Rights of civilians in armed conflict under international law

 A look at the Syrian civil war

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Abstract

Civil disputes are a good platform for widespread and systematic violations of human rights and humanitarian law and the growth of terrorist activities. Obviously, in the course of these conflicts, acts such as murder, torture, hostage-taking, rape, brutal and violent of against civilians, especially women and children, are commonplace. In the Syrian crisis, which is a prime example of domestic armed conflict, it has been the scene of popular protests since January 2011 calling for some political and economic reforms in the country. But after a while, these protests began to develop violence because of the lack of response and, of course, the involvement of foreign agents. Now evidence suggests that this civil crisis has turned into armed conflict based on the criteria defined in the humanitarian documents, which resulted in the deaths of more than a hundred thousand displaced millions of Syrian citizens. The rules governing civil armed conflicts impose minimum obligations regarding the protection of civilians, as well as the use of means and methods of combat to the parties to the conflict, which may lead to their violation of these obligations. Accordingly, the present study was conducted through a descriptive-analytical method to examine the civil rights of armed conflicts in international law with a view to the civil war in Syria.

Key words: Armed Conflict, Civilians, Syria, Civil War

Introduction

The contemporary world, especially in the last decade of the twentieth century and the beginning of this century, witnessed the occurrence of dozens of civil wars that violated fundamental norms and ignored human values. These wars have already killed millions of innocent people. Meanwhile, the acquisition of interests and privileges by global and regional powers, as well as the benefits that these conflicts give to military dealers, has prevented an inclusive and comprehensive approach to dealing with them. civil conflicts are always a good platform for widespread and systematic violations of human rights and humanitarian law, as the beginning of the conflict, the introduction of acts such as murder, torture, rape, Ravishment and committing violent acts against civilians, especially women And children, and most importantly, the growth of terrorist activities. In the latest civil war, the Syrian crisis, there has been a flagrant violation of many fundamental principles of human rights and humanitarian law every day. In particular, the use of chemical weapons in this war and the increase in terrorist operations in Syria led to the international community's response to the adoption of several Security Council resolutions. However, so far, the Security Council's efforts to maintain international peace and security as well as the Arab League and regional efforts to end the Syrian crisis have not been successful. So, in this research, we are looking to answer the question of how civil rights in armed conflicts are in the Syrian civil war.

The formation of the Syrian crisis

The Syrian crisis began in January 2011 with peaceful protests that were partly influenced by the political developments in the Middle East, called "Arab Spring," or as a "Islamic Awakening", calling for some political and economic reforms in the country. Unlike most of the region's movements, in which the rulers were almost able to surrender to the demands of the people, the opposition movement in the Syrian regime and popular protests, after a while, were drawn to the violence of the government as a result of the government's lack of accountability and the involvement of foreign agents. Following the spread of violence and the death of a large number of people, some soldiers and officers were separated from the Syrian Army and formed a force called the "Free Syrian Army". The Free Syrian Army, along with the Syrian National Assembly, opposed the Syrian army. The Syrian government, with the terrorist reading the opposition, claims that the opponents are all armed and are carrying out terrorist acts and collapse the country's security based on the longstanding ethnic and religious disagreements that are rooted in the Syrians. Also, the support of foreign countries. So for Safeguarding security against military the army is inevitable and confronts with its armed opposition and its terrorist activities. Syrian ambassador to the United Nations, Bashar Jafari, has repeatedly denied the existence of a civil war in Syria, saying his government was fighting with Saudi-Qatari-supported terrorist groups And some Western countries whose goal is to destabilize Syria and change the regime in the country.

In general, the roots of the current Syrian crisis can be explained at the domestic, regional and international analysis level. The starting point for the Syrian political crisis in 2011 was to major protests in the periphery, cities and towns of Syria to fight corruption, lack of social justice, religious discrimination and lack of political reform. In this regard, the Syrian regime has also agreed with these requests, and corrective action has been taken in this regard. Although the depth of the crisis in Syria has been drawn to the civil war, but in general, the Syrian minority, Sunni nationalists and secularists, the Alawite minority and Druze have little desire to join the opposition, because they are concerned about the formation of a Salafi radical government In Syria that will harass them. On the other hand, the common interests and affinity between the army, the Syrian security and political forces, as well as the legitimacy of the anti-Zionist discourse of the Syrian regime have made the people. in Regional and international dimensions is related to regional and foreign interventions. Hence, the comprehensive support of the media, finances and arms of the Western and Arab conservative stream along with the West support has fueled the internal crisis in Syria.

Separation of military personnel from civilians

The division of combatants from non-combatants into the realm of ground warfare raises many issues. This separation bases itself on the notion that hostile operations are not a work that everyone can do and anyone can not be a combatant, but, according to international law, members of regular armed forces are known as combatants. Armed combatants have certain rights, such as the right to fight, the right to defense, the right to the wounded and the prisoners of war, and are responsible for specific duties, including the observance of the laws and regulations of war. In this regard, hostile countries may attack. Along with Regular fighters there are irregular fighters who have an exceptional status in terms of international law. Apart from regular and irregular fighters, non-combatants or civilians have certain rights and duties. Including that they should avoid hostile acts to be respected by the enemy.

Civilians: The basic principle governing the law of war is that civilians, who are not involved in the war, are protected by international law and must be outside the enemy's operations, and in the present day, with regard to the use of air weapons and The weapons of mass destruction that are used blindly, and damage to civilians and military personnel in urban areas, The implementation of the aforementioned principle has been challenged. Protecting civilians primarily involves technical means. The distribution of gas masks, the manufacture of shelters against air strikes or atomic bombardments, the transfer of people to remote areas of the internal or even neutral countries, but these actions due to the unpredictability of the type of attack of the enemy and ... have limited effect . So protection should be provided through another way. The Geneva Conventions of June 12, 1949, provide for special provisions for the protection of civilians during the war, and most of its articles are about determining the legal status of civilians in the occupied territories. (Articles 47 to 135 of the treaty)

The basic principle is that the civilian population should be targeted. (Article 12, paragraph 2, of Protocol No. 2), on the other hand, they should not engage in hostilities. Otherwise they will lose their civilian character. Civilians who are not engaged in hostilities are protected by international law.

The Additional Protocol No. 1 in the second chapter, states "Persons who are not civilians, who are not members of the Armed Forces of the Parties to the conflict and do not engage in the hostile acts of war are civilian". According to this definition, if an individual is a member of the Armed Forces is considered combatant otherwise civilian and the enemy cannot target him unless he directly contributes to the conflict. In this regard, two important points are: first, in the event of doubt as to the status of a person in terms of military or civilian status, that person is a civilian; and moreover, the scattered presence of combatants among civilian inhabitants civilians does not destroy civilian trait of the inhabitants. And they continue to enjoy the protections outlined in human rights documents.

In a final conclusion, one can say that a civilian is not a military one. A civilian is protected by international humanitarian law, except in one case and when it has direct involvement in armed conflicts.

Supporting civilians during armed conflicts is in accordance with the following general principles:

A. Observance of distinction between military and civilians (principle of separation)

B) Prohibition of attacks on civilians, including attacks on them as retaliation;

(C) Prohibition of acts aimed at creating fear among civilians;

(D) Take all precautionary measures when attacking civilian population.

 Legal Status of Civilians: The legal status of civilians has changed in relation to the past due to the change in the nature of armed conflicts. The nature of contemporary armed conflict is such that civilians are more exposed than the past to the effects of the war. Today, the scope of the conflict is not limited to soldiers on the battlefield, but civilians also have the capability to engage in armed conflicts and target the enemy. Contemporary humanitarian law calls this action direct participation in hostilities. Referring to direct participation in hostilities means that we also have indirect participation. In this way, a civilian can take part in conflicts indirectly. The purpose of indirect participation is that in a civil or international conflict, a civilian can engage in feelings of engagement with one of the parties, even to promote one's side, sell, donate money. Surely, this reaction never means direct participation. Instead, direct participation it is such that the civilian person hurts and damages the enemy. For example, the person firing a shotgun at the enemy, there is no doubt that the enemy is harmed and this is a direct partnership. Indirect participation does not exclude the civilian immunity, but it eliminates direct civilian immunity, and for this reason, the enemy can attack him or arrest him.

In case of arrest, enemy cannot act arbitrarily with him, but must observe minimum human and humanitarian law requirements. Peace conferences of 1899 and 1907 Hague had somewhat narrower provisions regarding the civilian legal status, but the bitter and terrible consequences of two World Wars, especially World War II, revealed the inadequate support of civilians, and was the beginning of thinking that those civilians should be supported more than before. In this regard, the Fourth Geneva Convention of 1949 and its two Additional Protocols were drafted in 1977. The aforementioned documents provide a coherent and acceptable set of rules to provide more support to civilians. However, governments involved in armed conflicts may violate these regulations. For example, the Iraqi government has repeatedly ignored the rights of civilians in the war with Iran.

Syria's commitment to humanitarian law

States parties to humanitarian law treaties are required to observe the rules contained in such treaties on the basis of the " pact sunt servanda ". They must use their full power to comply with and guarantee the observance of humanitarian law. In other words, when the state enters into the international humanitarian law treaty, it will take all the obligations contained in that treaty. Therefore, the government may be held liable for breach of its obligations under the relevant laws.

Regarding the commitment of the Syrian government to humanitarian law, since this government is a member of the Geneva Conventions, it is bound to comply with the provisions of Article 1, in particular Article 3, of the Geneva Conventions, in the form of both contractual obligations and common law (Due to the common nature of these articles). The International Court of Justice in Nicaragua, in 1986, stated that the joint article 3 would "constitute the minimum criteria" is applicable to any armed conflict, reflecting the same notions as the Court in Corfu case referred to in 1949 as "the fundamental considerations of humanity" has done. Since this article embodies the most fundamental principles of respect for human dignity, all hostile parties must observe it as “imperative laws" in its civil conflicts. Therefore, its provisions are binding on all governments, including non-members.

Also, although the Syrian government has not acceded to the Second Additional Protocol, at least it "is required to observe the fundamental guarantees provided for in article 2, paragraph 4, and article 6 of the protocol, which are consistent with article 3, and have found a common aspect". Therefore, there is no doubt about the fact that some of the provisions of the protocol are fundamental in nature and are binding on non-state governments. On the other hand, other Security Council resolutions issued on the subject of humanitarian law, as well as on the state of affairs, are binding on the Government of Syria in accordance with Article 25 of the United Nations Charter. In addition to contractual obligations, the Syrian government is committed to respecting the customary humanitarian rules governing civil conflicts. The most important role of the common humanitarian rules deriving from the practice and functioning of national, regional and international courts and tribunals, as well as statements by governments, international organizations and a group of military forces, is in the area of ​​civil armed conflict, which goes beyond the scope of the rules of arrangements and provisions set out in Article 3 and the Second Additional Protocol And eliminates the gap in the rules of the treaties governing civil armed conflicts, in particular with regard to the prohibition and limitation of weapons and the methods of warfare .Other benefit of common law is its universality. Thus, the provisions of treaties expressing the principles of customary law are for all Governments, both member and non-member.

In the meantime, the common rules governing civil armed conflict, in addition to protecting civilians, wounded and persons at risk of armed aggression, includes rules and regulations on the prohibition and limitation of certain weapons , as well as rules and regulations on Fundamental guarantees and outrageous behavior regularity of the parties to the conflict. Therefore, the need for the Syrian government to adhere to them in the civil conflict is inevitable. In addition to the Syrian government's commitment to humanitarian law, given its membership in human rights instruments, such as the Covenant on Civil and Political Rights and the Covenant on Economic, Social and In the cultural context, the aforementioned government is required to observe and enforce the human rights principles set forth in the covenants during the conflict because, as the International Court of Justice, in its advisory opinion on the construction of a retaining wall in the Occupied Territories, stated: The supports stipulated in human rights conventions have not been suspended in armed conflicts, but the rules on the violation of human rights clauses, as set forth in article 4 of the Civil and Political Convention, remain valid. "

Commitment of insurgent and armed groups to the rules of humanitarian law

It is generally accepted today that international humanitarian law is binding on organized armed forces, because, if these groups are organized sufficiently, they, as a party to armed conflict, are committed to the humanitarian law treaties. But in response to why organized armed groups are bound by humanitarian law, five perspectives have been expressed;

- Legislative jurisdiction of the government: According to this view, the Government's jurisdiction in legislation for its citizens creates the right for the state to impose all its obligations under international law, even if those persons are at war with that State or another armed groups. In this regard, the interpretation of International Committee of the Red Cross is considered. According to the committee's interpretation, the international obligations that a state undertakes not only bind the state itself, but also bind all relevant authorities and all individuals within the territory of that state.

- The armed opposition groups are required to comply with humanitarian rules because members of these groups, like other people and citizens of a country, are committed to humanitarian rules. In other words, people who are directly in humanitarian law must obey it, and if they violate these rules, they will have criminal responsibility. Such assignments and obligations are applied to all persons, whether they are official combatants and members of armed forces of the armed forces of the international armed forces or members of the armed forces of a non-international armed conflict or as ordinary people.

- The View of Pseudo-governmental function: According to this view, organized armed groups are obliged to observe humanitarian rules because they exercise functions and duties in a twofold way.

- International legal personality view: According to this view, organized armed groups are required to abide by customary humanitarian rules because they have some kind of international legal personality. The Sudanese Darfur Investigation Commission on International Legal Personality stated: "All insurgents who exercise effective, durable, and systematic control over the land (having an international legal personality) are committed to the common international rules relating to civil armed conflicts.

- Another basis for the commitment of organized armed groups to humanitarian rules is their satisfaction. Regarding previous perspectives, it is believed that international humanitarian law for organized armed groups, despite their will, and even in some cases contrary to their will, is obligatory, but in this view, their satisfaction as the main basis of obligation of humanitarian law is considered for them.

In the commitment of the armed groups and the insurgents, in reference to the minimum standards of international humanitarian law, we can also refer to the instruments and rules governing civil conflicts. Under Article 3, parties to the conflict are prohibited from committing acts such as violations of life, massacre, amputation, torture and cruel treatment, human dignity violation, humiliation and insult, hostage-taking, and trial and execution without observance of judicial safeguards.

It should be noted that the term "the parties to the conflict or any of the enemy" referred to in Article 3, include the government party, or the person who claims the legitimacy of the government, and the group that rebelled against the government and conduct armed conflict with the government. The International Committee of the Red Cross (ICRC), in its interpretation of Article 3, agrees that the insurgents' duty to respect human rights and humanitarian law is due to the fact that individuals are also subject to right and duty in the international level. The insurgency's commitment to compliance with the provisions of Article 3 of the common law is essential to its nature, since this article contains fundamental rights that no one is permitted to violate. Therefore, one of the foundations of the commitment of insurgents and armed groups to the humanitarian rules is the same article, but in another important source of civil conflicts, the Second Additional Protocol, because of the opposition of governments, there is no explicit regulation and expression addressed to insurgents and armed opposition groups on humanitarian obligations. In fact, most of the governments participating in the diplomatic conference, which led to the adoption of the protocols, were unwilling to legally treat the insurgents and armed opposition groups as government officials. Therefore, the inclusion of any kind of phrases and explicit statements to "hostile parties" in the text of the protocol was refused. However, the absence of a similar mechanism (as mentioned in Article 3) should not be interpreted in the Second Additional Protocol, which would mean the rebellion is exempted from the implementation of international humanitarian law, since in this case the principle of equality of the Contracting group are ignored in the military battle.

In addition, from some protocol provisions, the commitment of non-state actors is taken into account, that the insurgents and armed opposition groups are said to act under a "command" and able to enforce the protocol (Article 1 of the protocol), and As much as possible, promote the provisions of the Protocol (Article 19 of the Protocol) implies that opposition armed groups must respect international humanitarian law and Are responsible for the actions of persons known to be part of these groups,.

Also, the obligation contained in paragraph 3 (c) of article 4 of the Protocol, which relates to the prohibition of the employment and use of children under 15 in armed conflicts, includes both the military forces of the state and the armed opposition groups and insurgents. In addition, the commitments contained in the Optional Protocol to the Convention on the Rights of the Child on the prohibition of the use of children under the age of 18 in the conflicts, adopted in 2000, are being addressed to all parties to the conflict, including non-governmental organizations.

According to paragraph 1 of article 4 of the protocol, armed groups, apart from government armed forces, should not under any circumstances engage persons under the age of 18 in war. Concerning the binding nature of the provisions of the Second Additional Protocol, as opposed to the armed groups, and also the ISIS and al-Nusra terrorist groups, it should be seen whether these groups have the conditions set forth in paragraph 1 of Article 1 of the Protocol so that provisions of the Protocol enter into force for them. As stated above, the Second Additional Protocol stipulates the fulfillment of three conditions for the occurrence of non-international armed conflict and the inclusion of its provisions: the presence of the responsible commander, having control over a part of the land, so that insurgents are able to carry out is consistent and stable military operations and have the ability to enforce protocol provisions.

It seems that the armed groups opposing the Syrian government, as well as the terrorist groups, have the first and second conditions of the Second Additional Protocol, because of domination of a part of the Syrian soil and having a coherent command and extensive military operations using heavy weapons. But the fulfillment of the third condition, the ability to enforce protocol provisions, is at least unexpected by the terrorist groups. But, on the assumption that all of the conditions contained in the Additional Protocol are not realized, the rebels or terrorists, are considered hostile and their hostile acts were still considered as non-international armed conflicts, in which case they would be subject to Article 3 of the Convention and other humanitarian rules governing civil hostilities. Therefore, in such a situation and "logically, there is a reasonable expectation that among the armed forces the rules applicable to civil armed conflicts should be observed".

The United Nations pillars for various occasions remind the insurgency's commitment to respect humanitarian law during armed conflict. The resolutions of the Security Council, as part of the resolution of the civil conflicts, many times addressed to "hostile parties", and called for humanitarian law to be respected. For example, in the resolutions on Afghanistan, Guinea-Bissau, Sierra Leone, Liberia, El Salvador, Libya and Syria ... address the need for the parties to the conflict, including non-state actors, to respect human rights and humanitarian law.

The Security Council explicitly calls on all parties involved in the conflict to respect humanitarian law means that, in addition to government forces, insurgent forces also have such a task. Because of such a task, the International Law Commission also states in article 10 of the 2001 State Responsibility Plan that the behavior of the insurgent movement is considered, in accordance with international law, as an act of that government when they are in power and succeeds in forming a new government. In its interpretation and explanation of this article, the International Law Commission believes that it is necessary to independently and directly recognize the insurgent movement and its like, because of violations of human rights by its members.

The 1244th UN General Assembly resolution is another basis for the commitment of non-governmental groups to human rights and humanitarian law. The Assembly states in these resolutions that all governmental and non-governmental officials responsible for warfare must comply with the principles contained in the Geneva Conventions.

The Assembly, in its resolution 3032 of 1972 on respect for human rights in armed conflict, calls on all parties to "provide training on the humanitarian rights applicable to their armed forces". In its resolution adopted at the Berlin Summit in 1999, the International Law stated that "States and non-state actors involved in armed conflict is legally responsible for the observance of humanitarian law in all circumstances vis-a-vis others and all members of the international community ... and can not escape its commitments in this regard by denying armed conflict. "

Also, in paragraph 7 of the Declaration adopted by the Conference of the Parties to the Fourth Geneva Convention on December 5, 2001, it is stipulated that Palestinian military units adhere to the principles of humanitarian law abroad or inside the occupied territories.

The International Court of Justice in Nicaragua case has repeatedly referred to the Contra forces' obligation to comply with Article 3 of the Geneva Conventions. The Tribunal declared that the violation of international humanitarian law by military groups was contrary to these rights in the Congo, calling on the Security Council to address the direct responsibility of these groups for the violation of humanitarian law. The Appeals Chamber of the Sierra Leone Special Court also stated in Norman's case that: "The fact that all parties to the armed conflict (including non-governmental armed forces and countries) are bound by international humanitarian law is consolidated from the point of view of international law. .. ". Judge Higgins, in his own theory of attachment to the Advisory Opinion of the International Court of Justice on the construction of the wall in 2004, regrets that the Court lost the opportunity to state that the irrefrangible  humanitarian obligations obligates not only the occupiers, but also Libertarians.

It is also important to note that insurgents and armed opposition groups can, on their own initiative and unilaterally, declare themselves to be bound by humanitarian law and regulations. Like the unilateral actions of governments that give rise to the right and duty, this unilateral commitment claim cause rights and duties for insurgent groups. One can also refer to the Declaration of 24 February 1988 by the Tamil Sri Lanka Tigers to the Commission on Human Rights, in which the Tamil Tigers Liberation Movement committed themselves to comply with the provisions of the Geneva Conventions of 1949 and the Additional Protocols. Also, under the terms of the final paragraph of Article 3, insurgents may, by concluding agreements with the central government, enforce all or part of the provisions of the Geneva Conventions in conflict, and by concluding such agreements, they are in fact bound to implement humanitarian rules. .

Regarding the commitment of armed opposing groups and insurgents to human rights law, it should be noted that human rights obligations are essentially binding on governments only, and international law is still not in a position to require armed opposition groups to comply with human rights law During civil armed conflicts, because they do not have the ability to execute certain specific obligations, such as holding a fair trial. Ultimately, the adherence of these groups to human rights and humanitarian law can be a yardstick for recognizing their legitimacy and competence to participate in government structures or create new government. Thus, insurgents and armed opposition groups, like government forces, are obliged to respect the rules and principles of humanitarian law related to armed conflict in civil conflicts, such as the Syrian conflict. It should be noted that, in the absence of regulations on a particular topic in the field of civil conflicts, Martens may be cited which is provided in the preamble to the Fourth Hague Convention of 1907, the Fourth Geneva Conventions and the First Additional Protocol, and will always be applicable. The purpose of inserting such a clause into these documents was to fill the gap due to the lack of regulations. The condition of the Martens stipulates that the parties to each armed conflict must act "in accordance with international law deriving from the Certain custom, humanitarian principles and the principle of general conscience." Therefore, if the humanitarian treaties or protocols and the treaty system are totally silent on the subject, the parties must act within the framework of this principle.

Some cases of humanitarian violations in Syria's civil conflict

1. Killing civilians and attacking civilian areas

It is estimated that over two hundred thousand people were killed in the Syrian civil war, of which nearly half are civilians, including women and children. A series of allegations such as attacks on residential areas, hospitals, clinics and mosques are reported. Failure to comply with the principle of separation of military and civilian personnel during military operations, including attacks on urban areas and civilian targets, resulted in the death of a large number of civilians, including women and children. The destruction of mosques and shia and Sunni shrines is one of the usual actions of the ISIS group.

In Humanitarian law, the "principle of separation" includes the prohibition of attacks on civilians and civilian property and targets, stipulating that attacks should only be directed against military objectives. According to Article 52 of the First Additional Protocol, the military purpose is limited to property which, "in terms of its nature or according to its location or use, provides effective assistance to military operations, and general or partial destruction, seizure or deactivation, in Existing time conditions have a definite military advantage. "

The International Court of Justice on Nuclear Weapons states: "The principle of separation is one of the fundamental principles of humanitarian law and one of the most irrefrangible principles of customary international law, according to which states should never target civilians and civilian targets ... ". As stated above, common Article 3 of the Geneva Conventions supports the victims of civil armed conflict. These victims, who are not directly involved in the war, or include armed forces who do not use their gun, or those who cannot fight due to illness or injury or detention or for any other reason. According to this article, the parties to the conflict Committed to act in accordance with human principles to these people at all times. It explicitly prohibits the following actions at any time and place against them: Harm to physical integrity, in particular murder in all its forms, amputation, Cruel, brutal behavior and torture, hostage taking, disruption of people's dignity, especially Humiliating and offensive behavior and sentencing and execution without a court order that is comprehensive judicial guarantees. "

In the Second Additional Protocol, in addition to the provisions of Article 4, support for the civilian population is also provided in Article 13, paragraph 2, of the Protocol. According to this article, the civilian population and civilians should not be targeted. Today, the prohibition of civilian attacks and civilian targets is part of customary international law. In addition, in accordance with Article 8 (paragraph 2) of the ICC Statute, a deliberate attack on these ends and individuals is considered a war crime. The General Assembly resolution 2444 dated December 1968 also emphasized the prohibition of attacks on civilian populations in all armed conflicts. Without specifying the nature of the conflict, the resolution states in paragraph 1 that government officials and other officials are responsible for their actions during armed conflicts.

Referring to paragraph 78 of the Consultative Opinion on the legitimacy or non-legitimacy of the use of nuclear weapons, the Government of the United States has never intended to target civilians. Therefore, with reference to this principle in the Geneva Conventions, the Additional Protocols, the Statute of the International Criminal Court and judiciary rulings can be seen in the existence of rules that are, at all times, binding and of an imperative nature.

2. Torture

Reports from the International Commission for the Study of Human Rights on Syria have repeatedly indicated that the parties involved, in particular the terrorist groups, have committed various types of mental and physical torture. One of the most important issues in the international human rights law and humanitarian law is the prohibition of torture. Article 7 of the Covenant on Civil and Political Rights stipulates that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." In addition, Torture is prohibited in Article 3 of the Geneva Conventions and Article 4 of the Second Additional Protocol, as the most important governing sources on domestic armed conflict.

Also, Under the rule of 90 of customary humanitarian law torture and any cruel or inhuman treatment is prohibited. The ban on torture has also been accepted in the statute of the International Criminal Court and international judicial procedure.

3. Hostage taking

Reports from the commission of inquiry, in particular the report of July 18, 2013 and March 2014, indicate that the parties to the conflict have taken hostages. The terrorist groups of ISIS and Al-Nusra have also repeatedly taken hostage. Article 3 of the Geneva Conventions prohibits hostage-taking. Part II (c) of article 2, paragraph 2, of the Second Additional Protocol has identified the issue of the prohibition of hostage-taking as a fundamental guarantee for civilians and people who are out of war. Also, hostage-taking is strongly prohibited in the framework of customary humanitarian law (rule 96), as well as international judicial and international procedures, and the practice of governments, and constitute a war crime in the Statute of the International Criminal Court and the International Criminal Tribunal for the former Yugoslavia and the Statute of Rwanda and the Special Court of Sierra Leone.

4. Rape and sexual violence

Sexual violence is common in conflicts. According to the International Investigation Commission, in the Syrian conflict, sexual violence, especially in home to home visits and inside camps, has been committed, but it is somewhat difficult to judge and assess precisely who exactly perpetrates this violence. .

Women benefit from the general provisions of Article 3 and paragraph 1 of Article 4 of the Second Additional Protocol. In addition, under article 2, paragraph 2, of the Second Additional Protocol, the Desecration of human dignity and Humiliating behaviors, rape, forced prostitution and any kind of insulting and violent assault at any time and place is prohibited and will be prohibited.

Protecting women against war-related injuries is not limited to the above. In accordance with the Statute of the International Criminal Court for Rwanda, rape, forced prostitution and other forms of sexual violence will violate Article 3 and the Second Additional Protocol. In addition, the Statute of the International Criminal Court in Article 8 (2) (e) (6) specifically addresses the issues of rape, sexual slavery, forced prostitution, forced sterilization and compulsory pregnancy in the list of war crimes and consider them prosecutable and Punishable in the court. Also, in accordance with rule 93 of the Convention on customary Humanitarian Law, rape and All Forms of sexual violence are prohibited in all international and non-international armed conflicts

5. Violation of children's basic rights

Among acts of violence against children, targeting, killing and wounding them during military conflicts and using them as defense shields and the use of children in war by all parties is addressed. In addition to torture and abuse of children, the killing and torture of parents against the children's eyes and their coercion to observe such scenes is another violation of their rights. It should be noted that more has been reported from the insurgency's action to this last case. The recruitment and use of children in military operations is also a case of violations committed during the Syrian civil war. Also according to Human Rights Watch report, the terrorist group of ISIS and al-Nusra, use children and youth in their military operations.

Despite the continued assistance of international organizations to refugee camps in Jordan, Turkey and Lebanon, the situation of displaced Syrian children in these camps and in areas under the control of the Syrian rebels is Wretched;

In a statement dated 11 March 2013, the Security Council accused both sides of violating the fundamental rights of children, in particular the provisions of the Optional Protocol to the Child Rights Convention, to ban the use of children under the age of 18 in conflict.

The use of children in war is a violation of the Second Additional Protocol, as well as a violation of the Convention on the Rights of the Child and UN Security Council Resolutions, since Article 4 (3) of the Second Additional Protocol stipulates: "The recruitment of children under fifteen years in national armed forces or groups is prohibited, as these people are not allowed to engage in conflicts.”In addition, Article 38 of the Convention on the Rights of the Child states:" during armed conflicts States Parties to this Convention undertake to comply with humanitarian law, provisions which are related to children 2. States Parties shall take any action taken to ensure that People less than 15 years of age will not be directly involved in the conflicts ...”

The issue of children in armed conflict has always been a concern of the UN Security Council. In this regard, one of the new Security Council measures is the adoption of resolution 2143 on March 7, 2014 on children and armed conflict. In this resolution, the council voiced concern over continuing violations of the principles and rules of international law by parties involved in armed conflicts, with regard to the lack of punishment and the lack of prosecution and punishment of perpetrators. In this resolution, the Council, in emphasizing the importance of systematic attention to and abuse of children's rights, urged member States to facilitate programs and guidelines for the prevention of exploitation of children in armed conflict.

6. Lack of access to adequate housing, food, medicine and essential facilities for life and forced displacement

More than 4 million Syrians have become homeless. Of these, one million people in neighboring Syria and in camps are in Unfortunate conditions. In camps, there have been reports of cases of sexual violence against women, forced marriage, kidnapping, and the spread of certain illnesses and food and drug deficits. The United Nations High Commissioner for Refugees (UNHCR), in a report entitled "Displacement: A New Challenge for the 21st Century," dated June 19, 2013, described the Syrian crisis as the most important factor in increasing the number of refugees and IDPs. Valery Amos, Under-Secretary-General for Humanitarian Affairs, 16 In June 2014, referring to the deteriorating situation of the Syrian refugees, stated that Al-Nusra has deliberately deprived 241,000 of people in the city of Aleppo of access to water, and there is no way to send them aid. UN High Commissioner for Human Rights, UN High Commissioner for Human Rights Also pointing to the cutting off the water of the city of Aleppo by al-Nusra said that about 90,000 people were denied access to aid Due to the Theft of the medical and sanitary goods of the caravan of rescue workers.

The deteriorating situation of displaced people and the lack of access to essential living conditions in Syria have led the Security Council to turn the issue of humanitarian assistance on its agenda. As stated, the Council succeeded in unanimously adopting Resolution 2139 on February 22, 2014, under the heading of Facilitation of Humanitarian Aid and ... by the parties involved in the civil conflict in Syria. The Council urged all parties to allow the delivery of humanitarian assistance, to refuse to deprive civilians to receive food and clothing and essential medical equipment necessary for their lives, and to provide a fast, safe and unhindered exit area for civilians who Civilians who want to leave besieged areas. In addition, all parties, in particular the Syrian authorities, were requested to contact United Nations agencies and their colleagues on the issue of access Humanitarian cooperation assistance.

Among the humanitarian rules governing civil armed conflict, although the common article 3 on humanitarian assistance is not clear, the refusal to provide food and medicine or to prevent it from being distributed to victims of civil armed conflict is a cruel act that can be considered as an inhumanity in the context of Article 3. In addition, in the context of Article 14 of the Second Additional Protocol, the refusal to provide humanitarian assistance and, consequently, famine and starvation are prohibited. Similarly, unnecessary destruction and displacement of the property necessary for the survival of the civilian population is also prohibited. The homelessness of a country's people is contrary to the obligations of governments within the framework of the Covenant on Economic, Social and Cultural Rights. In this regard, the Committee on Economic, Social and Cultural Rights said: "Forced dismissal is a violation of the wishes of individuals, families or groups permanently or temporarily from their home or land of residence, without considering access to appropriate forms of legal protection and other supports."

The committee has also considered the Forced evictions resulting from civil armed conflicts and sectarian or racial violence as Violation of the covenant.

Also, under Article 12 of the Covenant, the governments committed themselves to "recognize everyone's right to get the best physical and mental state", while displacing individuals and attacking hospitals and health clinics and placing people in difficult conditions Is a violation of this right. The guidelines on domestic displacement prohibit the arbitrary displacement of individuals in armed conflicts, except in cases where civilian security and military requirements are necessary. According to the guidelines, all international officials and actors must comply with their human rights and international humanitarian obligations in order to avoid the situation that results in the displacement of people, and to ensure compliance with them.

Also, in accordance with Article 21 of the Code of Conduct for Observers on Internally Displaced Persons, "the property and assets that the Refugees have to abandon should be protected against the Arbitrary and unlawful destruction, seizure and exploitation ".

Forced displacement and lack of access to healthcare, safety and nutrition are also violations of Article 17 of the Second Additional Protocol. According to this article, the displacement of the civilian population is prohibited except for the purpose of securing them or for military reasons, and if necessary, all possible facilities in terms of personal safety, health, safety and nutrition should be granted in a satisfactory manner. In addition, paragraph 2 of the same article stipulates that the displacement and evacuation of the population should not result in the transfer of population outside the national borders.

However, the displacement and homelessness of a large number of Syrians, the severity of their livelihoods and their lack of access to vital necessities such as safe drinking water, food and medicine have a direct effect on the lack of access to basic human rights. Therefore, the exclusion of civilians from the equipment and facilities necessary for their survival is prohibited under human rights and international humanitarian law, and this is considered a war crime in the Statute of the International Criminal Court.

7. Trial and execution without observance of fair trial

The report of the International Commission for the Study of Syria reports several quick and hasty trial and executions. Also, mass executions by the ISIS and Al-Nusra groups have become commonplace within these groups. This is a violation of the Covenant on Civil and Political Rights, Article 3 of the Geneva Conventions, Article 6 of the Second Additional Protocol and the customary humanitarian rules in this regard. According to Article 8 (2) (c) of the Statute of the International Criminal Court, the issuance of sentences and execution of the death penalty without properly established and comprehensive prior judicial review that has all judicial guarantees is considered a war crime.

8. Terrorist actions

Terrorist activities in Syria has intensified, especially since the announcement of the existence of the Islamic State (ISIS) and the Al-Nusra group. These groups have repeatedly attempted murder and torture of civilians, especially women and children, kidnapping and hostage-taking, mass murder, obstruction in the way of humanitarian aid to the besieged residents and etc. The intensity of their violence was such that the international community and the United Nations reacted. As stated above, the adoption of resolution 2170 dated August 15, 2014 and resolution 2178 of 24 September 2014, and the creation of an international anti-ISIS coalition, has been in response to the terrorist acts of the groups. In addition, most countries have included the groups in the list of terrorist groups.

It should be noted that in Security Council Resolution 2139 dated February 22, 2014, the increased terrorist attacks by al-Qaeda organization and its affiliated groups and other terrorist groups in Syria were condemned and called on the Syrian authorities and opposition groups to fight and suppress these groups. Also, in its resolution 2170 dated August 15, the Council imposed restrictions on the prohibition of travel and arms embargo on both ISIS and the Al-Nusra Front, condemning terrorist acts in violation of human rights and humanitarian law. The Council, in its resolution 2178 condemning extremism and considered it as a threat to international peace and security, calls on all States to prevent the employment, organization, transfer or equipping of persons who travel to a country other than the concerned country or Their place of residence to commit, design or engage in terrorist acts, in particular the ISIS and Al-Nusra Front operations.

However, from the point of view of humanitarian law, assassinations and terrorist acts are prohibited. In addition to the prohibition of terrorist acts in the rules governing international armed conflicts, such as Articles 33 and 147 of the Fourth Geneva Convention and Article 51 of the First Additional Protocol, in the area of ​​civil conflicts, paragraph 2 (c) of of article 4 of the Second Additional Protocol expressly considered " terrorism acts “forbidden at any time and place. In addition, Article 13 of the Protocol stipulates that "the civilian population, whether individually or collectively, should not be attacked. The violent acts and threats, whose primary purpose is to spread terror and violence among the civilian population, are prohibited. "

9. Use of chemical weapons in Syria

In the latest report from the Commission of Inquiry, the use of chemical weapons in the Syrian conflict has been mentioned. Some news agencies have also reported the use of chemical weapons in Syria, especially in Aleppo. But the most severe chemical attack in Syria occurred on August 21, 2013 around Damascus, according to news agencies, about 3,600 people were poisoned and more than 600 people, including many children, were killed. It is still not certain who carried out the attack. Of course, the two sides of the conflict, the Syrian army and the armed opposition groups, have accused each other of using chemical weapons in the August 21 incident.

This chemical attack was followed by the intense reaction of the international community. The Secretary-General of the United Nations, Ban Ki-moon, urged that the use of chemical weapons in Syria هس a crime against humanity, and that the use of chemical weapons in any place by any person and in all cases is violation of rights International.

The UN High Commissioner for Human Rights said: International law prohibits the use of chemical weapons. Its absolute prohibition applies to all situations, including armed conflicts. Therefore, the prohibition of the use of chemical weapons as a norm and a common rule is binding on both the Syrian government and the armed opposition groups.

Meanwhile, some countries, like the United States (which considers the chemical attack the work of the Syrian government), Britain and France have proposed a military intervention in Syria, which was faced with severe international opposition. By contrast, Russia has stated that the Syrian government has not used chemical weapons, but insurgents are more likely to be charged. However, with the onset of a chemical attack, the United Nations Board of Investigators visited Syria to investigate the issue. The board, in collaboration with the Organization for the Prohibition of Chemical Weapons and the World Health Organization, continues its research on the use of chemical weapons in the Syrian civil war. On September 12, the Syrian government announced its readiness to join the UN Chemical Weapons Convention in a letter to the UN Secretary-General. It should be noted that the convention came into force on the 14th of October, 30 days after the accession, to the Syrian government. The report of the UN inspectors on September 16, 2013, confirmed the widespread use of chemical weapons in Syria. The report says that in August 21 is Sarin gas was used in the Al-Ghutta area. Finally, on September 27, 2013, the Security Council approved Resolution 2118 on the use of chemical weapons in Syria. The council considers the use of chemical weapons as a threat to international peace and violations of international law. (Paragraphs 1 and 2). It is also emphasized that none of The parties involved in Syria should not use, or develop, acquire, or store chemical weapons. (Paragraphs 4 and 5) The resolution also invites Member States to assist in the provision of expertise, science and technology, financial assistance and equipment in the process of destroying Syrian chemical weapons. (Article 10) The resolution calls on the Syrian government to provide chemical weapons in a given time frame and allow international inspectors to freely travel. The lack of cooperation of the Syrian government and disregard for the resolution will lead to the seventh chapter of the Charter. (Paragraph 21).

From the humanitarian law perspective, the use of chemical weapons are prohibited under various treaties, such as the Geneva Protocol of 1925, the Chemical Weapons Convention of 1993, and the Statute of the International Criminal Court. Also, the practice of governments recognize prohibition of the use of chemical weapons as a customary rule in all international and non-international armed conflicts.

In several resolutions, the General Assembly has called for the non-use of Suffocating, toxic and chemical and bacteriological weapons in all armed conflicts. For example, the General Assembly, in resolution 3318 of 14 December 1974 on the protection of women and children in extreme conditions and armed conflicts, considered the use of chemical and bacteriological weapons as violations of the 1925 Protocol and the Geneva Conventions of 1949 and the International Humanitarian Law, and called on states to comply with it.

Appeal Chamber of the International Criminal Tribunal for the former Yugoslavia in the Tadic case announced that gradually an international consensus has been reached that prohibits the use of chemical weapons in civil armed conflicts. According to the court, the prohibition of the use of chemical weapons in civil conflicts is based on basic human considerations and common sense. Therefore, everything that is inhumane and prohibited in international conflicts cannot be humanitarian and acceptable in civil conflicts.

The Colombian Constitutional Court has also stated that the prohibition of the use of chemical weapons in non-international armed conflicts is part of customary international law.

Syria was not a member of the Chemical Weapons Convention, but after the August 21 chemical strike and the pressure of the international community, joined the treaty on 12 September 2013. In addition, as stated above, the prohibition contained in the Chemical Weapons Convention on the possession and use of chemical weapons is a common rule for international law. On this basis, all states, including Syria, are bound to comply with the obligations of this Convention. On the other hand, Syria is a member of the Geneva gas Protocol of 1925. There is therefore no doubt that the Syrian government, under both customary international law and treaty law, is committed to not using chemical weapons in war. Therefore, if it is proven that Syrian military forces use these weapons, they Have committed violations of the rights of armed conflicts.

It should be noted that the prohibition of the use of chemical weapons and the responsibility for its use in conflicts include rebel groups. Consequently, if the United Nations were to endorse the result of Russia's investigation into the use of chemical weapons by armed opposition groups in in Aleppo, or if a recent chemical attack around Damascus was proven by them, it is obvious that This action will be considered a crime of war and will have international responsibility..

However, according to reports from the International Commission, investigations into Syria and other humanitarian organizations, the commission of "crimes against humanity" and "war crimes" as examples of violations of human rights norms in Article 3 of the Geneva Conventions, the Second Additional Protocol, and other Humanitarian documents and customary humanitarian law in the field of acts such as attacks on civilians, hospitals and health clinics, the destruction of cultural property, the destruction of villages and the theft of property, rape, torture and cruel treatment, the use of children as defense shields, Compulsory displacement of the population, use of Forbidden weapons, trial and punishment Without respecting the basic guarantees and ... will continue in the Syrian civil war.

Conclusion

The subject of armed hostilities in the present era is one of the major issues in international and domestic affairs. Every day, the world is witnessing international and civil wars. In all wars, civilians are the only population that is harmed even more than military because they are targeted due to their physiological condition and they are at greater risk than others because they are less likely to defend themselves And more than other individuals and groups are exposed to violence and violations of rights and freedoms and constitute the majority of the victims of refugees and displaced persons. civil conflicts are a good platform for widespread and systematic violations of human rights and humanitarian law and the growth of terrorist activities. Obviously, in the course of these conflicts, acts such as murder, torture, hostage-taking, rape, violent brutal acts against civilians, especially women and children, are commonplace. In the Syrian crisis, which is a prime example of civil armed conflict, especially with the intensification of terrorist activity, reports of civilian deaths and human rights violations and human rights violations are published every day. In this regard, the United Nations Security Council (UNSC), as the pillar of the international community's peace, in endorsing the conflicts, issued resolutions and statements, calling for the parties to the conflict to comply with human rights and humanitarian law and peacefully end the conflict. But the differences between the views of the great powers in this regard and the intervention of some Arab and regional countries have prevented the Security Council from adopting a Appropriate and binding decision and forming a similar approach to end the Syrian crisis. The reports of the International Commission for the Study of Syria and the resolutions of the Security Council and the General Assembly have confirmed the continuing and widespread violations of human rights and humanitarian law in the Syrian conflict. The situation continues as the Syrian government is a member of many human rights instruments such as the Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and its Optional Protocol, as well as the Geneva four Conventions. On the other hand, armed opposition groups and the Syrian rebels are also required to comply with the minimum humanitarian rules governing civil armed conflict, such as the provisions of Article 3, and the fundamental guarantees provided for in Article 4 of the Second Additional Protocol. However, in terms of humanitarian law, the parties to the conflict are committed to support civilians and limit the use of warfare tools and methods. In other words, other parties to the Syrian conflict are required, at least, to comply with the provisions of Article 3 and the fundamental guarantees contained in the Second Additional Protocol, the relevant human rights instruments, as well as the Chemical Weapons Convention, so that the violations of these principles and Humanitarian commitments can provide the ground for the realization of their international responsibility and even lead the response of the international community and other countries.

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