

**PROTECTION OF WOMEN AND
CHILDREN DURING ARMED
CONFLICTS UNDER
INTERNATIONAL
HUMANITARIAN LAW.**

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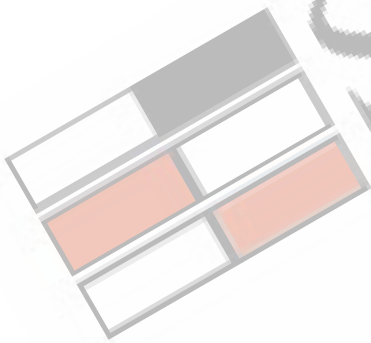
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“Injustice anywhere is a threat to justice everywhere.”

- by Dr. Martin Luther King Jr.

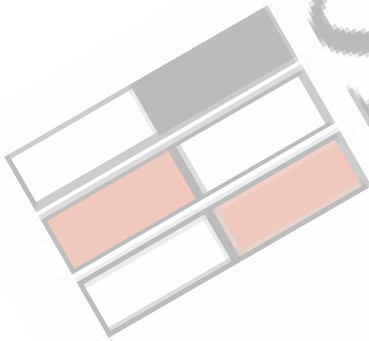
INTRODUCTION:

Wars and conflicts have rage around the world. Many of these wars go unreported, often due to the political expediency or lack of interest. In spite of the injunction of the preamble to the charter of the United Nations, which enjoins us to “*save succeeding generations from the scourge of war*”, we are witnessing an abomination- an abomination directed against children in the context of armed conflict, a larger and growing number of innocent children are suffering in the midst of armed conflict and its aftermath; children being killed children being made orphans, children being maimed, children being raped and sexually abused, children being deprived of education and health care and children being exploited as child soldiers and children left with deep emotional scars and trauma. Children are the least responsible for conflict; yet suffer disproportionately from its excess.

In armed conflicts which have taken place since the adoption of the four Geneva Conventions of 1949, statistics indicate more men and more women died than during World War II. The proportion of civilians among the dead, in some instances, was as high as 90%. Women and girls predominantly experience armed conflict as civilians and as such, are often exposed to acts of violence including: -

- Death and injury from indiscriminate military attacks and the prevalence of mines;
- Lack of the basic means of survival and health care;
- Limitations on their means of support themselves and their families.

More specific, but not exclusive to women and girls is the crime of sexual violence. Since wars began, rape and other forms of sexual violence have been used as a means of warfare to humiliate and subjugate the enemy. Violations such as rape, enforced termination of pregnancy are heinous attacks against the life and the physical and psychological integrity of the person, and are recognized as such under Humanitarian Law.



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Protection of Women during Armed Conflicts under International Humanitarian Law.

“All too often, conflict happens in societies that can least afford it, takes its toll on those who least deserve it and hits hardest those least equipped to defend themselves. civilians have become the main targets of warfare. From rape and displacement to the denial of the right to food and medicines, women bear more than their fair share of the burden.”¹

The Four Geneva Conventions of 12th August, 1949 (hereinafter referred to as G.C.-I, G.C.-II, G.C.-III, G.C.-IV and Additional Protocols of 1977 (hereinafter referred to as A.P.-I and A.P.-II) protect women both as members of civilian population not taking part in hostilities and also as combatants, fallen into the hands of the enemy. International Humanitarian Law gives expression in law to the fundamental principle of the equality of men and women, specifying this principle in clauses forbidding discrimination. The principle of equal treatment is extended by the further principle that “Women shall be treated with all the regard due to their sex.” (Art. 12, GC-I and GC-II, Art.14, GC-III). This particular regard is not legally defined, but regardless of the status accorded to women, it covers certain concepts such as physiological specificity, honour and modesty, pregnancy and childbirth².

¹ Secretary General, Kofi Annan, United Nations Day for Women’s Rights and International Peace, 6 March, 2000, Press Release, SG/SM/7325, WOM/1190. Extract from Special Report of Amnesty International on the International Criminal Court. Fact sheet 7.

² Commentary on the Third Geneva Convention, ICRC, Geneva 1960, Article 14, P.147.

International Humanitarian Law makes particular reservations concerning the female sex in various cases, either in general terms (“without prejudice to the provisions relating to their sex.....”) or in more specific terms (separate

dormitories, separate places or detention). One should not deduce from this that the principle of differentiated treatment is not applicable in cases where it is not specifically mentioned (protection against insults and public curiosity, questioning, searches, food, clothing, intellectual, educational and recreational pursuits, sports and games, labour, conditions for transfer, prisoners representatives, identification). An express reference tends to strengthen the scope of the principle, rather than to limit its application and differentiated treatment is accorded to women even if it is not explicitly mentioned³.

In an *International armed conflict*, women are among the persons protected by the Fourth Geneva Convention relative to the protection of civilian persons in time of war. In addition to the general protection from which all civilians benefit, “*women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution or any form of indecent assault*” (Art. 27, Para 2, GC-IV, Art.75 and 76, A.P.-I). This provision was introduced to denounce certain practices which occurred, for example, during the last world war, when innumerable women of all ages, and even children were subjugated to outrages of the worst kind: rape committed in occupied territories, brutal treatment of every sort, mutilations etc. In areas where troops were stationed or through which, they passed, thousands of women were made to enter brothels against their will..... Acts against which women, whatever their nationality, race, religious, beliefs, age, marital status or social condition have an absolute right to respect for their honour and their modesty, in short, for their dignity as women.⁴

³ [Ibid, Article 14, P.147].

⁴ Commentary on the Fourth Geneva Convention, ICRC, Geneva 1958, Art.27, PP.205-206.

In a *non-international armed conflict*, women are protected by the fundamental guarantees governing the treatment of persons not taking part in hostilities

which are contained in Article 3, common to all four conventions. However, this article does not provide special protection for women. Additional Protocol

II completes and develops this provision. Its Article 4 expressly forbids *“outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault.”*

Countries at war generally take some measures for the benefit of persons whose weakness in one respect or another warrants special care. These measures are varied in scope and application; they may cover the granting of supplementary ration cards, facilities for medical and hospital treatment, special welfare treatment, exemption from certain forms of work, protective measures against the effects of war, evacuation, transfer to a neutral country.⁵

“Pregnant women and mothers of children under seven years shall benefit by any preferential treatment to the same extent as the nationals of the State concerned” (Art.38, GC-IV). Likewise, the occupying power shall not hinder the application of any preferential measures.... Which may have been adopted prior to the occupation in favour of children under fifteen years, expectant mothers, and mothers of children under seven years.” (Art.50, GC-IV).

Further, the four Geneva Conventions of 1949 are silent on death penalties being imposed on women. Additional Protocol-I makes up for this deficiency, drawing inspiration from the International Covenant on Civil and Political Rights which entered into effect on 23rd March, 1976. Its Article 6, para 5, provides that a death penalty must not be executed on pregnant women. It

⁵ Commentary Fourth Convention, Art.38, P.248.

was not possible, however, for the authors of the protocols to prohibit absolutely in the event of an International Armed Conflict, the pronouncement of the death penalty on pregnant women and the mothers of young children.

Such a prohibition would run counter to specific provisions in the national legislation of a number of countries. Nevertheless, International Humanitarian Law recommends that such pronouncements be avoided to the utmost possible extent. With regard to the actual execution of the sentence, it was relatively

easy for the authors to agree to forbid the execution of pregnant women. The fact is that many national legal codes which still provide for the death penalty also recognize this restriction. The barbarous practice of postponing an execution until the birth of the child has been abandoned almost universally, both in law and in fact.⁶ *To the maximum extent feasible, the parties to the conflict shall endeavour to avoid the pronouncement of the death penalty on pregnant women or mothers having dependent infants, for an offence related to the armed conflict. The death penalty for such offences shall not be executed on such women.*" (Art.76, Para 3, A.P.-I).

In *non-international armed conflicts*, Additional Protocol II also makes up for the previous absence of such a protective clause. The protocol goes even farther than the International Covenant on Civil and Political Rights. It specifies that *"the death penalty shall not be carried out on mothers of young children."* (Art.6, Para 4, A.P. II).

International Humanitarian Law undoubtedly gives extensive protection to women. They benefit from all the provisions which protect the victims of armed conflicts in general. In addition, among, the approximately 560 articles

⁶ Commentary on the two 1977 protocols.... Art.76, PP.472-473.

in the Geneva Conventions of 1949 and the Additional Protocols of 1977 about 40 are of specific concern to women.⁷

Protection of children during Armed Conflicts under International Humanitarian Law.

“UNICEF is insistent on the need to fight atrocities against children....., including rape as a weapon of war, by deploying a permanent, fully empowered International Criminal Court. The purveyors of genocide and ethnic cleansing and other inseparable crimes must be made understand that as surely as the sun rises, they will be called to account- and that impunity will not stand.”⁸

In International Humanitarian Law children are entitled to general protection as persons not taking part in hostilities, and to special protection owing to their particular vulnerability. Children taking part in hostilities are, however, also protected. Article 25 of the Universal Declaration of Human Rights recognizes that mothers and children are entitled to special care and assistance and that all children have the rights to social protection.

Several provisions of International Humanitarian Law grant children special protection adapted to their needs. This special protection derives from the general principle which states that *“children shall be the object of special respect and shall be protected against any form of indecent assault.”* (AP-I, Article 77), and that they *“shall be provided with the care and aid they require.”* (A.P.-II, Art.4).

⁷ Francoise Krill: The protection of women in International Humanitarian Law, extract from the International Review of the Red Cross; November-December 1985; P.25.

⁸ Carol Bellamy, Executive Director of the United Nations Children’s Fund, address to the opening session of the Hague Appeal for peace. The Hague, Netherlands, 12 May, 1999. Extract from special report of Amnesty International on the International Criminal Court, Fact Sheet 8.

A series of obligation arise from this general principle acknowledging the need for special protection and make it more specific.

Among the most important of these are: -

- That children must be evacuated from besieged or encircled areas (GC-IV, Arts.14 and 17).
- That they have the right to receive care and aid by the dispatch of medicines, foodstuffs and clothing (GC-IV, Arts. 23, 50, 81, 89 & 91, AP-I, Art.70).
- That they have a right to the maintenance of their cultural environment, to education and to the preservation of family unity (GC-IV, Articles 24, 25, 26, 50, 51, 82 and 94; A.P-I, Articles 74 & 78).
- That if detained or interned, they must be held in quarters separate from the quarters of adults (AP-I, Art.77).
- That it is prohibited to impose the death penalty on children under 18 years of age (GC.-IV, Art.68, AP-I, Art.77).
- That it is prohibited to recruit children under 15 years of age into the armed forces (AP-I, Art.77, AP-II, Art.4).

Apart from four Geneva Conventions of 12th August, 1949 and Additional Protocols of 1977, the United Nations Convention on the Rights of the Child, 1989 also confer protection on the children. In the words of the preamble to the

1989 Convention on the rights of the Child, *“the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the charter of the United Nations.”*

Article 38(2) of the Convention requires State parties to take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities. Further, Article 38(3) requires State parties to refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years, but have not attained the age of eighteen years State parties shall endeavour to give priority to those who are oldest.

Under the statute of the International Criminal Court, conscripting or enlisting children under the age of fifteen years or using them to participate actively in hostilities is a war crime in both International and Non-International armed conflicts (Art.8).

In an ideal world, the child’s best interest lies in never having to join an armed group and in never having to live under conditions, which make that the only choice is the other battle for survival.⁹ Article 77(1) of Additional Protocol - I requires the parties to the conflict to provide children *‘with the care and aid they require, whether because of their age or any other reasons.’* The reference to *‘age or any other reason’* can be interpreted to include the trauma resulting from involvement in combat and as therefore, implying an obligation to provide appropriate counseling or other rehabilitation services. Such a view is supported by Article 39 of the Convention on the rights of the Child:

⁹ Child soldiers by Guy Goodwin- Gill & Ilene Cohn. P.123.

State Parties shall take all appropriate measures to promote the physical and psychological recovery and social re-integration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. __Such recovery and re-integration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Neil Boothby suggests that 'the former child soldier needs to be forgiven by society, sometimes by the very people who have been victimized by his actions.¹⁰ So, forgiveness and reconciliation of children taking part in hostilities should be the motive of high contracting parties of Geneva Conventions. Torture and hard punishments to children for their war crimes can ever be a solution and can be counter productive.

EPILOGUE

The discussions in this paper, on provisions regarding protection of women and children during armed conflicts, clearly shows that there is no insufficiency as far as rules in the book is concerned. The four Geneva Conventions of 1949 and Protocols Additional to them of 1977 are vociferous enough to clearly lay down the principles to be followed by the high contracting parties during an armed conflict. Unfortunately for the human race satisfactory implementation of the provisions of Geneva Conventions and Additional Protocols is still a distant dream. Since, the adoption of these conventions and protocols there had been a number of violations.

If we take example of Iraq, the Human Rights violations by the occupying forces of United States have been innumerable. Such violations and degradation of Human dignity by the forces of a State which hails itself as a civilized Nation is pathetic and brings to fore the hypocrisy practiced by the

¹⁰ Neil Boothby, Living in the War Zone, World Refugee Survey-1989 in Review, P.41.

International Community. More recently the attack by Israel on Lebanon, in the name of self defence, shows the excesses being made by a militarily powerful country over the weaker one. The Israel, in its so called self defence, has attacked and destroyed many undefended cities of Lebanon resulting in destruction of infrastructure and deaths of many innocent civilians.

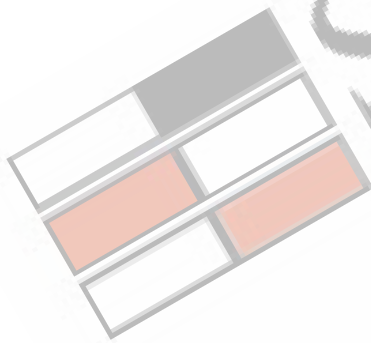
My suggestions for the protection of women and children during armed conflicts is that the International Community should make the implementation of International Humanitarian Law more potent. An implementation machinery which is powerful enough to make countries like United States, Israel, United Kingdom, China etc. accountable for their violations of provisions of International Humanitarian Laws and Humanitarian Rights. So that the civilians of the countries which have been invaded or attacked feel that justice has been imparted.

In the present day world, where the States are sitting on a time bomb of war, which is ticking very fastly towards explosion, the International Statutory Bodies, Courts and Tribunals overlooking the justice system for prevention of any war crime or Genocide should be more impartial in its actions and transparent in its working. The children of Afghanistan and Iraq should not feel that they are enslaved by a occupying power, the children of Lebanon and Palestine should not live in a constant fear of being attacked by Israel. Such fear and sense of enslavement makes a bad impact on young minds and push them to the brink where they are brainwashed by the radicalists and turned into terrorists or human bombs.

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