AN INTERNATIONAL HUMANITARIAN LAW PERSPECTIVE ON CONFLICT-RELATED MIGRANTS: STATUS AND PROTECTION

Anita Nwotite*

Abstract

Migration is one out of the many global issues arising from the situations of armed conflicts. Although migration cuts across peace and wartimes, conflict-related migrations are relatively more common because of the terror and threat associated with armed conflicts. The unsavory consequences of conflicts facilitate the movement of civilians in search of safety. This Article is informed by the fact that incidences of conflict induced migrations expose innocent civilians to more attacks, abuses and negative treatments thereby raising questions as to their status and protection in International Humanitarian Law. Adopting doctrinal method of legal research, this Article examined the status of conflict-related migrants in International Humanitarian Law with particular reference to the Geneva Conventions' regime. It further considered the protection accorded conflict-related migrants in International Humanitarian Law. The Article argued that conflict-related migrants not taking active part in armed conflict are civilians entitled to protection. Hence, the paper contended that acts of violence against conflict-related migrants constitute a violation of International Humanitarian Law. However, the paper found that the reality of migration makes conflict-related migrants more vulnerable and their protection more difficult. To address this challenge, the paper recommended among other things peacetime measures such as the dissemination of the rules of International Humanitarian Law among members of armed forces, so as to reduce the incidence of violations facilitating migration. It also recommended the provision of stricter sanctions for the violation of the rules of humanitarian law facilitating migration, through domestic legal framework.

Keywords: Migrants, Armed Conflict, Geneva Conventions, International Humanitarian Law, Protection.

1. Introduction

Migration is one recent global issue that is adversely affecting International Humanitarian Law. This is given the fact that it makes migrants more vulnerable to indiscriminate attacks and abuses resulting from armed conflict especially at their transit or destinations points.

Contemporary armed conflicts witness situations facilitating the movement of civilians from one country to another as a result of acts constituting threat and terror to civilians' lives and properties. The civil wars in Syria, Somalia, Yemen, Afghanistan, Iraq, and Darfur are illustrative of this point as they facilitate forceful migration of the civilian population and make them more vulnerable. The Syrian Civil War for instance, witnesses acts such as the use of chemical weapons; mass killings; employment of landmines; airstrikes; bomb-shelling; kidnapping, and the recruitment of child soldiers.[1] Following these acts, civilians migrate to safer countries to save their lives. The greatest of these flights in Syria was the movement of about 900,000 Syrians, representing the largest exodus of civilians since World War II.[2] However, these civilians are not safe even as conflict-related migrants as they are often trapped in other

*LL.M, B.L, PhD Researcher at Nnamdi Azikiwe University, Awka, Nigeria; nwotiteanita@gmail.com.

[1] <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> accessed 5 May 2020; <https://www.un.org>accessed 5 May 2020.

[2] <www.aljazeera.com/news/2020/02/syria-cites-deliberate-attacks-civilians-200218111516852.html> accessed 5 May 2020

armed conflicts along their way to the supposed 'promised land'. Thus, the transit points and the destinations of conflict-related migrants have turned into a nightmare[3]as they meet more dangerous and horrorful conditions on their way. Hence, the problem of conflict-related migrants is not that of flight from their war-torn countries but that of their safety in the course of their journey. This fact is illustrated by the case of some Somali war migrants who, while fleeing the armed conflict in Somalia were trapped in another armed conflict in Yemen-a transit country for many migrants. [4] The said Somalis were reportedly attacked by a coalition military vessel which opened fire, killing about 43 of them on board a boat.[5]

Armed conflicts constitute one of the drivers of migration[6] with serious consequences on International Humanitarian Law. International Humanitarian Law comes into effect to mitigate human suffering associated with such situations[7] by striking a balance between military necessity and concern for humanity.[8] The relationship between International Humanitarian Law and migration stems from the fact that the violation of the basic rules of International Humanitarian Law such as the principles of distinction and proportionality, give rise to incidences of migration.

The situation of migration does not remove the affected civilians outside of the application of International Humanitarian Law. Hence, humane treatment of persons not taking active part in hostilities, whether these persons exist within the borders of their home countries or across international borders as migrants, underscores International Humanitarian Law.[9] However, the dynamics of migration has witnessed a situation where civilian migrants are made more vulnerable to all sorts of attacks, abuses and treatments because of the situation of armed conflict taking place in either their transit or host countries. This situation raises a number of humanitarian law questions such as: What is the status of conflicted-related migrants in International Humanitarian Law? Are conflict-related migrants entitled to protection in International Humanitarian Law? What is the nature of the protection accorded conflict-related migrants, if any? Thus, the crust of this paper is to examine the status of conflict-related migrants in International Humanitarian Law and whether or not they are entitled to protection. This is even more imperative as the situation of armed conflicts have in recent times constituted one of prevalent triggers of migration.[10] The paper demonstrated with reference to the Geneva Conventions' regime that conflict-related migrants not taking active part in hostilities are also

[3] Migration Policy Institute Report, 'On the Move in a War Zone: Mixed Migration Flows to and through Yemen' Published 6 February 2019, available at <https://reliefweb.int/report/yemen/move-war-zone-mixed-migration/flows-and-through-yemen> accessed 3 January 2020.

[4]<https://www.reuters.com/article/us-yemen-security-refugees/somalis-fleeing-yemen-war-caught-in-nighttime-sea-attack-idUSKBN171129> accessed 17 May 2020.

[5] *Ibid*.

[6] Gieseken HO & E Quellet-Decoste, International Humanitarian Law and the Protection of Migrants Caught in Armed Conflicts. Available at https://blogs.icrc.org>2018/06/04>ihl accessed 26 February 2020.

[7] U O Umozurike, *Introduction to Law*,(3rd Edition), Ibadan:, Spectrum Books Limited, 2005), p 212; S Vite, ''Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations,'' March 2009, Volume 91, Number 873 *International Law Review of the Red Cross*.

[8] A Alexander, 'A Short History of International Humanitarian Law', (2015) 26(1), *European Journal of International Humanitarian Law,* 109-138, 111. < https://doi.or/10.1093/ejil/chv002 > Accessed 17 May 2020.

[9] Geneva Conventions, 1949, Common Article 3.

[10] Gieseken HO & E Quellet-Decoste, *op cit*.

civilians entitled to protection against direct and indiscriminate attacks except for such times they take active part in hostilities.[11]

2. Who is a Migrant?

There is no generally acceptable definition of a migrant.[12] However, attempt is made here to define the term. The Oxford Advance Learner's Dictionary defines a migrant as 'a person who moves from one place to another to find work'.[13]Again, an online Dictionary defines the term migrant as 'a person that travels to a different country or place, often in order to find work'.[14] The Longman Dictionary of Contemporary English defines the term as: 'someone who goes to live in another area or country, especially in order to find work'.[15]

Moreover, the International Federation of the Red Cross and Red Crescent Societies define migrants as: 'persons who leave or flee their habitual residence…to seek opportunities or safer and better prospects'.[16] The above definitions more or less considered the definition of a migrant from an economic point of view. However, the search for work or job is not the only reason that could lead to migration as people could also migrate in order to avert the consequences of armed conflict; natural disasters or massive human rights violations.

On the other hand, the International Organization for Migration[17] defines a migrant as:

> Any person who is moving from or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person's legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes of the movement are; or (4) what the length of the stay is.

The above definition is more elaborate and encompassing as it captured the many situations that could lead to migration. In this Article, the term 'migrants' is defined as persons who are leaving or who have left their home countries to other countries in order to avert the consequences of war; their status or the period of their stay in such countries notwithstanding.

Although there are different types of migrants, the focus of this Article is limited to conflict-related migrants not taking active part in armed conflict

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[11] Protocol Additional to the Geneva Conventions, 1949, and relating to the Protection of Victims of international Armed Conflicts, 1977 (Protocol I), Article 51(1)(2)&(3); Protocol Additional to the Geneva Conventions, 1949and relating to the Protection of Victims of Non - International Armed Conflicts, 1977 (Protocol II), Article 13.

[12] Gieseken HO, 'The Protection of Migrants under International Humanitarian Law' (2017) 99(1) 121-152, 124, *International Review of the Red Cross* Available at <https://www.international-review.icrc.org> accessed 26 February 2020.

[13] AS Hornby, Oxford Advanced Learner's Dictionary, Special Price, Sally Wehmeier, M Ashby(Eds) (6th Edn, Oxford University Press, 2001) 743.

[14] <https://dictionary.cambridge.org/dictionary/english> accessed 25 February 2020.

[15] <ttps://www.Idoceonline.com/dictionary/migrant> accessed 25 February 2020.

[16] International Federation of the and Red Crescent Societies, "Policy on Migration", November 2009, available at <www.ifrc.org/PageFiles/89395/Migration%20Policy_EN.pdf.> Accessed 27 December 2019.

[17] United Nations Migration Agency (IOM)<https://www.un.org>issues-depth> accessed 25 December 2019.

3. Status of Conflict-Related Migrants in International Humanitarian Law

International Humanitarian Law recognizes only two distinct classes of persons for the purpose of the principle of distinction.[18] These are: civilians and combatants. 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 (GC III) and under Article 43 of the Protocol Additional to the Geneva Convention and relating to the Protection of Victims of International Armed Conflict, 1977 (Protocol I).[19] The circle of persons referred to under the above provisions are: Members of the armed forces of a party to the conflict; 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; Members of regular armed forces who profess allegiance to a government or any authority not recognized by the Detaining Power; People who accompany the armed forces without actually being members ; Members of crews; and *Levee en mass.* In other word words, civilians are those persons who do not fall under the category of persons mentioned above. They are persons not taking active part in armed conflict. In the case of doubt as to whether a person is a civilian or not, that person shall be considered as a civilian.[20]

The second class of persons recognized in International Humanitarian Law is combatants. Combatants are members of the armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of the Third Geneva Convention).[21] They consists of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is not recognized by a government or by an authority not recognized by an adverse Party.[22] The persons referred to under the above provisions are:

(1) Members of the 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, combatants are persons empowered to take active part in hostilities.[23] Besides having the right to take active part in hostilities, they also possess combatant immunity against prosecution if captured and are entitled to prisoner of war status.[24]

[18] Protocol I, *op cit*, Article 48.
[19] Protocol I, *op cit* Article 43(2).
[20] *Ibid*, Article 50(2).
[21] *Ibid*, Article 43(2).
[22] *Ibid*, Article 43(1).
[23] Protocol I, *op cit*, Article 43(2).
[24] *Ibid*, Article 44(1).

Conflict-related migrants do not exist outside of this line of classification. Hence, they may be classified as civilians or combatants depending on the part they are taking in an armed conflict. As persons not taking active part in hostilities, conflict-related migrants are civilians.[25] However, where they take active part in hostilities, they become legitimate targets like combatant but only for such time they so participate in hostilities.[26] In other words, the status of conflict-related migrants will depend on whether or not they are taking active part in the hostilities. However, the focus of this Article is conflict-related migrants not taking active part in hostilities.

4. Are Conflict-Related Migrants Entitled to Protection in International Humanitarian Law?

There are no specific rules under International Humanitarian Law dealing with the protection of migrants as a distinct class of persons.[27] However, their protection exists within the context of the general protection accorded civilians not taking active part in armed conflict.[28] Conflict-related migrants are civilians and like other civilians, they are entitled to protection against attacks arising from military operations.[29] The situation of migration does not change this fact.

The protection of conflicted-related migrants not taking active part in hostilities is regulated by the four Geneva Conventions of 1949 and their Additional Protocols of 1977. However, the exact legal regimes that would apply will depend on whether the armed conflict is an international or non-international one. International armed conflicts are regulated by the four Geneva Conventions, 1949 and complemented by the Protocol Additional to the Geneva Conventions, 1949 and relating to the Protection of Victims of International Armed Conflict, 1977 while non-international armed conflicts are regulated by the Article 3 Common to the Geneva Convention, 1949 and complemented by the Protocol Additional to the Geneva Conventions, 1949 and relating to the Protection of Victims of Non- International Armed Conflict, 1977.

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'.[30] 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.[31]

[25] *Ibid*, Article 50.
[26] *Ibid*, Article 51(3); Protocol II, *op cit*, Article 13(3).
[27] International committee of the Red (ICRC), IHL and the Protection of Migrants Caught in Armed Conflict, 4 June 2018, available at: <https://www.refworld.org/docid/5b1fc324.html> accessed 22 December 2019.
[28] Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949 (GC IV); Article 3 Common to the Geneva Conventions; Protocol I, Article 51(1)(2)&(3); Protocol II, Articles 4 , 13 & 17.
[29] Protocol I, *ibid*, Article 51.
[30] Geneva Conventions, 1949, Common Article 2.
[31] Protocol I, *op cit*, Article 1 (4).

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.[32] 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'.[33] This classification is important because it determines the applicable legal regime and the rights accruable to the parties. The provisions of these regulatory frameworks as they relate to the protection of conflict-related migrants in both international and non-international armed conflicts will be considered side by side.

i. Geneva Convention Relative to the Protection of Civilians in Time of War, 1949

The Geneva Convention Relative to the Protection of Civilian Persons in Time of War protects civilians who find themselves in the hands of an adverse power within the context of international armed conflict. The Convention has copious provisions protecting civilians and by implication conflict-related migrants. It 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.[34] 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.[35] The Convention again prohibits the exercise of physical or moral coercion against protected persons.[36] In addition, no measure intended to cause physical suffering or extermination of protected persons shall be taken.[37] Besides, no protected persons shall be punished for an offence he or she did not commit personally.[38] Corporal punishment[39]and hostage taking are also forbidden under the said Convention.[40]

Again, protected persons are entitled to the protection afforded under Parts I and III of the said Convention subject to Articles 4(1) & 5. They are also afforded protection as aliens on the territory of a party to an armed conflict provided they qualify as 'protected persons' and satisfy the nationality requirement under Article 4 of the said Convention. Even where, for any reason they remain within the territory of a party to the conflict after the said conflict, they are still entitled to the protection afforded under Section II of the said Convention which requires that migrants be accorded the protection proper to aliens in time of peace including but not limited to the application of the principle of non- refoulment and the right to leave such a territory. However, where the situation so requires that certain security or protective measures be taken, such measures shall be applied to ensure their security.[41] Protected persons shall also have the right to receive relief materials individually or collectively; the right to medical treatment; and to freedom of religion without adverse distinction.[42] As refugees, they may also benefit from the

[32] 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) 93 (881) 189-225, 199.
[33] Common Article 3, *op cit*.
[34] GC IV, op *cit*, Article 27.
[35] *Ibid*.
[36] *Ibid*, Article 31.
[37] *Ibid*, Article 32.
[38] *Ibid*, Article 32.
[39] *Ibid*, Article 33.
[40] *Ibid*.
[41] *Ibid*, Articles 27, 41-43; Protocol II, *op cit*, Article 17.
[42] GC IV, *op cit*, Article 38.

protection afforded under Article 44 or under Article 70(2) of GC IV for persons not benefitting from the protection of any government.

This Convention specifically applies in situation of international armed conflicts. Its provisions are complemented by the provisions of the Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts, 1977 (Protocol I).

ii. Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts, 1977 (Protocol I)

The Protocol Additional to the Geneva Convention, 1949, and relating to Victims of International Armed Conflict, 1977[43] complements the four Geneva Conventions in the regulation of international armed conflicts. This Protocol also have certain provisions protecting civilians and by extension, conflict-related migrants. For instance, Article 51 provides that: 'The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations'.[44] It further provides 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.[45] Hence, 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 are prohibited.[46] Again, 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 also forbidden.[47] Furthermore, attacks against civilians by way of reprisal are prohibited.[48] Besides, migrants who also measure as refugees are accorded protection drawing from the provisions of Article 73 of the Protocol I which entitles them to the protection accorded 'protected persons' without adverse distinction, where they so meet the criteria. It follows then that acts such airstrikes, bomb shelling, use of chemical weapons and landmines which characterize the Syrian, Yemen and Somali Civil Wars constitutes a violation of International Humanitarian regarding the protection of civilians (conflict-related migrants).

iii. Common Article 3 to the Geneva Conventions, 1949

The Common Article 3[49] is a miniature law for the regulation of non-international armed conflicts. This is complemented by the Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of Non-International Armed Conflicts, 1977 (Protocol II).

The Common Article 3 provides 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 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

[43] Protocol I, *op cit*, Article 51(2).
[44] *Ibid*, Article 51(1).
[45] *Ibid*, Article 51(1).
[46] *Ibid*, Article 51(4).
[47] *Ibid*, Article 51(5)(a)&(b).
[48] *Ibid*, Article 51(5); J M Henckaerts & L Doswald-Beck, *Customary International Humanitarian Law* (Geneva: ICRC, Cambridge University Press, 2007), 188.
[49] Geneva Conventions, 1949.

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.[50] It also provides for an impartial humanitarian body such as the International Committee of the Red Cross to offer its services to the Parties to the conflict. Hence, acts such as violence to life, health and physical or mental well-being of persons, in particular murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment; collective punishments, taking of hostages; acts of terrorism, outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault; pillage; threats to commit any of the foregoing acts against civilians.[51] Civilian migrants are entitled to the above protection unless and for such time they take active part in hostilities.[52]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.[53]

iv. Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of Non-International Armed Conflicts, 1977 (Protocol II)

The Protocol Additional to the Geneva Conventions, 1949 and relating to the Victims of Non-international Armed Conflict, 1977 (Protocol II) which complements and supplement Common Article 3 to the Geneva Conventions in the regulation of the conduct of non-international armed conflicts also has some provisions similar to the Protocol I for the protection of civilians (conflict related migrants). 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.[54]

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.[55]

Again, the Protocol II[56] 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

[50] *Ibid*, Common Article 3.
[51] Protocol *II*, *op cit*, Article 4(2) (a)-(h).
[52] Protocol I, *op cit*, Article 51(3); Protocol II, *ibid*, Article 13(3).
[53] Protocol I, *op cit*, Article 51(8).
[54] Protocol, *op cit*, Article13 (1)(2).
[55] *Ibid*.
[56] *Ibid*, Article 4.

physical or mental well-being of persons, collective punishments, taking of hostages, acts of terrorism and recruitment of child soldier.

Apart from these general protections, special protection is also accorded to certain group of migrants such as children, women, internees, the wounded and sick and so on. For instance, the wounded and sick must be protected and given urgent medical and other necessary attention by the parties to the conflict,[57] the aged; persons with disabilities; and persons with other special health needs are also entitled to special protection. The Protocol II also accords special protection to children by providing against recruitment of children under the age of 15 into armed forces,[58] facilitation of their reunion with their respective families,[59] provision for their education,[60] and their removal from the area of armed conflict.[61] Over and above all, conflict-related migrants who do not benefit from the minimum standard of treatment set out under International Humanitarian Law may still be accorded fundamental guarantees.[62]

vi. Statute of the International Criminal Court, 1998

Article 8(1) and (2) of the Statute of the International Criminal Court criminalizes the violation of these basic principles of International Humanitarian Law respecting the protection of civilians not taking active part in hostilities. It was on the basis of one of such violations (sexual violence) that the International Criminal Court[63] recently convicted a war lord in the Democratic Republic of Congo for acts constituting

5. International Humanitarian Law and the Reality of Conflict-Related Migration

In 2015, the number of international migrants including refugees reached a record of 244 million and 21.3 million respectively. Between 2010 and 2015, the level of international migration grew by 27 percent and the Syrian Civil War was identified as one of the major causes for this increase.[64] As at 2016, about 2.75 Syrians had migrated to Turkey, 1.01 million to Lebanon, 656,000 to Jordan, 225,400 to Iraq and 117,500 to Egypt,[65] all in the bid to avert the consequences of the armed conflicts in their various countries. In countries affected by armed conflict like Syria, Somalia, Yemen, Afghanistan, Darfur, Ethiopia, and so on, the direct impact of conflict is an immediate reason for people to migrate.[66] For instance, since 2011 when the Syrian Civil War broke out, there has been a continuous movement of Syrians into neighbouring countries and beyond, all in an attempt to escape the consequences of the war.[67] In fact, the flight of 900,000 Syrians at a particular instance was said to represent the largest exodus of civilians since World War II.[68] The story is the same in Yemen. The situation in Yemen escalated after an

[57] Geneva Conventions, 1949, Common Article 3(2).
[58] Protocol II, *op cit* , Article 4(3)(c).
[59] *Ibid*, Article 4(3)(b).
[60] Protocol II, *op cit*, Article 4(3)(a).
[61] *Ibid*, Article 4(3)(e).
[62] Protocol I, *op cit*, Article 75.
[63] *Prosecutor v Bosco Ntaganda* ICC-01/04-02/06.
[64] World food Program, 'At the Root of Exodus: Food Security, Conflict and International Migration', (2017), 13.
[65] *Ibid*, 30.
[66] *Ibid*, 57.
[67] World food Program, 'At the Root of Exodus: Food Security, Conflict and International Migration', (2017), 30.
[68] <www.aljazeera.com/news/2020/02/syria-cites-deliberate-attacks-civilians-200218111516852.html> accessed 5 May 2020

Iran-backed Houthis overran Sanaa, Yemen's capital, in 2014. The conflict became internationalized in 2015 when an international coalition led by Saudi Arabia launched a military and economic campaign against the Houthis which gave rise to the world's most humanitarian crisis causing about 14,000 Yemenis to seek refuge in Somalia since 2015.[69]

Somalia which has been bedeviled by lawlessness and violence since the early 1990s also witnessed the migration of Somalis to Yemen despite the conflict in Yemen. Unfortunately the Somali migrants found themselves trapped in the armed conflict in Yemen, a situation which has caused them their lives.[70] Despite the danger posed by the conflict in Yemen, about 266,000 migrants mainly from Somalia still find themselves stocked in the middle of the government-Houthi cross fire.[71] As pointed out earlier in this Article, the problem of the victims of armed conflict is not in their migration but in the safety of their journey. The situation of the Somali migrants in Yemen explains this point vividly as the Yemeni government forces and the Houthi armed groups expose migrants to more dangers of direct attacks. This is even worse as Yemen constitute a transit country for the Somali migrants who are fleeing the war in their home country. In March 2017 for instance, about 42 Somali migrants travelling off the west coast of Yemen by boat, were reportedly killed by a coalition military vessel and helicopter which opened fire on them.[72] This is a clear violation of the basic principle of International Humanitarian Law requiring the protection of persons not taking active part in hostilities.[73] The reality of migration present a difficult situation for International Humanitarian Law as it exposes migrants to horrorful treatments in both transit and destination points.

Only respect for the basic principles protecting civilians not taking active part in hostilities (conflict-related migrants) will guarantee this protection.

6. Conclusion

Conflict-related migrants not taking active part in hostilities are entitled to protection in International Humanitarian Law.[74] This protection derives from the fact that they are civilians not taking active part in armed conflict within the meaning of Articles 50 and 51 of the Protocol I. Hence, their status as migrants does not deprive them of the basic protection accorded civilians not taking active part in hostilities. Nonetheless, like other situations of armed conflict, the

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[69] Nisan Ahmado and Sahra Eide Nur and Hussein Aden 'Yemen Unrest Makes Somalia Unlikely Safe Haven for Refugees'14 December (2019). <https://www.voanews.com/extremism-watch/yemen-unrest-makes-somalia-unlikely-safe-haven-refugees > Accessed 17 May 2020.

[70] Abduljabbar Zeyad, 'Somalis Fleeing Yemen War Caught in Nighttime Sea Attack', 30 March (2017). <https://www.reuters.com/article/us-yemen-security-refugees/somalis-fleeing-yemen-war-caught-in-nighttime-sea-attack-idUSKBN171129 > accessed 17 May 2020.

[71] Nisan Ahmado and Sahra Eide Nur and Hussein Aden 'Yemen Unrest Makes Somalia Unlikely Safe Haven for Refugees'14 December (2019). <https://www.voanews.com/extremism-watch/yemen-unrest-makes-somalia-unlikely-safe-haven-refugees > Accessed 17 May 2020.

[72] Migration Policy Institute Report, 'On the Move in a War Zone: Mixed Migration Flows to and through Yemen' Published 6 February 2019, available a <https://reliefweb.int/report/yemen/move-war-zone-mixed-migration/flows-and-through-yemen> accessed 3 January 2020.

[73] Protocol I, *op cit,* Articles 48 & 51; Protocol II, *op cit,* Article 13.

[74] Protocol I, *op cit,* Article 13(3); Geneva Conventions, 1949, Common Article 3.

protection of conflict-related migrants is very difficult to realize particularly given the added vulnerability of these migrants and due to the intrigues of migration and armed conflict giving rise to lawlessness and impunity. However, it is the responsibility of the warring parties to ensure that the basic principles of International Humanitarian Law respecting the protection of civilians, (particularly migrants trapped in armed conflicts within their territories) are effectively protected. To facilitate this protection, this Article recommends as follows:

1. Addressing the root causes of migration such as armed conflicts by ensuring responsible governance and security.

2. Provision of peacetime measures such as the dissemination of the rules of International Humanitarian Law among members of armed forces, so as reduce the incidence of violation of the rules of International Humanitarian Law facilitating migration.

3. Constant training and re-training of armed forces;

4. The provision of stricter sanctions for the violations of the rules of International Humanitarian Law through an effective domestic legal framework.