

Dr. Javed Ahmed Qureshi

School of Studies in Law

Jiwaji University

GWALIOR - 474 011 (MP), INDIA

Dr. Javed Ahmed Qureshi

LAW

B.A.LL.B. X-SEM

HUMANITARIAN AND REFUGEE LAW

BY

Dr. JAVED AHMED QURESHI

DATE- 01-04-2020

SOME OTHER INFORMATION ABOUT HUMANITARIAN LAW

Basic Rules of International Humanitarian Law

They can be expressed as follows:

Individuals not taking an active part in life, physical and moral integrity, or hostility, should be respected. They must be humanely protected and treated without discrimination under all circumstances. It is forbidden to Kill or injuring an enemy who surrenders or is combating an enemy . The wounded and the sick must be collected and taken care of by the party. Protection also includes medical personnel, installations, transportation and equipment. The Red Cross or Red Crescent symbol should also be respected. The lives, dignity, personal rights and punishment of captured combatants and civilians caught under the authority of an adverse party must be respected. They should be protected avoid all acts of violence and rebellion. Everyone has the right to benefit from the fundamental judicial guarantee. No one shall be responsible for doing what he or she has done. No one shall be subjected to torture, corporal punishment or cruel and degrading treatment.

There is no unlimited choice of methods and means of war in favor of a conflict. It is prohibited to employ weapons or methods of warfare of nature so as to cause unnecessary harm or extreme suffering. Parties to a conflict shall at all times distinguish between the civilian population and combatants in order to spare civilian population and property. Neither the civilian population as such, nor civilian persons shall be the object of attack. Attacks shall be directed solely at military objectives.

Acts are prohibited in armed conflicts

International humanitarian law aims to limit the effects of violence on civilians by regulating the way in which the parties to an armed conflict conduct military operations The IHL thus prohibits makes the civilian population or individual civilians the object of the attack, starving of civilians as a method of war or launching indiscriminate attacks affecting

civilian populations or civilian objects. In addition to the rules on hostilities conduct, the IHL seeks to protect civilians who find themselves in the midst of an enemy armed conflict. It specifically prohibits murder, torture, mutilation, rape, corporal punishment, collective punishments, the taking of hostages or the denial of fair trial rights to civilians subject to criminal process. All of the above acts, and many others, are considered war crimes.

Human rights law also applies in armed conflict.

International human rights law is valid in all circumstances and at all times, including in situations of armed conflict. However, in emergency situations, state parties to certain international treaties may have to be exceptionally humiliated (temporarily suspending their obligations) from certain civil and political rights under strictly defined circumstances. Yet there are certain rights that can never be suspended - not even in war.

The International Covenant on Civil and Political Rights provides that the following rights may never be derogated from:

- **The right to life;**
- **The prohibition of torture or cruel, inhuman or degrading; treatment or punishment;**
- **The prohibition of slavery and servitude;**
- **The prohibition of retroactive application of criminal law;**
- **The right to freedom of thought, conscience and religion.**

Most human rights treaties, among them the International Covenant on Economic, Social and Cultural Rights or the Convention on the Rights of the Child, do not provide for the possibility of offending at all.

Some Types of Human Rights are Usually Violated in an Armed Conflict

Typically, an armed conflict will result in the violation of a wide range of human rights of civilians. The right to life would certainly be violated, as well as the right to freedom and safety of the individual and often, the right not to be tortured. Probably there will be grave abuse of economic, social and cultural rights, for example in the context of conflict-induced humanitarian emergency. What's more, armed conflict often occurs and forces

widespread discrimination - whether on racial, ethnic, religious or other grounds. Very often women and children will suffer untimely and will be specifically targeted for abuse and assault.

Refugee status was determined when thousands of civilians were fleeing armed conflict

In situations of armed conflict, citizens generally have large-scale activities across international borders, thereby hindering their ability to conduct case-by-case interviews and personal positioning. In those cases, fleeing civilians may be given protection based on prima facials, meaning that they are believed to have fled in a situation where civilians are targeted and persecuted.

Non-state actors have obligations under international humanitarian, human rights and refugee law

The rules of international humanitarian law are binding on both states that have ratified the respective treaties and on non-state actors (rebels and other armed groups) in non-international armed conflict. It is clear that international humanitarian law will be considered null as long as it does not apply to all parties to internal armed conflict. Individuals belonging to armed groups - as well as government officials - can be held criminally responsible internationally for war crimes committed in non-international armed conflict.

Human rights law is, primarily, designed to protect individuals from state abuse and is generally not considered to bind nonstate actors. However, according to non-state actors there is a growing body of opinion - especially if they exercise government - such as work in a given field - that can be expected to respect human rights. Under international refugee law a person may be recognized as a refugee on the grounds that he or she has a well-established fear of persecution by a non-state actor. Members of non-state armed groups — along with government officials — can also be held personally criminally responsible in situations where violations committed constitute crimes under international law (genocide, crimes against humanity). Practice in many countries is also showing that, non-state actors, such as insurgent groups, can be successfully observed for compliance with human rights treaties such as the Convention on the Rights of the Child (e.g. on issues such as child soldiers).

Rules on Humanitarian Assistance in Armed Conflict

“Humanitarian assistance in situations of armed conflict is primarily regulated by international humanitarian law. In international armed conflict, the basic rule is that a state must accept relief actions for the civilian population of any territory under its control (other than occupied territory, mentioned below) when the population is not adequately supplied and when relief, which is humanitarian and impartial in nature, is available. Refusing a relief action is thus not a matter of discretion and agreement could be withheld only for exceptional reasons. In any event, offers of relief shall not be regarded as interference in the armed conflict or as unfriendly acts.”

The basic rule in relation to the occupied territory is that the occupying power has a duty to ensure the supply of food and medicine to the population and that it must bring in essential foodstuffs, medicine and other articles if the resources of the occupied territory are inadequate. If, however, the entire or part of the population in an occupied area is insufficiently supplied, the occupying power must agree and facilitate relief plans by all means at their disposal.

Similar rules also apply in non-international armed conflict. Humanitarian agencies can offer their services, and the state involved should theoretically allow humanitarian assistance.

Humanitarian Law	Human Rights Law	Refugee Law
<p>Fourth Geneva Convention, Articles- 23, 55, 59, 60-63:</p> <p>Passage of relief supplies in blockades; obligations of Occupying Power to provide itself for civilians or to permit humanitarian</p>	<p>International Covenant on Economic, Social and Cultural Rights, Articles 11 and 12:</p> <p>The right to an adequate standard of living, including adequate food, clothing and housing; the right to health.</p>	<p>Convention Relating to the Status of Refugees, Article 35:</p> <p>The Contracting States undertake to cooperate with UNHCR in the exercise of its functions, and shall facilitate its</p>

<p>assistance to population of occupied territory.</p>		<p>duty of supervising the application of the Convention.</p>
<p>Additional Protocol I, Article 70:</p> <p>Relief actions in favour of the entire civilian population may be conducted with the consent of the parties to the conflict. Offers of such relief shall not be considered interference in the armed conflict or an unfriendly act.</p>	<p>International Covenant on Civil and Political Rights, Article 6:</p> <p>The right to life.</p>	<p>This article guarantees access to ensure that all rights that are afforded to refugees according to the Convention are respected.</p> <p>Like other humanitarian organizations, UNHCR provides assistance and protection on the basis of international humanitarian and human rights law.</p>
<p>Additional Protocol I, Article 54:</p> <p>Starvation of civilians as a method of warfare is prohibited.</p>	<p>Convention on the Rights of the Child, Articles 6, 22 and 38:</p> <p>The right to survival and development, including food, medical treatment and shelter.</p>	
<p>Article 3 common to the Geneva Conventions:</p>		

An impartial humanitarian body, such as the ICRC, may offer its services to the parties to the conflict.

**Additional Protocol II,
Article 18:**

If the civilian population is suffering hardship, relief actions shall be undertaken subject to the consent of the party concerned.

Article 14:

Starvation of civilians as a method of combat is prohibited.

Articles 4 and 7:

protection of children, the wounded and sick.

References

www.unicef.org

Date – 01-04-2020

Dr. Javed Ahmed Qureshi