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Syrian Refugee Crisis and its Impact on International Humanitarian Law

Jayanta Boruah*

Abstract

Due to several internal, socio-economic and political crises, Syria is witnessing the human barbarism. Inhuman tortures, and brutalities have made the headlines of daily newspapers in India. Although this crisis was initially an internal issue, subsequently, International interference gave it a global status and has also increased the rate of Refugees. The International Humanitarian Law is therefore expected to protect the rights of the victims and the Refugees in the Syrian Crisis and at the same time it is also expected to point out the wrong doings of those who are actively involved in this inhuman war. But, the facts in and around Syria proves the reverse stand. This Article will therefore make an attempt to analyze the success of the law keepers in implementing the International Humanitarian Law in the case of Syrian Civil War.

Keywords: *Syrian Crisis; Humanitarian Law; Human Rights; Refugees; and ICRC.*

Introduction

International Humanitarian Law (IHL) includes rules and regulations to defend and protect the aspects of humanity during war and conflicts. Its main aim is to establish a regulatory framework to provide relief and protection to the sick and wounded soldiers in armed conflicts, either International or Non-international.[1] Its aim extends to the providing of protection to the civilians from the impact of war by regulating the means and methods of war and the weapons to be used in such conflicts.[2] Protection to the civilians also include protection to those who are displaced during armed conflicts (mostly wars), generally

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1 THE SYRIAN REFUGEE CRISIS: REFUGEES, CONFLICT, AND INTERNATIONAL LAE, 5-7 (Al-Marsad, Democratic Progress Institute).

2 GEOFFREY COM, THE LAW OF ARMED CONFLICT: AN OPERATIONAL APPROACH (Wolters Kluwer Law & Business, New York, 2012).

known as refugees.[3]

Meaning of International Humanitarian Law

IHL is generally termed as the law of wars and its main objective is to regulate the conduct of war.[4] It positively provides protection to human rights of the non-combatants and civilians in war situations and negatively restricts the rights of the combatants by providing norms on the means and methods of warfare. The main foundations of IHL are- the Four Geneva Conventions and the Two Additional Protocols to the Geneva Conventions backed by several treaties and customs related to warfare.[5] Since refugees are mostly displaced due to war situations therefore the factors relating to refugees and their influences come under the domain of IHL.

Meaning of Refugee

A Refugee is generally a person who has been forced to leave his/her country of residence due to fear of being persecuted, war or violence. They are the people who most often face the fear of being persecuted on the grounds of race, religion, rationality, political opinion or membership in a particular social group.[6] From this we can conclude that following are the main reasons that in majority of cases leads to the situation where a normal citizen is forced to gain the status of a refugee-

a. Violence due to war,

b. Ethnic and Tribal conflicts,

c. Racial and other forms of discrimination,

d. For being a member of a particular political group,

e. Due to invasion of a rival country conducting inhuman tortures on native civilians, etc.

3 Olivia Dunn, *The Syrian Refugee Crisis: Making a Case for State Obligation and Humanity,* ROMAPO COLLEGE OF NEW JERSEY (Jun 01, 2020, 01:11 AM) https://www.ronapo.edu/law-journal/thesis/the-syrian-refugee-crisis-making-a-case-for-state-obligation-and-humanity/.

4 *Supra* note *3*.

5 Martti Koskenniemi & Paivi Leno, *Fragmentation of International Law? Postmodern Anxieties,* 15(3), LJIL (Jan. 15, 2020, 01:11 AM) https://doi.org/10.1017/S0922156502000262.

6 *What is a Refugee?*, UNHCR (Jan. 12, 2020, 02:17 AM) https://www.unrefugees.org/refugee=facts/what-is-a-refugee/.

Although the issue of refugees are stated above, the causes are very dynamic and multi-dimensional, they may differ from place to place or even from time to time. In most cases refugees are interchangeably referred to as 'Internally Displaced Persons (IDP)' but there is a huge difference between the two. Refugees are those who take shelter by crossing international borders while the IDPs are those who are forced to leave their residence but they don't cross the international borders rather they take shelters in schools, public places and so on. The reasons for people being internally displaced although are similar to those of refugees, but they might be different in most cases like for instance, environmental disasters like Tsunami, Flood Earthquake, etc. and therefore they might not come under the scope of IHL. While refugees are mostly forced to leave their land due to wars and conflicts.[7]

It is estimated that around the world nearly 67% of refugees are from the five countries-Syria, Afghanistan, South Sudan, Myanmar and Somalia. So, there is no doubt that Syria suffers from a huge problem of Refugees and also of IDPs. [8]

International Legal Perspective on Refugees

The subjects of protecting the Rights of the Refugees as well as of those who seek asylum have always been under consideration of both International Customary Laws as well as International Treaty Laws. Under the International Customary Laws, the Principle of Non-Refoulement and the provisions of Universal Declaration of Human Rights are recognized. Principle of Non-Refoulement means that no State shall force their Refugees to return back to their home State, where such Refugees can be subjected to torture and exploitations. The Principle further provides for right to life; right to freedom from torture, cruelty, inhuman treatments and other basic forms of human rights to the Refugees.[9] This Principle, besides forming a core aspect of the International Customary Laws on Refugees, has also been recognized under the Convention on the Status of Refugees, 1951 under Article 3 and Article 33.[10] While the Universal Declaration of Human Rights provides for respecting the human rights of all human beings merely on the ground of them being born as humans in

7 Martti Koskenniemi & Paivi Leno, *Fragmentation of International Law? Postmodern Anxieties*, 15(3), LJIL (2005) (Jan 15, 2020, 01:12 AM) https://doi.org/10.1017/S0922156502000262.

8 A GUIDE TO INTERNATIONAL REFUGEE PROTECTIONAND BUILDING STATE ASYLUM SYSTEMS, 15-19 (UNHCR, Inter-Parliamentary Union For Democracy For Everyone, 2017).

9 Vanya Verma, *Syrian Refugee Crisis and Its Implication on International Law,* IPLEADERS (Jun 01, 2020, 03:11 AM) https://blog.ipleaders.in/syrian-refugee-crisis-implications-international-law/emp/.

10 *Convention and Protocol Relating to the Status of Refugees,* UNHCR (Jun 02, 2020, 01:11 AM) https://www.unhcr.org/en-in/3b66c2aa10.pdf#zoom=95

this planet. This particular Declaration is the epitome of all legal sources for protecting the basic human rights as well as for recognizing majority of the International Customary Laws. Under Article 14(1), the Convention has given all human beings the right to seek and enjoy asylum in any country from persecution.[11] This particular provision is very important for all the Refugees in order to live a life with dignity since it entrusts upon all the States a corresponding responsibility of providing shelter to the Refugees within their countries rather than expelling them or returning them back to their home States.

Under the International Treaty Laws, the major source of Laws governing the Rights of Refugees originates from the Convention on the Status of Refugees, 1951 and the 1967 Optional Protocol.[12] The scope of this 1951 Convention was however initially limited to the Europeans who became refugees due to several instances that occurred prior to January 1951 but the Optional Protocol of 1967 made the provisions of this Convention applicable to all Refugees irrespective of any time deadline, thereby making it globally applicable. The Convention brought into existence the Office of United Nation High Commissioner for Refugees (UNHCR) with the main function to provide protection to the Refugees and to assist the Governments of the respective States in bringing solutions to the issues related to Refugees. This Convention has provided a multidimensional approach towards solving the issue of increasing Refugees across the globe which includes legal, political as well as ethical perspectives. Under its legal perspective, it seeks to provide an universal guideline for protecting the Rights of the Refugees; under its political perspective, it enables the States for establishing mutual corporation for sharing the burden of Refugees thereby recognizing one another internationally accepted principle of Burden Sharing and finally its ethical perspective is highlighted from the fact that almost 140 States have signed the Treaty accepting their responsibilities of protecting the Rights of most of the vulnerable sections of population that comes within the ambit of this Convention.[13] The Convention seeks to protect the Rights of the Refugees through several provisions, the approach of which can be categorized into three broad categories, via-

a. Naturalization and assimilation- under this approach the States are made responsible to allow the Refugees with the minimum facilities for getting assimilated within the State and they must be given access to valid documentation. No penalties on them shall be imposed for their illegal entry within the State territories and they shall be given access to the Courts of Law

11 Universal Declaration of Human Rights, 1948.

12 *Supra* note 9.

13 *Supra* note 10.

b. Access to Basic Services- under this approach the Convention has made all its signatories responsible for granting equal treatment as regards public services and assistance are concerned, to the Refugees in the similar manner as they are provided to the Nationals.

c. Employment- the Convention has also made the States responsible for granting the Refuges access to employment and access to Justice against any exploitations made on them in the same manner as they are provided to the Nationals.[14]

Besides these main International Laws on Protection of the Rights of Refugees, there are several other International Laws that more or less provides protection to such Refugees, some of which includes- The Geneva Convention of 1949 and the Additional Protocols that provides for extensive set of Rules protecting the humanitarian Rights of Individuals during the warfare. These set of Rules seek to provide protection to the civilians from the hostilities of war, who are not parties to the war and includes- health workers, aid workers, children, women, etc. and also to those who were involved in the war but later surrendered or got captured or injured or due to any other reasons has become non-parties to the hostilities. The Geneva Convention of 1949 was a combination of Four Geneva Conventions that were previously enacted while the two Additional Protocols strengthened the Rights of the Victims of both International and Non-International Armed Conflict respectively. There is a Third Additional Protocol that recognizes the Red Crystal with the same status as that of the Red Cross and the Red Crescent.[15]

Further there are several International Human Rights Laws that protects the Rights of the Refugees and the Asylum seekers from gross human rights violations like- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also recognizes the Customary International Law of Non-Refoulement; The Convention on Rights of the Child where Article 2 provides the children of Refugees protection from discriminations, Article 3 provides for their best interests, Article 6 provides such children with the Right to life, survival and development, Article 12 provides them with the Right to be heard, etc.; the International Covenant on Civil and Political Rights also grants the Refugees with several Rights, like- Right of freedom from inhuman cruel treatment, Right to liberty of movement, etc. in whichever territory they reside; the International Covenant on Economic, Social and Cultural Rights provides such Refugees with the Right

14 *Supra* note 9.

15 *The Geneva Conventions of 1949 and Their Additional Protocols,* INTERNATIONAL COMMITTEE OF THE RED CROSS (Jun 03, 2020, 01:45 AM) hhttps://www.icrc.org/en/document/Geneva-conventions-1949-additional-protocols.

to have a minimum standard of living for having a proper physical and mental development including other Rights like Right to education; Similarly all Human Rights Conventions like- Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; etc. seek to provide protection to different categories to Rights of the one or more classes of Refugees.[16]

Even Protection of the Rights of Refugees can be sought from the International Criminal Law, like the Rome Statute of International Criminal Court which provided that the International Criminal Court shall have jurisdiction for trying cases related to genocides, war crimes and all crimes that are against the very notion of humanity. This law seeks to provide protection to all human beings including Refugees from cross-border criminal offences, like forceful prostitution, sterilization, pregnancy, or any other like kinds of sexual violence. In the Judgements of International Tribunal for the Former Yugoslavia for Rwanda, activities like enslavement, rape, genocides, torture, etc. were declared as criminal offences against humanity. And based on such Judgements, the Rome Statute becomes relevant in determining the criminal activities that makes someone being excluded from the status of Refugee.[17]

Background of Syrian Crisis and its Impact on IHL

The Syrian civil war has a very long history and legacy, there is not a single cause that can be attributed to be the main cause of the war. However, the genesis of the war can be traced from 31 January, 1973 when Hafez al- Assad, the then President of Syria implemented a new Constitution whereby the condition that for being the President, one must be a Muslim was withdrawn. Since then many Muslim rival groups took arms against the government and started raising attacks to overthrow it. Later after the death of Hafez al-Assad in 2000, his son Bashar al-Assad became the President but most of his critics had opined that he failed to address any constructive reforms and to implement them. However, Assad later in 2017 opined that these protestants are merely Jihadis who were raising their voices against his secular democratic principles.[18] One another reason that can be attributed as a cause of this civil war is the huge socio-economic inequalities that mostly occurred due to the Free market policies introduced by Hafez al-Assad and then further accelerated by Bashar

16 *Human Rights and Refugee Protection (RLD 5),* UNHCR (Jun 01, 2020, 12:47 AM) https://www.unhcr.org/3aa5bd900.pdf.

17 *Supra* note 10.

18 Associated Press, *Rebels in Syria's largest city of Aleppo mostly poor, pious and from rural backgrounds,* FOXNEWS (Jan. 15, 2020, 01:47 AM) https://www.foxnews.com/world/rebels-in-syrias-largest-city-of-aleppo-mostly-poor-pious-and-from-rural-backgrounds.

al-Assad. Due to these open market policies, only a few nationals that belonged to the Sunni-merchant class having good relations with the governments were able to get jobs and maintain their families. While on the other side, there prevailed absolute poverty amongst the non-supporters of the government who later started joining the armed rebellion.[19] Moreover, the great immediate cause for this outbreak can be attributed to the massive and intense draught that occurred in 2008 and lasted till 2011 which led to several issues like-severe crop failure, increase in food prices, huge migration of farming families to urban centers that further increased the burden over the available resource stock, since lakhs of refugees from the Iraq war were already taking shelter there. This drought is alleged to be the result of anthropogenic global warming and it indicates that climate change which is an environmental concern is also a reason behind this war.[20] At last, the major reason behind this outbreak is the outburst of frustration amongst the Syrian citizens, since they were constantly restricted from exercising their basic human rights like freedom of expression, assembly, association, etc. They were all either curtailed by stringent measures or by repeatedly declaring emergencies.[21]

At present this crisis has led to gross human rights violations. The recent chemical attacks in a Damascus suburb has impacted millions of Syrian populations that has also led to the huge increase in the rate of migration of refugees in order to escape this inhuman action in 21st century civilization. It is not the only instance; in other words, it has been near about a decade that Syrian population is experiencing the other side of human civilization that we sitting at home cannot even dare to imagine. There is no doubt that now Syrian civil war has become the epitome of a humanitarian crisis. It is estimated that over 6 million people have been Internally Displaced and 5 million Syrian refugees have been relocated to neighboring countries. The people who want to flee from this war situation and to survive require medical support, pure drinking water, food and such other basic stuff, but unfortunately all these are rarely available.[22] In such a situation, it becomes difficult to decide, whether to die in war or to die in search for survival?

19 Rozanne Larsen, *Youth exclusion in Syria: Social, Economic and Institutional Dimensions*, JOURNALIST RESOURCES (Jan 15, 2020, 11:13 PM) https://journalistsresources.org/studies/international/development/youth-wxckusion-in-syria-economic/.

20 Francesco Femia & Caitlin Werrel, *Syria: Climate Change Draught and Social Unrest,* THE CENTER FOR CLIMATE & SECURITY (Jan. 15, 2020, 12:14 AM) https://climateandsecurity.org/2012/02/29/syria-climate-change-draught-and-social-unrest/.

21 Ian Black, *Human Rights Watch says virtually nothing has been done to improve human rights in 10 years of his presidency* THEGUARDIAN (Jan. 15, 2020, 12:13 AM) https://www.theguardian.com/world/2010/jul/16/syrian-human-rights-unchanged-assad.

22 Rahma Aburas, et al., *The Syrian conflict: a case study of the challenges and acute need for medical humanitarian operations for women and children internally displaced persons,* BMC MEDICINE (Jan 16, 2020, 01:23AM) https://www.mobi.ncbi.nlm.nih.gov/pmc/articles/PVC5946430/.

According to the United Nation High Commissioner for Refugees (UNHCR) the rate of Syrian Refugees will increase as the war progresses. But although the civil war is the primary reason for the suffering of Syrian Refugees, there are many other secondary causes that led to the massive suffering of these refugees.[23] First being that, due to the increase of birth rates in the refugee camps, the neighboring countries who initially gave shelter to these refugees are now facing shortage of resources to supply to their camps and even natives of those countries are not willing to adopt those refugees for which most of such countries are closing their international borders for these refugees, thus violating their obligations under the Convention of 1951. Second, since the war is still in progress the number of refugees is increasing as already mentioned.[24] In such a situation, it is obvious that refugee camps will be overcrowded. For instance, from the shelters in Idlib and Aleppo governorates many people had been forced to escape to safer place due to the ongoing war while many are still unable. Third, the refugees are still provided with some sort of reliefs by International Organizations and to some extent by neighboring countries, but the conditions of IDPs are even more pathetic since the governance of Syria has broken down for which they are mostly devoid of any security agencies and safety measures when war takes place and even in normal situations due to economic crisis they are unable to afford even the basic needs for their survival including healthcare facilities, education, etc. Further, the injured and disabled persons remain at the receiving end during war and even after the war.

Due to the war and emerging hostilities several infrastructures are also getting destroyed and those that are left undestroyed are wanting repair and so are in a non-functioning stage. For instance, the Allouk pumping station that was serving water to more than 400,000 people in and around Hasakeh, stopped functioning from 30 October, 2019. This water pump is very critical since it was used to supply water to more than 400,000 people. But its repairing is highly difficult since its servers are located near the front line where the hostilities are at the top. This is a great evidence, which proves that civilians who are not part of any hostilities are made to suffer without any of their cause.[25]

Further the health scenario is also pathetic. In most cities like in AI HoI, hospitals are failing to provide adequate facilities to treat the needy. Cases of malnutrition and injuries from weapons are mostly registered among whom many suffers from critical stages since they were not able to receive preliminary medical treatment, and this has made their situations

23 *Ibid*.

24 Sans Frontierers, *Unacceptable Humanitarian Failure*, MEDICINES SANSFRONTIERERS (Jan. 16, 2020, 01:17 AM), https://www.msf.org/syria-unacceptable-humanitarian-failure.

25 *Refugees and Displaced people in Syria,* ICRC (Jam 15, 2020, 01:11 AM), https://www.icrc.org/en/where-we-work/middle-east/syria/syrian-refugees.

even more difficult.[26] At one side resources are limited while at the other side many are unable to get access to whatever resources are available.

Among the millions of refugees, the majority are children, whose parents are in a dismal condition since while escaping the fear of death in their motherland, they are forced to enter a situation where they have only two alternatives- either to buy food for their children or to defend them from cold. While many such parents do not possess the money even to afford either of those alternatives. Most of such refugees take shelter in countries like- Lebanon, Iraq and Jordan but the residents and the refugees who are already there are suffering from severe conditions especially when the harsh winter arrives, since the present infrastructure is not enough to support all of them. Even it is estimated that around 2 million children have been devoid from going to school which shadows the future of the country besides affecting the present. Further, the children in the refugee camps had to work very hard like carrying water from distant places at the age of hardly 4-5 years in order to survive.[27] Most of the children in the refugee camps are suffering from physical and mental traumas created by this devastating war. Physical injuries however more or less may get healed with the passing of time but the fear is about the mental trauma that these children are undergoing. Most of them have experienced the emotions of losing their parents and are witnessing unprecedented violence In Front of their eyes and that also at the age when they should have been playing in kindergartens. Recently, UNICEF stated that over 500 children were injured or killed in this war in the first three quarters of 2019.[28] Such is the situation which makes a question relevant that if these children survive this phase of inhuman legacy then in the near future will they be able to live the life of a normal human being in this world?

As of January 2020, more than 380,000 people were killed in this war, as reported by Syrian Observatory for Human Rights. The death consisted of military personnel, government soldiers, armed rebel troops, and most importantly civilians including children.[29] While a report from SNHR in 2018 stated that 82000 victims were forcibly made to disappear by the Syrian regime which includes 14,000 confirmed deaths. Similarly, it is reported that girls of 6-8 years of age are brutally raped or converted to sex slaves while boys of same age group being tortured and are forced to conduct public killings.[30] In this year only, on January 1,

26 *Supra* note 22.

27 *Supra* note 24.

28 '*Children in Syria bearing blunt of intensifying violence*, UNICEF (Jan. 15, 2020, 11:12 PM) https://www.infomigrants.net/en/post/21848/children-in-syria-bearing-blunt-ofintensifying-violence-unicef.

29 *Syria death toll tops 380,000 in almost nine-year war: Monitor,* LIVEMINT (Jan. 16, 2020, 03:1 AM) https://www.livemint.com/news/world/syria-death-toll-tops-380,000-im-almost-nine-year-war-monitor-11578143112160.html.

30 Jamey keaten, *UN report lays out agonies faced by Syrian child amid war*, LOCAL 12 (Jan. 16, 2020,

eight civilians including four children were killed in a Rocket attack in a school in Idlib by Syrian government.[31] Nothing can be a better example than this about the violation of not only humanitarian rights but also internationally recognized principles of humanitarian law.

Role of Humanitarian Organizations

The International Committee of the Red Cross (ICRC), that is an international organization historically working for the protection of humanity in war as well as conflict situations, and which has also contributed to the development of the IHL, is requesting the warning parties to spare the civilians and their infrastructure. Further, the ICRC is recommending not to attack those who want to flee from the war and has prohibited attacks that are indiscriminate in nature and are on hospitals, schools, etc. They have further issued restrictions on indiscriminately firing of Rockets and Mortars that are blindly targeted into the urban cities from either side of the Front Line. [32]

ICRC along with the Syrian Arab Red Crescent (SARC), which is providing reliefs to the sufferers of this civil war, are extending their support to an Emergency Response Center providing for first aid reliefs and also a neonatal Intensive Care Unit within the pediatric hospitals in the Idlib city. The ICRC has also established two polyclinics and provided three mobile health units in Western Rural Aleppo serving the escapers of war from Idlib and nearby areas. ICRC and SARC together are striving hard to protect the IDPs and to make them survive by providing daily food and other stuff in the relief camps. For instance, a recent report of ICRC on January 03, 2020 provided that a collective kitchen organized by SARC with the assistance of ICRC has been providing food with a target of serving 37,500 newly emerged IDPs, while they had been able to provide only 7,500 household kits in the city of Idlib. [33]

Similarly, few other international groups and activists are helping these victims of war to make life a slight better than hell. For instance, on December 30, 2019 Ireland welcomed 50 Syrian Refugees including 27 children under the Irish Refugee Protection Program.[34]

03:1 AM) https://local12.com/news/nation-world/un-report-lays-out-agonies-faced-by-syrian-children-amid-war.

31 Matilda Coleman, *Four Syrian Children killed in New Year's attacks on School*, UPNEWSINFO (Jan. 16, 2020, 02:13 AM) https://upnewsinfo.com/2020/01/01/four-syrian-children-killed-in-new-years-attack-on-school-news-from-syria/.

32 *Supra* note 24.

33 *Ibid*.

34 Alison Bray, *Fifty Syrian Refugees promised the warmest of Irish welcomes*, HERALD.IE (Jan. 16, 2020, 02:13 AM) https://m.herald.ie?news/fifty-syrian-refugees-promised-the-warmest-of-irish-welcomes-

While on the other hand, there are many more left who are claiming that they have not received any assistance from any of the international or regional groups.

Conclusion

It shows that humanity has a lot to learn from what is happening in Syria. It must be taken as an example for addressing conflicts in the future in any part of the world. While from IHL perspective, it also shows that there is much to be developed in order to avoid a massive conflict in the near future particularly in this nuclear age. The IHL advocates more or less, will now have to adopt a two way approach- first a protective and defensive approach where the main agenda will be to provide relief to the victims of the Syrian war, to monitor and to condemn violation of humanitarian law and the second approach- prevention and deterrence approach where they must spread the lessons taught by this war through the passing time to the entire world fraternity so that a fear is created in the minds of the young generations, thereby proving as a deterrence, to avoid themselves from getting involved in such huge conflicts. It is the responsibility of all of us to adopt this dual approach by providing donations and assistance in whatever manner we can to those victims and at the same time we must also frame our opinion about their pathetic stories and must educate our upcoming generations about the consequences that such conflicts can lead to.

Fortunately, now we can hope that after seeing such devastating consequences, no political party in this democratic civilization would dare to undermine public opinion. Further, this might act as a great lesson for the governments to learn before drafting and enacting any policy against the majority. Moreover, it appears that such conflicts are merely the result of economic disparity which is again caused by improper planning and settlement. The Syrian crisis was fueled by the drought of 2008 which is attributed to be the result of climate change. All these indicate that in the near future humanity might seem to be fighting for every resource in the same manner since we all are aware about the present state of the global atmosphere. Every beginning has its end and every end has a new beginning, similarly we can hope that this Syrian crisis will come to an end and then will lead to a new beginning.

38823817.html.