armed conflict, which include conflicts conducted by peoples against repressive regimes in the state or conflicts aimed were divided the country.¹⁰

2.2 Concept(s) of Human Rights

The basic international standards on the “human rights” are contained in Article 3 of the Universal Declaration of Human Rights (“UDHR”) 1948 and Article 6 of the International Covenant on Civil and Political Rights (“ICCPR”) 1966. For example, Article 6 of the ICCPR requires the human right to be protected by law. Hence, the human rights are a phrase that describes the belief that a human being has an essential all rights and in this context, one human being has the right not to be killed by another human being.¹¹ These rights are undoubtedly the most fundamental of all rights. It is important to note that all other rights add quality to

⁹ Ahmed Abou El Wafa, "General Theory of International Humanitarian Law," Arab Renaissance, Cairo, (2009): 9.

¹⁰ Ahmed Humaid Al Badri, Ibid, n 3, 18.

¹¹ Ahmad Masum, “An Overview of the Right to Life under the Malaysian Federal Constitution” (2008): 6.

the life in question and depend on the pre-existence of life itself for their operation. There are no doubt that the human rights are obviously one of the most basic rights. If these rights are deprived, all other freedoms suffer an eclipse as well.

Still on the definition(s) of the human rights, perhaps it is vital to make reference to the sentiment echoed by Kofi Annan, the former Secretary General of the UN. Kofi Annan described human rights, in a report on March 21, 2005, as being:

“Fundamental to the poor as to the rich, their protection is as important to the security and prosperity of the developed world as it is to that of the developing world. It would be wrong to treat civil freedoms as though there were a trade-off to be made between freedoms and such goals as security or life. We only weaken our hand in fighting the horrors of extreme poverty or armed conflicts if, in our efforts to do so, we deny the very human rights that these scourges take away from citizens. Strategies based on the protection of the rights are vital for both our moral standing and the practical effectiveness of our actions.”¹²

From the above statement echoed by Kofi Annan, it would be suffice to note that the human rights are considered as one of the most basic. Hence, the human rights are clearly of paramount importance in international human rights law. Therefore, in the context of this Article, it could be argued that the fight against armed conflicts, both internally and externally, should not be used as a blanket means to deprive world citizens of their rights.

Perhaps it is also equally important to make reference to the Iraqi Constitution of 2005 in addressing the human rights as stated in Article 14 until 46 for

¹² Annan, Kofi, In Larger Freedom—Towards Development, Security and Human Rights for All—Report of the Secretary General, (2009):37, <http://dspace.africaportal.org/jspui/bitstream/123456789/17698/1/In%20Larger%20Freedom%20Towards%20Development%20Security%20and%20Human%20Rights%20for%20All%20Report%20of%20the%20Secretary%20General.pdf?1> (Accessed June 4, 2013).

Constitution of 2005. Article 15 of the Iraqi Constitution provides the concept of human rights: “Every individual has the right to enjoy life, security and freedom. Deprivation or restriction of these rights is prohibited except in accordance with the law and based on a decision issued by a competent judicial authority”. Furthermore, Article 46 of the Iraqi Constitution provides that: “Restricting or limiting the practice of any of the rights or liberties stipulated in this Constitution is prohibited, except by a law or on the basis of a law, and insofar as that limitation or restriction does not violate the essence of the right or freedom.” Looking at the constitutional provisions above, the states are under an obligation to protect as well as respect the human rights of its citizens regardless of the fight against armed conflicts. The armed conflicts has a devastating consequence on the ability of individuals to fully enjoy of all human rights.¹³

3.0 International Responsibility of Armed Conflicts and its Impact on Human Rights

According of the variables that have occurred in the international community, the interdependence of interests and contradictions of international behavior has led to violations of the international law rules, which constitute some of them (armed conflicts) a major threat to international peace and security. So that the international responsibility is the key element of the international legal system, based on that the rules of international responsibility to reflect the development of the legal system, which it contains.¹⁴

¹³ Mohammed Salman Mahmood, Ahmad Masum and Zainal Amin Ayub, “The Impact of International Terrorism on the Right to Life in Iraq after 2003,” *The Law Review Journal*, No1, (2015): 70-81.

¹⁴ Ahmed Hamdi, "Public International Law Studies," Zain Legal Publications, Beirut, (2013): 323.

However, a scholars of international law has different on the status of a specific definition of international responsibility on the armed conflicts as well as identifying those who are legal persons which bearing the international responsibility.¹⁵ Hans Klsn defined international responsibility: the standard that creates an obligation on states to reform the damage that has committed to being a bear international responsibility.¹⁶ Also Di Fischer defined it: a realistic idea is based on the state an obligation the reform of the consequences of the illegal act attributed to it.¹⁷

That the reality of armed conflicts proved many and repetitive violations by parties to armed conflict on human and peoples' rights, which caused extensive damage to their rights led to the impact of international responsibility on the human rights are particularly important in spite of being located after the attack on the rights of peoples. Based on that, the international responsibility within the scope of international humanitarian law is the legal system that imposes a penalty on the subjects of international law, because of its violations to international rules of human rights protection.¹⁸

In the same context, the researcher found that if has any armed groups violation of international legal norms of human rights during armed conflicts, it is considered evacuated its international obligation and bear the international responsibility and should be punished for perpetrated from the damage and the impact of the civilians human rights and not adhering to the rules set by the international community.¹⁹ For example, Geneva 25 August 2016, in light of the gravity of alleged breaches of

¹⁵ Khalil Ibrahim, "Responsibility of International Organizations for its Illegal," Zain legal publications, Beirut, (2013): 141.

¹⁶ Ibid, 143.

¹⁷ Ibid, 144.

¹⁸ Ahmed Humaid Al Badri, Ibid, n 3, 101.

¹⁹ Ibid, 102.

international humanitarian law and international human rights law in Yemen, and given challenges faced by the national commission of inquiry, UN High Commissioner for Human Rights (UNCHR) Zeid Ra'ad Al Hussein called on the international community to establish an international, independent body to carry out comprehensive investigations in Yemen. In a report mandated by the UN Human Rights Council and released, the UN Human Rights Office has laid out a number of serious allegations of violations and abuses committed by all sides to the armed conflict in Yemen, highlighting in particular their impact on civilian human rights. High Commissioner Zeid also urged all parties to the conflict to work towards a negotiated and durable solution to the armed conflict in the best interest of the Yemeni people and to ensure full respect for international humanitarian law.²⁰

On the other hand, to achieve international responsibility by armed conflicts and its impact on human rights, should be the availability of three conditions:

1- Committing an Act Incompatible with the International Law Rules:

Even ask the state about international practices, if that this practice is contrary to the provisions and international law rules, a natural and logical requirement. Disposition may be a non-project of the state and the consequent international responsibility is to the disposal either negative or positive, which was confirmed by the International Court of Justice in the case of Corfu strait in 1948, when the Court decided to British responsibility for the positive disposal by removing mines from the territorial waters in Albania, and the Court decides responsibility for

²⁰ United Nations Human Rights Office of the High Commissioner, "Zeid urges accountability for violations in Yemen," August 25 (2016). From: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20411&LangID=E>. (Accessed 10 November 2016).

Albania and its disposal was considered negative by not report states that expresses the Corfu strait in the existence of mines in its territorial waters.²¹

2- Establishment of State an Illegitimate Act

That work is contrary to the rules of international law has been committed by the state, and entail international responsibility as a result of armed conflicts, and based on this responsibility to the litigation principle that the state perpetrated illegal act must be committed to compensation for the harm suffered.²²

Furthermore, confirmed was by international conventions that indicated the responsibility of states for the actions of its armed forces, such as: Article 3 for Hague Convention in 1907 concerning the Laws and Customs of War on Land and the responsibility of the state party to the Convention for the acts perpetrated by a member of its armed forces, which represent a violation of the Convention and the human rights of its people as far as compensation for damages caused to rights.²³

3- Damage to Human Rights

To ensure that damage to human rights because of the armed conflicts, there must be a continuous damage, the inability to restore rights to remain the same, that damage is achievement, the damage is serious, and there is a causal relationship between the damage on human rights and act happening because of armed conflicts.²⁴

All in all, these conditions are be achieved if available international responsibility because of armed conflicts and the obligation states to repair the damage and

²¹ Ahmed Humaid Al-Badri, Ibid, n 3, 103.

²² Ahmed Abou El Wafa, "Mediator in Public International Law," Arab Renaissance Publishing House, Cairo, (2004): 842.

²³ Article 3 of Hague Convention Respect Laws and Customs War Land 1907.

²⁴ Ahmed Abou El Wafa, Ibid, n 22, 825.

compensation for the impact on human rights of peoples. Of this and that, the researcher concluded that there should be the international protection of human rights as a result of armed conflict.

4.0 International Protection to Human Rights from Armed Conflicts

This research focuses on international rules and principles that protect human rights from armed conflicts, as Article 38 of the International Court of Justice on the international legal standards, and its role in protecting human rights of peoples from armed conflict. Following are:

4.1 International Conventions

Human rights claims evolve over time. There is a strong link between the growth of new human rights and international standard. As modern global society has matured, accompanied by deep ecological interdependence, new threats to the individual and the group have surfaced. To combat these threats, governments and non-governmental organizations (NGOs) have raised issues of human rights. Global cooperation between state and non-state actors is seen as critical to addressing this perplexing new agenda of world. Accordingly, the Use of human rights claims keeps growing. Complex social relations give rise to these demands as new claims are made to alleviate suffering. What appears fundamental in one historical era may not be in another. Human rights claims today have no relation to a primitive state of nature where people's lives were dominated by a few essential needs. Yet none of the better known descriptions of the state of nature mentions such a right. International human rights today are a product of this particular historical period. The International BiU of Human Rights incorporates civil,

political, economic, social and cultural rights. It acknowledges human needs of

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onal conventions provided for the protection of human rights from armed conflict, such as the first Protocol to the Geneva Convention of 1949, which represents the reaction of the international community, because of the wars of the United States against Vietnam, where there were harmful effects of human rights.²⁶ In addition, September 23, 2016 - signed the United Nations and the Republic of Iraq signed a cooperation agreement on the prevention of violence related conflict in Iraq.²⁷ In below statistics to Iraqi civilian deaths from armed conflicts:

MONTHLY IRAQI CIVILIAN DEATHS FROM ARMED CONFLICTS 2003 UNTIL 2016²⁸

²⁵ WILLIAM F. FELICE, *Ibid*, n 2, 39-40.

²⁶ Ahmed Humaid Al-Badri, *Ibid*, n 3, 27-28.

²⁷ UN Agencies in Iraq, International agreement on the prevention of conflict-related violence and respond to between Iraq and the United Nations, 2016. From: http://www.uniraq.org/index.php?option=com_k2&view=item&id=6052:2016-10-03-07-46-17&Itemid=556&lang=ar. (Accessed November 9, 2016).

²⁸ Iraqi body count the public record of violent deaths following the 2003 invasion of Iraq, 2016. From: <https://www.iraqbodycount.org/>. (Accessed 11-11-2016).

2003	3	2	3977	3438	545	597	646	833	566	515	487	524	12,133
2004	610	663	1004	1303	655	909	834	878	1042	1033	1676	1129	11,736
2005	1222	1297	905	1145	1396	1347	1536	2352	1444	1311	1487	1141	16,583
2006	1546	1577	1957	1804	2277	2584	3298	2865	2565	2996	3084	2898	29,451
2007	3017	2679	2726	2565	2844	2199	2694	2481	1387	1324	1124	996	26,036
2008	858	1092	1667	1315	914	750	639	704	612	594	540	586	10,271
2009	372	407	438	589	428	563	431	652	350	441	226	478	5,375
2010	267	305	336	385	387	385	488	520	254	315	307	218	4,167
2011	389	254	311	289	381	386	308	401	397	366	279	392	4,153
2012	531	356	377	392	304	529	469	422	400	290	253	299	4,622
2013	357	360	403	545	888	659	1145	1013	1306	1180	870	1125	9,851
2014	1097	971	1029	1037	1099	4084	1573	3336	1469	1732	1431	1321	20,179
2015	1486	1620	1099	2005	1289	1350	1839	1986	1439	1292	1015	1091	17,511
2016	1369	1238	1453	1182	1263	1393	1212	1363	928	2300	641		14,342

4.2 International Customs

International custom is a basic source from international humanitarian law, which is binding on all states. Either way proved the existence of custom, it shall be given to the overwhelmingly states in their actions during the armed conflicts, and even some international conventions draft from international custom rules, such as Hague Convention in 1907 provided for the verdicts customary, and confirmed that the Nuremberg German Court to consider the rules of the Hague Convention for the protection of the peoples from armed conflicts is the basis of the rules and customs of wars, and called on the court the validity of the rules of the Hague Convention on all states even which were not party to the Convention.²⁹

However, highlights the role of international custom by organizing aspects of the armed conflicts and the granting of protection for human rights of peoples, in spite of the presence of many international conventions governing armed conflicts, in

²⁹ Ahmed Humaid Al-Badri, Ibid, n 3, 58.

which case the international custom rules are binding on all states contrary to some international conventions may be binding the parties to it only.³⁰

4.3 General Principles of Law

Paragraph 1 of Article 38 of the statute of the International Justice of Court provided for the principles of public international law that civilized nations approved by a source of international legal rules that protect the human rights from armed conflicts as the general principles of law from legal systems of the international community, to afford these principles from justice and conciliation between the general interest of all countries. However, acquires the international protection of human rights by reference to general principles of international humanitarian law and its role in the protection, the general principles of the law-derived from the internal laws and their importance to the protection of human rights of the peoples from armed conflicts, as well as the general principles of human rights and acquires its importance to the fact that the aim of protection is the human rights of peoples.³¹

On the same regard, Article 57, paragraph 2 of the First Protocol to the Geneva Convention of 1949 made clear that the means of war if it was proportionate to the requirements of military necessity, the damage caused by the military action should always be proportionate to the military objective, and that this principle as one of the principles of international humanitarian law.³²

5.0 Conclusion

³⁰ Ibid, 59.

³¹ Ibid, 42.

³² Jean Marie & Louise Doswald, "Customary International Humanitarian Law, the International Committee of the Red Cross, Wright Advertising & Publicity, Cairo: 41.

For the vast majority of individuals on the planet, human rights remain a fantasy and dream, aspirations for some long-distant future to these individuals' human rights just do not seem feasible in today's world of intractable geopolitical rivalries, massive arms races and unspeakable human suffering. Human rights can also provide a fairy-tale façade which serves to disguise the often vicious nature of autocratic and/or highly inegalitarian societies. Acting 'as if certain rights were authentic often inhibits people's to recognize when they are in reality.' International human rights can, however, move beyond the realm of utopia and serve as the cornerstone of domestic and foreign balance. Only through public policy can human rights mitigate militarism. As outlined above, a human rights public policy agenda means moving towards positive peace and common security. If the global community is serious about this, bold and dramatic action is needed. The researcher has taken some recommendations, that a new Human Rights Council should be established to coordinate and organize the work of the UN High Commissioner for Human Rights, the UN Centre for Human Rights, the United Nations International Children's Emergency Fund (UNICEF), the UN Development Program (UNDP), the World Bank, the International Monetary Fund (IMF), the human rights components of the specialized agencies, and regional intergovernmental organizations. Also, the Human Rights Council could establish a framework that would enable these organizations to consolidate their efforts and prioritize human rights strategies for peace and development, as well as should be the Human Rights Council to establishment new international convention to protect human rights from armed conflicts. It is no longer enough just to point out the interrelationships between peace, demilitarization and human rights. Human rights strategies must direct policy towards peace and development. Human rights are not dreams, but tools to inform and guide institutions of States.

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