

## **AN ASSESSMENT OF THE LAW OF ARMED CONFLICT AND INTERNALLY DISPLACED PERSONS IN THE SYRIAN CIVIL WAR: THE NEED TO STRENGTHEN PROTECTION**

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### **Abstract**

*Following the Syrian Civil War which only started as a peaceful protest against the government of President Bashir al Assad, about 6.2 million Syrians have been internally displaced. The displacement followed from the brazen violations of the basic principles of the Law of Armed Conflict made evident in the targeting of civilians not taking active part in the armed conflict. The employment of chemical weapons; planting of landmines; bomb-shellings; and airstrikes among other tactics were used by both the Syrian-Russian Alliance and the non-State armed groups in civilian populated areas, in complete disregard of their effect on the civilian population. Even at the Internally Displaced Persons' camps, civilians are not spared as they are also faced with further violations such as sexual and gender-based violence. This paper, adopting doctrinal method of research and case evaluation of the Syrian Civil War, interrogates the status of internally displaced persons and their protection under the Law of Armed Conflict. The paper argued that internal displacement is one of the consequences of lack of respect for the basic principles of the Law of Armed Conflict which among other things prohibits direct attacks against civilians and civilian objects. It further contended that internally displaced persons not taking active part in armed conflict are civilians entitled to protection against the effect of military operations. The paper suggested that the challenge of internal displacement posed on the Law of Armed Conflict by the Syrian Civil War, can better be tackled by ensuring effective respect for the basic principles of the Law of Armed Conflict such as the principles of distinction, proportionality and military necessity, by all the parties to Civil War.*

**Keywords:** Internally Displaced Persons, Syria, Civil War, Law of Armed Conflict, Geneva Conventions.

### **1. Introduction**

The internal armed conflict which has erupted in Syria since 2011 as a result of the protest against the dictatorial government of President Bashir al-Assad has unfortunately turned out to be a complex situation affecting both Syria and the international community as a result of its implication on the Law of Armed Conflict. The situation first started as a protest by the Arab Spring against Al-Assad's regime, featuring a lot of players, both foreign and local, but which unfortunately spread across the region and metamorphosed into a full fledged Civil War. It is a conflict between the Syrian government forces and other non-state armed actors and non-state armed actors among themselves. The situation has also witnessed foreign intervention by World Powers such as Russian and America and other allies such as Iran and Turkey. There is no doubt that the armed situation in

Syria has reached the required threshold for the crystallization of the Law of Armed Conflict (otherwise known as International Humanitarian Law).

The Law of Armed Conflict otherwise known as International Humanitarian Law is that 'branch of law that regulates the conduct of armed conflict by imposing a minimum standard expected of the parties to armed conflict'.<sup>1</sup> It tries to strike a balance between military necessity and concern for humanity. Contemporary armed conflicts are majorly regulated by the four Geneva Conventions of 1949, to wit:

- a. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armies in the Field (GC I);
- b. Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked of the Armed Forces at Sea(GC II);
- c. Geneva Convention Relative to the Treatment of Prisoners-of-War (GC III); and
- d. Geneva Convention Relative to the Protection of Civilians Persons in Time of War (GC IV).

The above four Conventions are complemented by three other Additional Protocols, to wit:

- a. Protocol Additional to the Geneva Conventions, 1949, and relating to the Protection of Victims of International Armed Conflict (Protocol I); and
- b. Protocol Additional to the Geneva Conventions, 1949, and relating to the Protection of Victims of Non-International Armed Conflict (Protocol II).
- c. Protocol Additional to the Geneva Convention, 1949, and relating to (Protocol III).

The four Geneva Conventions complemented by Protocol I, apply in situation of international armed conflict while the Common Article 3 which is complemented by Protocol II regulates the conduct of non-international armed conflicts. On the other hand, the Protocol III relates to the protective emblems. The applicable laws

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<sup>1</sup> A Nwotite, 'The Principle of Distinction in the Light of Civilian Protection in International Armed Conflict', (2020) 4(2) *African Journal of Law and Human Right*, 78-89, 80. Available at <<https://www.journals.enzenwaohaetorc.org>> accessed 4 May 2020.

will depend on whether the armed conflict is international or non-international in character.

International armed conflict refers to ‘all cases of declared war or any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them’.<sup>2</sup> It also includes all cases of partial or total occupation of the territory of a High Contracting Party, even if the occupation meets with no armed resistance and to situations in which people are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.<sup>3</sup>

On the other hand, non-international armed conflict refers to all armed conflicts in which at least one of the parties is not governmental. In this type of armed conflict, hostilities rage either between one or more armed groups and government forces or solely between the armed groups within the territory of a High Contracting Party.<sup>4</sup> The four Geneva Conventions refer to this class of armed conflict as ‘armed conflict not of international character occurring in the territory of one of the High Contracting Parties’.<sup>5</sup> This classification is of essence as it determines whether the fighters are combatants entitled to Prisoner-of-War status or merely criminals.

The situation in Syria is a Civil War, evoking the application of Common Article 3 to the four Geneva Conventions of 1949 and the Protocol Additional to the Geneva Conventions, 1949, and relating to the Protection of Victims of Non-International Armed Conflict (Protocol II) which require a minimum standard of treatment for persons who find themselves within the context of such armed conflict.

The Syrian Civil War is an overwhelming one witnessing direct and indiscriminate attacks against civilians and civilian objects; destruction of schools and hospitals; the use of forcible displacement as a method of warfare; airstrikes, bomb-shellings;

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<sup>2</sup> Geneva Conventions, 1949, Common Article 2.

<sup>3</sup> Protocol Additional to the Geneva Conventions, 1949, and relating to the Protection of Victims of International Armed Conflict (Protocol II), Article 1 (4).

<sup>4</sup> J Pejic, ‘The Protective Scope of Common Article 3: more than Meets the Eye’, Selected Article on International Humanitarian Law, *International Review of the Red Cross*, 2011 vol 93 (881) 189-225, 199.

<sup>5</sup> Geneva Conventions, *ibid*, Common Article 3.

and destruction of lives and properties as a result of such unlawful acts.<sup>6</sup> As a consequence, civilians particularly in Northwest Syria, Northern and Eastern Idlib, have been forced to flee the area in search of safety.<sup>7</sup>

The United Nations High Commissioner for Refugees noted that Syria has the highest world's record of internally displaced persons.<sup>8</sup> He particularly noted that in 2017 alone, the total number of about 1.8 million internally displaced persons was recorded.<sup>9</sup> With the intensity of the offensives between government forces and non-State armed groups, many civilians have been forced to find succour at the Internally Displaced Persons' camps. But then, even at the Internally Displaced Persons' camps where these civilians are haboured, they are still not safe as they are made vulnerable to inhumane treatment such as gender-based violence and sexual abuses even by those who ought to protect them. The situation is a precarious one as it interrogates the status of internally displaced persons and the role of the Law of Armed Conflict in their protection.

This is against the background that the essence of the Law of Armed Conflict is to 'limit human suffering in situations of armed conflict while at the same time preventing atrocities'.<sup>10</sup>

Ama Oji succinctly captures this thus:

The essential purpose of the Law of Armed Conflict is not to provide a code governing the game of war, but for humanitarian reasons to reduce or limit the suffering of individuals and to circumscribe the area within which the savagery of armed conflict is permissible.<sup>11</sup>

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<sup>6</sup> Syrian Arab Republic: Recent Development in Northwest Syria, Situation Report No. 8-As of 13 February 2020. Available <<https://www.internal-displacement.org/countries/syria>> accessed 21 February 2020.

<sup>7</sup> Syrian Arab Republic: Recent Development in Northwest Syria, Situation Report No. 8-As of 13 February 2020. Available <<https://www.internal-displacement.org/countries/syria>> accessed 21 February 2020.

<sup>8</sup> <[www.unhcr.org/sy/internally-displace-people](http://www.unhcr.org/sy/internally-displace-people)> accessed 21 February 2020.

<sup>9</sup> *Ibid.*

<sup>10</sup> U O Umozurike, *Introduction to International Law*, (3<sup>rd</sup> edn, Ibadan: Spectrum Books Limited, 2005), p 212.

<sup>11</sup> E Ama Oji, *Responsibility for Crimes under International Law*, (Lagos: Odade Publishers, 2013), 73-74.

Displacement no doubt is a consequent of armed conflict. However, displacement exposes civilians to innumerable hardships and makes them more vulnerable<sup>12</sup> to certain treatments incompatible with the norms of humanitarian law.

The rationale behind this work is to examine the status of internally displaced persons and their protection in International Humanitarian Law and how respect for the basic principles of the Law of Armed Conflict can reduce the incidence of internal displacement.

The paper argued that the occurrence of internal displacement is not as a result of lack of laws to that effect, the paper rather observed that to a certain extent, lack of respect for these laws is responsible for internal displacement. This is premised on the fact that the Law of Armed Conflict has copious and comprehensive provisions preventing the incidence of internal displacement in the first instance but then these laws are rather disrespected as is evident in Syria's case.<sup>13</sup> The paper called for effective respect for International Humanitarian Law through such measures as mass education.

## **2. Internally Displaced Persons Defined**

The Law of Armed Conflict did not specifically define internal displacement; however the wordings of the Geneva Conventions regime imply this term.<sup>14</sup> For instance, the Geneva Convention Relative to the Protection of Civilian Persons in Time of War<sup>15</sup> which among other Laws regulates the conduct of international armed conflict used the term 'forcible transfers' and 'deportation' which are also understood as displacement. On the other hand, the Protocol Additional to the Geneva Convention and relating to the Protection of Victims of Non-international Armed Conflicts of 1977,<sup>16</sup> used the word 'displacement' even though it is not defined anywhere in the text. Hence, there is no generally acceptable definition of 'internal displacement' or 'internally displaced persons' by the Law of Armed

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<sup>12</sup> International Committee of the Red Cross, 'Displacement in Times of Armed Conflict, How International Humanitarian Law Protects in War and Why it Matters'.

<https://www.icrc.org/en/document/ihl-displacement> accessed 5 May 2020.

<sup>13</sup> [www.aljazeera.com/news/2020/02/syria-cites-deliberate-attacks-civilians-200218111516852.html](http://www.aljazeera.com/news/2020/02/syria-cites-deliberate-attacks-civilians-200218111516852.html) accessed 5 May 2020.

<sup>14</sup> International Committee of the Red Cross, 'Displacement in Times of Armed Conflict, How International Humanitarian Law Protects in War and Why it Matters'.

<https://www.icrc.org/en/document/ihl-displacement> accessed 5 May 2020.

<sup>15</sup> Article 49(1)

<sup>16</sup> Article 17.

Conflict. However, the definition offered by the United Nations Guiding Principles on Internal Displacement of 1998 is, instructive. The Guiding principles defines Internally Displaced Persons as:

“Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”<sup>17</sup>

The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, (Kampala Convention)<sup>18</sup> also adopted the above definition of internally displaced persons. Thus, internally displaced persons are people who have fled their places of habitual residence to safer places within the borders of the same country in order to avert the consequences of armed conflict, massive human rights violations, natural or man-made disasters or because of any other situation of violence. In other words, internal displacement quite unlike migration is limited to persons who remain within their national borders.<sup>19</sup>

### **3. How Does the Law of Armed Conflict Protect Internally Displaced Persons?**

The Law of Armed Conflict otherwise known as International Humanitarian Law makes a distinction between civilians and combatants.<sup>20</sup> While the law recognizes combatants as legitimate targets of military operations<sup>21</sup>; civilians are afforded protection<sup>22</sup> unless and except for such time they take active part in hostilities.<sup>23</sup>

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<sup>17</sup> African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 2009, Article 2.

<sup>18</sup> Article 1(k).

<sup>19</sup> E Opara & Ndimouwuri, ‘Enhancing Protection of Internally Displaced Persons through Domestic Law & Policy’ (2019) *NAUJILJ* 10(2) 77 < <https://www.ajol.info/index.php/nau> > accessed 12 December 2019.

<sup>20</sup> N Quenivet, ‘The “War on Terror” and the Principle of Distinction in International Humanitarian Law’, (2010) 3 ISSN: 2027-11311 ISSN: 2145-4493 ACDI, Bogota, 155-186, 160. Protocol I, *op cit*, Article 48.

<sup>21</sup> Protocol Additional to the Geneva Conventions, 1949 and relating to the Protection of Victims of International Armed Conflict, 1977, (Protocol I), Article 48.

<sup>22</sup> Protocol I, *ibid*, , Article 51; Protocol II, *op cit*, Article 13.

<sup>23</sup> Protocol I, *ibid*, Article 51(3); Protocol II, *ibid*, Article 13(3).

A civilian is any person not belonging to the categories of persons mentioned under Article 4A(1)(2)(3)&(6) of the Geneva Convention Relative to the Treatment of Prisoners of War, 1949 and under Article 43 of the Protocol I.<sup>24</sup> The persons referred to under the above provisions are:

- (1) Members of armed forces of a party to the conflict;
- (2) Members of militias or volunteer corps forming part of such armed forces; members of other militia and members of other volunteer corps including those of organized resistance movements provided they have a chain of command, wear a distinctive mark, carry arms openly and comply with the laws and customs of war;
- (3) Members of regular armed forces who profess allegiance to a government or any authority not recognized by the Detaining Power;
- (4) People who accompany the armed forces without actually being members
- (5) Members of crews; and
- (6) *Levee en mass*.

In other words, the above persons are combatants and not civilians.

Internally Displaced Persons are not distinct class of persons in International Humanitarian Law. They are also classified as civilians as long as they are not taking active part in armed conflict.<sup>25</sup> However, even where they do, they are only legitimate target for such time they do take up arm.<sup>26</sup> Once they cease their hostile acts, they regain their protection.

Generally, the protection accorded Internally Displaced Persons in International Humanitarian Law, exists within the context of the general protection afforded civilians in situations of armed conflict. This is for the simple reason that Internally Displaced Persons not taking active part in hostilities are also civilians.<sup>27</sup>

The Law of Armed Conflict has both general and specific protecting Internally Displaced Persons. The Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949 (GC IV) specifically protects civilians. The spirit underlying this Convention is that of humane treatment as it contains specific provisions prohibiting internal displacement. The Convention prohibits individual

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<sup>24</sup> Protocol I, *ibid*, Article 50.

<sup>25</sup> Protocol I, *op cit*, Article 50(1) & (2).

<sup>26</sup> *Ibid*, Article 51(3).

<sup>27</sup> Protocol I, *ibid*, Article 51; Protocol Additional to the Geneva Conventions, 1949 and relating to the Protection of Victims of Non-International Armed Conflict, 1977,(Protocol II) Article 13.

or mass forcible transfers, as well as deportations of persons<sup>28</sup> unless the security of the civilian population or imperative military situation so demands.<sup>29</sup>

The displacement of protected persons is also prohibited unless it is impossible to avoid such displacement.<sup>30</sup> However, where it does occur, the relevant authorities shall have the obligation to ensure satisfactory accommodation; standard conditions of hygiene, health, safety and nutrition.<sup>31</sup> The relevant authorities must also ensure that members of the same family are not separated from each other.<sup>32</sup> Nevertheless, where such separation is inevitable, the relevant authorities shall search for and reunite family members dispersed as a result of such armed conflict.<sup>33</sup> The Convention further provides that protected persons shall be entitled in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs.<sup>34</sup> They shall at all times be humanely treated and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.<sup>35</sup> The Convention again prohibits the exercise of physical or moral coercion against protected persons.<sup>36</sup> In addition, no measure intended to cause physical suffering or extermination of protected persons shall be taken.<sup>37</sup> Besides, no protected person shall be punished for an offence he or she did not commit personally.<sup>38</sup> Corporal punishment<sup>39</sup> and hostage taking are also prohibited under this Convention.<sup>40</sup>

In addition, the Common Article 3<sup>41</sup> which regulates the conduct of non-international armed conflicts as in the case of Syrian Civil War requires that in any armed conflict not of an international character occurring in the territory of one of the High Contracting Parties each Party shall be bound to apply as a minimum

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<sup>28</sup>Geneva Convention Relative to the Protection of Civilians Persons in Time of War, 1949, Article 49.

<sup>29</sup>*Ibid*

<sup>30</sup>*Ibid.*

<sup>31</sup>*Ibid.*

<sup>32</sup>*Ibid.*

<sup>33</sup>GC III, *op cit*, Article 26.

<sup>34</sup>*Ibid*, Article 27.

<sup>35</sup>*Ibid.*

<sup>36</sup>GC III, *op cit*, Article 31.

<sup>37</sup>*Ibid*, Article 32.

<sup>38</sup>*Ibid*, Article 32.

<sup>39</sup>*Ibid*, Article 33.

<sup>40</sup>*Ibid.*

<sup>41</sup>Geneva Conventions, 1949.

standard of treating the persons therein, without any adverse distinction founded on race, colour, religion or faith, sex, birth, or wealth, or any other similar criteria. To that effect, it prohibits such acts as violence to life, health and physical or mental well-being of persons, outrages upon personal dignity, taking of hostages, acts of terrorism and so on.<sup>42</sup> It also stipulates that an impartial humanitarian body such as the International Committee of the Red Cross may offer its services to the Parties to the conflict.

The Protocol Additional to the Geneva Convention, 1949, and relating to Victims of International Armed Conflict, 1977<sup>43</sup> also have some provisions protecting civilians, and in particular internally displaced persons. Article 51 provides that: ‘The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations.<sup>44</sup> It further stipulates that civilians shall not be made the object of attack. Acts or threat of violence the primary purpose of which is to spread terror among the civilian population is prohibited.<sup>45</sup> Indiscriminate attacks against civilians are also prohibited.<sup>46</sup> The law defined indiscriminate attacks as:

‘attacks which are not directed at a specific military objectives; those which employ a method or means of combat which cannot be directed at a specific military objective; or those which employ a method or means of combat; the effects of which cannot be limited as required by this Protocol’.<sup>47</sup>

Hence, acts such as bombardment by whatever methods or means and acts expected to cause incidental loss of civilian life; injury or damage to civilian objects are indiscriminate attacks and therefore forbidden.<sup>48</sup> Again, attacks against civilians by way of reprisal are further prohibited.<sup>49</sup>

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<sup>42</sup>*Op cit*, Common Article 3.

<sup>43</sup>Protocol I, *op cit*, Article 51(2).

<sup>44</sup>*Ibid*, Article 51(1).

<sup>45</sup> Protocol I, *op cit*, Article 51(1).

<sup>46</sup>*Ibid*, Article 51(4).

<sup>47</sup>*Ibid*.

<sup>48</sup> Protocol I, *op cit*, Article 51(5)(a)&(b).

<sup>49</sup> *Ibid*, Article 51(5); J M Henckaerts & L Doswald-Beck, *Customary International Humanitarian Law* (Geneva:

ICRC, Cambridge University Press, 2007), 188.

The Protocol also prohibits an unauthorized movement of civilians for the purpose of using them as shield or in order to impede military operations is also forbidden.<sup>50</sup> Forcible transfer is a breach of the Protocol I.<sup>51</sup>

The Protocol Additional to the Geneva Conventions, 1949 and relating to the Victims of Non-international Armed Conflict, 1977 which complements and supplement Common Article 3 in regulating the conduct of non-international armed conflicts also has some provisions similar to the Protocol I in that regard. It provides as follows:

The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstance.

The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.<sup>52</sup>

The Protocol further prohibits such means or methods of warfare as starvation and destruction of objects indispensable to the survival of civilians. Thus, Article 17 provides as follows:

Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for the that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of the foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.<sup>53</sup>

Again, the Protocol II<sup>54</sup> requires a minimum standard of treatment of persons not and those no longer taking active part in hostilities by forbidding such acts as violence to life, health and physical or mental well-being of persons, collective punishments, taking of hostages, acts of terrorism and recruitment of child soldier. Article 14<sup>55</sup> is very specific on internal displacement and it provides thus:

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<sup>50</sup> *Ibid*, Article 51(7).

<sup>51</sup> Protocol I, *ibid*, Article 85(4)(a).

<sup>52</sup> Protocol II, *ibid*, Article 13 (1)(2).

<sup>53</sup> Protocol II, *op cit.*.

<sup>54</sup> Protocol II, *ibid*, Article 4.

<sup>55</sup> Protocol II, *ibid*.

The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacement have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition...Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.<sup>56</sup>

Civilians are entitled to the above protection unless and except for such time they take active part in hostilities.<sup>57</sup> The violation of any of the above provisions regarding the protection of civilians shall not absolve the Parties to the conflict of the legal obligations with respect to the civilian population or of the precautionary measures required of them under Article 57 of Protocol I.<sup>58</sup>

It is a War Crime to cause forcible displacement of civilian persons not taking active part in hostilities in both international and non-international armed conflicts.<sup>59</sup> There is therefore no gainsaying that the Law of Armed Conflict adequately protects internally displaced persons.

#### **4. Specific International Humanitarian Law Violations Resulting in Internal Displacement in the Syrian Civil War**

The Syrian Civil War is one Civil War that has witnessed a high level of violation of humanitarian norms especially in terms of internal displacement. In that regard, Reuters reported that the 900,000 people who fled fighting in Syria represent the largest exodus of civilians since World War II.<sup>60</sup> As already noted, the incidence of internal displacement is not as a result of lack of legal regulation to that effect, it is rather observed that the occurrence is in part as a result of violations of the norms of humanitarian law as is evident in the Syrian Civil War.<sup>61</sup> The said Civil War witnesses incidences of violations of humanitarian law norms by both government

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<sup>56</sup> *Ibid*, Article 14.

<sup>57</sup> Protocol I, *op cit*, Article 51(3); Protocol II, *op cit*, Article 13(3).

<sup>58</sup> *Op cit*, Article 51(8).

<sup>59</sup> Rome Statute of the International Criminal Court, 1998, Article 8(2)(e)(viii).

<sup>60</sup> <[www.aljazeera.com/news/2020/02/syria-cites-deliberate-attacks-civilians-200218111516852.html](http://www.aljazeera.com/news/2020/02/syria-cites-deliberate-attacks-civilians-200218111516852.html)> accessed 5 May 2020

<sup>61</sup> <<https://www.hrw.org/world-report/2019/country-chapters/syria>> accessed 5 May 2020;

<[www.aljazeera.com/news/2020/02/syria-cites-deliberate-attacks-civilians-200218111516852.html](http://www.aljazeera.com/news/2020/02/syria-cites-deliberate-attacks-civilians-200218111516852.html)> accessed 5 May 2020; <<https://www.un.org>> accessed 5 May 2020.

forces and non-State armed groups, ranging from indiscriminate attacks against civilians not taking active part in the armed conflict thereby resulting in destruction of lives and properties against the clear provisions of the Law of Armed Conflict.<sup>62</sup> Such acts as the use of chemical weapons; hostage taking; mass killings; employment of landmines; forcible displacement; airstrikes; bomb-shelling; kidnapping,<sup>63</sup> recruitment of child soldiers, interference with humanitarian assistance and other acts inconsistent with the basic principles of International Humanitarian Law<sup>64</sup> occur in day light without regard to the civilian population.<sup>65</sup> For instance, the Human Rights watch<sup>66</sup> in reporting the nature and extent of humanitarian law violation in Syria observed that government forces used a combination of unlawful tactics, including prohibited weapons, indiscriminate airstrikes thereby resulting in mass displacement of civilians.

Again, according to the said report<sup>67</sup>, the military campaign launched by the Syrian-Russian Alliance in February 2018 in an effort to retake Eastern Ghouta left about 1,600 civilians dead; destroyed schools; medical facilities and civilians houses. Anti-government armed groups are not left out in these violations as they also employ indiscriminate attacks on government held areas thereby trapping civilians in the attacks.

The Syrian Civil War is also marked by the use of chemical weapons against the clear provision of International Humanitarian Law<sup>68</sup> which prohibits methods and means of warfare which cannot discriminate or which is expected to cause incidental loss of civilian life; injury or damage to civilian objects.

The said Civil War further features the use of landmines by ISIS which had claimed many civilians lives and maimed a host of others. Following these acts, a total number of 511,000 civilian deaths have been recorded and a total number of 5.6 million persons internally displaced in 2018 alone.<sup>69</sup>

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<sup>62</sup> Protocol I, *op cit*, Article 48; Protocol II, *op cit*, Article 13.

<sup>63</sup> *Ibid.*

<sup>64</sup> Protocol I, *op cit*, Article 48; Protocol II, *op cit*, Article 13.

<sup>65</sup> <<https://www.hrw.org/world-report/2019/country-chapters/syria> > accessed 5 May 2020; <[www.aljazeera.com/news/2020/02/syria-cites-deliberate-attacks-civilians-200218111516852.html](http://www.aljazeera.com/news/2020/02/syria-cites-deliberate-attacks-civilians-200218111516852.html)> accessed 5 May 2020; < <https://www.un.org> >accessed 5 May 2020.

<sup>66</sup> *Ibid.*

<sup>67</sup> <<https://www.hrw.org/world-report/2019/country-chapters/syria> > accessed 5 May 2020.

<sup>68</sup> <<https://www.hrw.org/world-report/2019/country-chapters/syria> > accessed 5 May 2020.

<sup>69</sup> *Ibid.*

Another offensive attack which was reportedly launched in Daraa and Quineitra governorates of Syria also forced the displacement of civilians towards Jordan and Golan Heights.<sup>70</sup> The effect of the military offensive launched by Turkish Troops in January 2018 is not different as it also left a dozen of civilians dead and many others displaced.<sup>71</sup> The said Civil War has further witnessed kidnappings and killings of individuals by ISIS in the al Suweida governorate area; summary executions and interference with humanitarian access and aid distribution in areas under their control.

The case is not also different in Idlib where it was reported that at 350,000 Syrians mostly made up of women and children fled their homes in search of safety in the border areas of Turkey.<sup>72</sup>

Rosemary DICARLO, under-Secretary-General for Political & Peace building Affairs, briefing the Security Council said that the ‘the security situation in and around Idlib in Syria continues to deteriorate following airstrikes in the frontlines of both the government and non-State-armed groups, targeting areas and populated centres far removed from the fighting.’<sup>73</sup> The attack and counter attack launched from both air and ground by both government and non-State-State armed groups were without due regard for both civilians and civilian properties thereby resulting in the displacement of about 1 million civilians in 2019 as a result of fear and terror.<sup>74</sup> In 2019 alone, a total number of about 1,750,000 civilians had lost their lives as a result of indiscriminate attacks.<sup>75</sup>

A further report had it that ‘helicopters drop barrel bombs filled with toxic gas on the last rebel-held town in Eastern Ghouta and not less than 500 people were affected by the attack’.<sup>76</sup>

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<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid*

<sup>72</sup> < <https://www.reuters.com/article/us-syria-security-idlib/says-around350000-pepole-have-fled-syrias-idlib-since-dec-1-idUSKBN1ZF1C0>> Accessed 6 May 2020.

<sup>73</sup> < <https://www.un.org> >accessed 5 May 2020.

<sup>74</sup> < <https://www.un.org> >accessed 5 May 2020.

<sup>75</sup> *Ibid.*

<sup>76</sup> < <https://www.un.org> >accessed 5 May 2020.

Even in the Internally Displaced Persons camps, civilians are not safe as they face dehumanizing conditions such as reckless killings, sexual and gender-based violence and poor living conditions.<sup>77</sup>

In another report by Aljazeera News, ‘nearly about 300 civilians lost their lives in attacks in the north-west Syria with 93 percent deaths caused by Syrian-Russian forces’.<sup>78</sup>

This is really worrisome especially against the background that International Humanitarian Law prohibits ‘acts or threat of violence the primary purpose of which is to spread terror among the civilian population;<sup>79</sup> indiscriminate attacks against civilians;<sup>80</sup> bombardment by whatever methods or means and acts expected to cause incidental loss of civilian life; injury or damage to civilian objects,<sup>81</sup> recruitment of child soldiers<sup>82</sup> and acts interfering with or impeding access to humanitarian assistance.<sup>83</sup> Therefore, acts such as airstrikes; bomb-shelling; use of chemical weapons and landmines; destruction of civilian lives and homes; destruction of objects indispensable to the survival of civilian; kidnapping; sexual abuses; forcible displacement which characterize the Syrian armed conflict threaten the lives of civilians and facilitates their internal displacement.

The prohibition of such acts is premised on the fact that attacks which are not directed at a specific military objectives; those which employ a method or means of combat which cannot be directed at a specific military objective; or those which employ a method or means of combat; the effects of which cannot be limited, violates the principle of distinction.<sup>84</sup> The principle of distinction remains the vehicle through which war is humanized;<sup>85</sup> in the absence of the principle of distinction, International Humanitarian Law collapses.<sup>86</sup>

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<sup>77</sup> *Ibid.*

<sup>78</sup> <[www.aljazeera.com/news/2020/02/syria-cites-deliberate-attacks-civilians-200218111516852.html](http://www.aljazeera.com/news/2020/02/syria-cites-deliberate-attacks-civilians-200218111516852.html)>

<sup>79</sup> *Protocol I, op cit*, Article 51(2).

<sup>80</sup> *Protocol I, op cit*, Article 51(4).

<sup>81</sup> *Protocol I, ibid*, Article 51(5)(a)&(b).

<sup>82</sup> *Protocol II, op cit*, Article 4(3)(c).

<sup>83</sup> Geneva Conventions, 1949, Common Article 3; *Protocol II, op cit*, Article 18

<sup>84</sup> *Protocol I, ibid*, Articles 48 &

<sup>85</sup> K Watkin, ‘Warriors Without Rights? Combatants, Unprivileged Belligerents, & the Struggle Over Legitimacy’, Winter (2005) 2, *Program On Humanitarian Policy & Conflict Research, Harvard, Occasional Paper Series*, p9.

<sup>86</sup> JM Spaight, *Air Power and War Rights*, (London: Longman, Green & Co., 1947) 73.

To guarantee the protection of civilians and particularly internally displaced persons, the principle of distinction must be maintained and respected.

### **5. Respect for the Law of Armed Conflict- a Prerequisite for Arresting Internal Displacement**

Internal displacement of persons during armed conflict is often a consequence of the violation of the basic rules of the Law of Armed Conflict.<sup>87</sup> These include such acts as direct attacks against protected persons and objects;<sup>88</sup> forceful displacement or movement of civilians;<sup>89</sup> adoption of methods of warfare the primary aim of which is to spread terror among civilian population;<sup>90</sup> use of starvation as a method of warfare;<sup>91</sup> destruction of object indispensable to the survival of civilians;<sup>92</sup> collective punishments;<sup>93</sup> means and methods of warfare militarily unnecessary and disproportionate, recruitment of child soldiers,<sup>94</sup> hindering relief agencies access to civilians in need of humanitarian assistance during armed conflicts<sup>95</sup> and so on. In the midst of these violations, civilians opt to flee their habitual residence to safer places either to avert or mitigate the unnecessary suffering arising from the armed conflicts. Sometimes, displacement is even weaponized by the parties to the conflict even though it is forbidden by Law.<sup>96</sup> Following internal displacement, civilians become more vulnerable, in addition to the vulnerability they are exposed to by the armed conflict itself, thus giving way to all manner of treatments against them. Even at the Internally Displaced Persons Camps, civilians are not also safe as they are subjected to degrading and inhumane treatments such as sexual slavery against the clear principles of the Law of Armed Conflict. It is on the basis of this that the International Criminal Court found a warlord guilty of War Crime on the charges of murder; attacking civilians; rape; sexual slavery and displacement of civilians, among other things; while noting that the Law of Armed Conflict not only governs actions of parties to the conflict in relation to each other but also concerns itself

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<sup>87</sup> E Opara & Ndimouwuri, *op cit*, 78.

<sup>88</sup> Protocol Additional to the Geneva Conventions, 1949 and relating to the Protection of Victims of Non-international Armed Conflicts (Protocol I), Article 4; Geneva Conventions, 1949, common Article 3.

<sup>89</sup> *Ibid*, Article 17.

<sup>90</sup> *Ibid*, Article 13.

<sup>91</sup> *Ibid*, Article 17.

<sup>92</sup> *Ibid*, Article 14.

<sup>93</sup> *Ibid*, Article 4.

<sup>94</sup> Protocol II, *op cit*, Article 4(3)(c).

<sup>95</sup> Protocol II, *op cit*, Article 18; Geneva Conventions, 1949, Common Article 3.

<sup>96</sup> *Ibid*, Article 17.

with protecting vulnerable persons during armed conflict and assuring fundamental guarantees to persons not taking active part in the hostilities.<sup>97</sup>

The International Criminal Tribunal for Rwanda had also earlier, in the case of *Prosecutor v Jean-Paul Akayesu*,<sup>98</sup> convicted Akayesu of Crimes against Humanity and the violations of common Article 3 to the Geneva Conventions, 1949 and in accordance with Articles 3(a) and 4(a).<sup>99</sup>

Although it could be argued that some other factors other than armed conflicts may be responsible for internal displacement, violation of International Humanitarian Law is a major cause of internal displacement.<sup>100</sup> Thus, displacement is a consequence of the cumulative effect of the violation of the Law of Armed Conflict—the principles of distinction, proportionality, military necessity, precaution and so on.

Ama Oji<sup>101</sup> reiterated that the problem with the Law of Armed Conflict lies in the lack of implementation of the principle of distinction during armed conflicts. The author recalled that the major goal of the Law of Armed Conflict is to balance military necessity with concern for humanity and in doing so, while the military aspect requires combatants to use the means and methods of warfare necessary to achieve the intended military advantage; the humanitarian aspect ameliorates the sufferings of civilians not taking a direct part in hostilities. The author further observed that one of the ways of ensuring respect for the Law of Armed Conflict is through the observance of the fundamental principles of the Law of Armed Conflict such as the principles of Humanity, Precaution, Military Necessity, Proportionality and most importantly, the Principle of Distinction. The principle of distinction stands as the ‘gatekeeper of target selection’.<sup>102</sup>

It therefore follows that States and other parties to an armed conflict have an obligation to respect and ensure respect for the Law of Armed Conflict in all

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<sup>97</sup> *Prosecutor v Bosco Ntaganda*, ICC-CPI-20170615-PR1313.

<sup>98</sup> Case No. ICTR-96-4-T.

<sup>99</sup> Statute of the International Criminal Tribunal for Rwanda, 1994.

<sup>100</sup> E Opara & Ndimouwuri, *op cit*, 78.

<sup>101</sup> E Ama Oji, ‘The Problem with International Humanitarian Law: Distinguishing Targets in Armed Conflict’, (2013) 4, *UNIZIK J.I.L.J.* <

<https://www.ajol.info/index.php/naujilj/article/view/136286> > Accessed 21 January 2020.

<sup>102</sup> G Swiney, ‘Saving Lives: The Principle of Distinction and the Realities of Modern War’ (2005) 39 *Int’l Law*, 733. < <https://www.jstor.org/stable/40707812> > accessed 23 January 2020.

circumstances.<sup>103</sup> Parties are by this obligation required to use their power to prevent and repress violations of the basic principles of International Humanitarian Law, particularly acts capable of resulting in internal displacement of civilians. This is against the backdrop that serious breaches of the Law of Armed Conflict which often affect civilians, facilitates internal displacement. Thus, if respect for human life and dignity will be achieved during the situation of armed conflict, particularly within the context of the Syrian Civil War, respect for the fundamental principles of Law of Armed Conflict must be observed by all who are parties to the armed conflict whether State or non-states actors. Hence, the principle of distinction requiring parties to distinguish between civilians and combatants<sup>104</sup> for the purpose of directing attacks only against combatants/military objectives must be fully respected. Again, such principles as proportionality and military necessity which require parties to an armed conflict to observe the required precaution during military operations and to limit themselves to only such acts that are militarily necessary, must also be respected. This is because internal displacement of civilians results not from the absence of laws to that effect but to an extent, as a result of lack of respect for such laws.

## **6. Conclusion**

Internal displacement of persons during armed conflict is a consequence of disrespect for the basic rules of the Law of Armed Conflict.<sup>105</sup> Hence, respect for International Humanitarian Law is key to arresting the situation of internal displacement. This is against the backdrop that the situation of internal displacement will seldom arise where parties to an armed conflict respect the various provisions safeguarding the protection of persons not or no longer taking active part in hostilities. However, even where such displacement is inevitable, Internally Displaced Persons not taking active part in the hostilities still retain their rights as civilians not taking active part in the hostilities. As such, the minimum standard of treatment still accrues to them, since the law prohibits such acts as degrading treatment, collective punishment, sexual violence, hostage taking, starvation as a method of warfare and displacement of civilians. Hence, the Syrian government and other parties to the conflict must exercise the required political will to respect and ensure respect for International Humanitarian Law. It must establish the required domestic regulatory framework to ensure effective penal sanction for the violation of International Humanitarian Law. Parties to an armed conflict must

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<sup>103</sup> Geneva Conventions, 1949, Common Article 1.

<sup>104</sup> Protocol II, *op cit*, Article 13.

<sup>105</sup> Protocol II, *op cit*, Articles 4; 13; 14; 17; & 18; Geneva Conventions, 1949, common Article 3.

further ensure constant training and retraining of their armed forces to get them acquitted with basic rules of International Humanitarian Law and respect for same. This obligation does not exclude non-state actors as they are also bound to apply the minimum standard of treatment to protect persons not or no longer taking active part in hostilities and must ensure adequate measures to minimize civilian casualties giving rise to internal displacement. Nonetheless, even where displacement is necessary, the displaced persons must be accorded humane treatment.

Hence, direct attacks against civilians and civilian objects; indiscriminate attacks against civilians and civilian objects; destruction of objects indispensable to civilians; the use of starvation as a method of warfare and so on as evident in the Syrian war, are in clear disregard of the basic rules of International Humanitarian Law which facilitate internal displacement.