journals.unizik.edu.ng/index-php/jcpl
ISSN: 2736-0342
NNAMDI AZIKIWE UNIVERSITY, AWKA
JOURNAL OF COMMERCIAL AND PROPERTY LAW

Armed Conflict, Migration and International Humanitarian Law: The Intersection

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Abstract

Migration is one of the contemporary issues raising global concerns. The situation is even exacerbated by incidences of armed conflicts witnessing fragrant violations of the basic principles of International Humanitarian Law (IHL) facilitating the protection of the civilian population. While existing literature mainly focused on peacetime migrations and how they impact on economies, the paper focused on identifying the intersection between armed conflict and migration; and the relevant International Humanitarian Law rules for the prevention of migration. The paper adopted doctrinal method of legal research and analytical approach. The paper found that armed conflicts are important triggers of migration. This is particularly the case where parties to a conflict violate the fundamental rules of IHL meant to protect civilians. The result is that many civilians are displaced as result of these violations thereby making it necessary for them to seek refuge in safer places, sometimes across international borders. To address the challenges revealed by the paper, the paper recommended among others respect for the principles of distinction prohibiting indiscriminate attacks on both civilians and civilian objects. This will help prevent the incidences of conflict-related migration.

Keywords: International Humanitarian Law, Armed Conflict, Migration, Displacement, Civilians

1. Introduction

Throughout history, the quest for safety and improved opportunities has been integral to human existence, prompting individuals to migrate from one place to another.[1] This trend persists today, with individuals crossing international borders for a multitude of reasons. In fact, the right to move from one place to another is universally recognized.[2] Nonetheless, the issue of migration stands as one of the paramount global concerns, as "every day, all over the world, people grapple with one of the most challenging decisions in their lives: to leave their homes in pursuit of a safer and more promising future."[3] In fact, the 2020 International Organization for Migration (IOM) Report documented approximately 272 million international migrants.[4] While migration may occasionally be a matter of personal choice, there are instances when it becomes a necessity due to various factors, including economic, persecution, human rights violations, climate change, and

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[1] UN Secretary General, 'Peace, Dignity and Equality on a Healthy Planet.' (UN General Assembly, 2023) <https://www.un.org> Accessed 30 November 2024

[2] Universal Declaration of Human Rights, 1948, Article 13(1)

[3] Amnesty International, 'Refugees, Asylum Seekers, and Migrants', <https://www.amnesty.org> Accessed 3 January 2024

[4] UN Secretary General, 'Peace, Dignity and Equality on a Healthy Planet.' (UN General Assembly, 2023) <https://www.un.org> Accessed 30 November 2024

natural disasters, among others.[5] However, it is worth noting that armed conflict stands out as a significant trigger for migration.[6] To that effect, a number of contemporary armed conflicts[7] result in displacement that is directly linked to the conflict itself.[8] The displacements arise from specific acts by the parties to the conflict that pose significant threat to the lives and property of civilians.[9] The Office of the United Nations High Commissioner for Refugees conceded to this fact when it observed that an estimated 108.4 million people were forcibly displaced in 2022 due to conflicts, persecution, or natural disasters.[10] On the other hand, the United Nations' World Migration Report 2022 also shows a rise of displaced persons from 84.8 million in 2019 to 89.4 million in 2020.[11] The trend is worrisome as forced displacement during armed conflicts often times end up in migration.[12] The implication is that the more the incidences of armed conflict, the more people are forced to migrate in order to ensure their safety.[13]

While International Humanitarian Law does not prohibit armed conflicts,[14] it "defines the limitations, restrictions, and prohibitions of parties engaged in armed conflict."[15] In other words, International Humanitarian Law establishes specific and general regulations governing the conduct of armed conflict;[16] and respect for these rules is important to mitigating migration.

The paper is particularly significant against the backdrop that while existing literature focused on migration in peacetime, the paper shall reveal the intersection between armed conflict, migration and International Humanitarian Law. The paper is divided into 7 sections. The first section is the introduction to the paper. The second section deals with the conceptual framework. The third part of the paper will examine the regulation of migration under International Humanitarian Law. The fourth section will be concerned with armed conflict as a trigger for migration. The fifth section will examine specific IHL violations responsible for migration. The sixth section will elucidate the principle of distinction as a key to preventing migration. The last past of the part of the paper deals with the conclusion recommendations and policy implications of the finding of the paper.

2. Conceptual Framework

International Humanitarian Law (IHL) is a part of public international law which comprises of a set of legal rules which seeks to solve humanitarian problems directly arising from armed conflicts and to protect people and objects not being part of the armed conflict, while also

[5]Ibid.

[6] Amnesty International, 'Refugees, Asylum Seekers, and Migrants', <https://www.amnesty.org> Accessed 3 January 2024

[7] The Russia-Ukraine; and the Israel-Palestinian wars are very illustrative.

[8] A Targba, 'The Impact of Armed Conflicts on Forced Migration Crises in Nigeria and Mali' *Journal on Migration and Human Society*, (2022) (10) 4

[9] These acts includes indiscriminate and direct attacks against civilians and civilian objects; and the obstruction of humanitarian access for civilians in need of humanitarian assistance.

[10] UNHCR, '108.4 Million People Worldwide were Forcibly Displaced' (Global Trends Report 2022) <https://www.unhcr.org> Accessed 3 January 2024

[11]Ibid.

[12]HO Gieseken & E Quellet-Decoste, 'International Humanitarian Law and the Protection of Migrants Caught in Armed Conflicts' (14 June 2018) <https://wwwblogs.icrc.org> Accessed 4 January 2024

[13]Ibid.

[14] Diakonia International Humanitarian Law Centre, "Understanding International Humanitarian Law – An Introduction and Overview of the Key Concepts of IHL." <https://www.diakonia.se> Accessed 4 January 2024

[15]Ibid.

[16] Protocol Additional to the Geneva Convention 1949 and relating to the Protection of Victims of International Armed Conflict, 1977 (hereinafter referred to as AP I), Articles 35, 41, 48, 51, 53, 54, 55, 56, 57

restricting the methods and means of warfare employed by the parties.[17] In a nutshell, the aim of IHL is "…to protect persons who are not or who are no longer taking active part in hostilities, the sick and wounded, prisoners and civilians, and to define the rights and obligations of the parties to a conflict in the conduct of hostilities."[18] The scope of IHL is therefore, limited to situations of armed conflict.[19]This notwithstanding, the term "armed conflict" is not defined by IHL treaties. However, but then the International Tribunal for the Former Yugoslavia posits that armed conflict "…exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state."[20]In essence, armed conflict is said to exist when a dispute arises between two or more states, resulting in the deployment of armed forces, even if one of the parties denies the existence of such a situation.[21]In this case the conflict is known as international armed conflict covered by common Articles 2[22] and 1(4).[23] The entanglement may also arise between governmental forces and non-state armed actors.[24] In this respect, the armed conflict is referred to as non-international armed conflict covered by common Article 3.[25]Thus, armed conflict may be classified as international or non-international armed conflict depending on the constituent parties.[26] The common Article 2[27] describes international armed conflict as "all cases of declared war or of any armed conflict that may arise between two or more High Contracting Parties, even if the state of war is not recognized.[28] International armed conflicts also includes all cases of partial or total occupation of the territory of a High Contracting Party even if the said occupation meets with no armed resistance;[29] and cases where peoples are fighting against colonial domination and alien occupation and racists' regime as part of their right of self-determination.[30] On the other hand, the International Committee of the Red Cross (ICRC), in elaborating the common Article 2 to the Geneva Conventions, 1949 posits that any difference arising between two states and leading to the intervention of members of the armed forces is an armed conflict, the duration and the number of casualties or destruction notwithstanding.[31] International armed

[17] J Meurant, 'Inter Alma Caritas: Evolution and Nature of International Humanitarian Law' *Journal of Peace Research*, Special Issue on Humanitarian Law of Armed Conflict, (1987) 24 (3) 237

[18] International Committee of the Red Cross (ICRC) 'War and International Humanitarian Law' (29 October 2010)<www.ucrc.org/en/doc/war-and-law/overview-war-andlaw.htm> Accessed 1 February 20234

[19] A Nwotite, 'Application and Applicability of the Law of Armed Conflicts within the Context of the Covid-19 Pandemic' (2012) 3 (2) *International Review of Law Journal and Jurisprudence*, 127.

[20] *ICTY, Prosecutor v. Dusko Tadic* (Appeals Chamber) No. IT-94-1-AR 72

[21] AA Bouvier and HJ Langholtz, *International Humanitarian Law and the Law of Armed Conflict* (Operations Training Institute, 2020) 23.

[22] Geneva Conventions, 1949.

[23] Protocol Additional to the Geneva Conventions 1949 and relating to the Protection of Victims of International Armed Conflict of 8 June 1977 (AP I).

[24] Geneva Conventions (n 25), common Article 3

[25] Ibid.

[26] Ibid,Articles 2 & 3

[27] Ibid.

[28] Ibid, common Article 2

[29] Ibid.

[30] AP I (n 26), Article 1(4)

[31] International Committee of the Red Cross (ICRC) 'How is Armed Conflict defined in International Humanitarian Law? '(ICRC Opinion Paper, March 2008) <https://casebook.icrc.org> Accessed 1 February 2024

conflict is comprehensively regulated by IHL; and differs in great extent from the regulation of non-international armed conflict.[32]

On the other hand, non-international, armed conflicts are armed conflicts occurring within the territory of a High Contracting Party between governmental forces and non-state armed group(s).[33] Although, this class of armed constitutes the most prevalent class of armed conflict in IHL,[34] it is only regulated by common Article 3[35] and Protocol II to the Geneva Conventions. It is important to note that IHL does not apply to situations short of armed conflict such as riots, isolated and sporadic acts of violence.[36] Whenever the situation of armed conflict ensues, IHL crystallises and applies equally to all the parties on the basis of consideration of humanity; and the mitigation of human suffering associated with armed conflict.[37] Therefore, given their sensitive nature, the rules of IHL must be respected at all times[38] by the parties to the conflict in order to ensure the protection of those who are not taking active part in the conflict whether civilians[39] or those placed *hors de combat.*[40]Theprotection also extends to their property.[41] It is the failure to respect the applicable IHL rules among other things that results in such issue as forced displacement which in return begets migration.

The International Organization for Migration (IOM) defines migration as a process of moving either across an international border, or within a state.[42] The length, composition and cause of the movement are immaterial.[43] Hence, migration might be permanent, temporary or even seasonal. It could also be for a range of reasons such as economic, political, armed conflict, climate change, natural disaster, or massive human rights violations. While migration is a normal human activity,[44] sometimes, migration may be induced without people voluntarily wanting to embark on it. Conflict-related migration is for instance induced by armed conflicts resulting from the violation of the basic principles of International Humanitarian Law facilitating the protection of the civilian population. In such a situation, people leave their habitual residence in order to safeguard their lives and properties.

On the other hand, displacement is "the situation in which people are forced to leave the place where they normally live."[45] In other words, it is the movement of people from their habitual

[32] G S Stewart, 'Towards a Single Definition of Armed Conflict in International Humanitarian Law' *International Review of the Red Cross* (2003) 85 (850) 319
[33] Geneva Conventions () common Article 3
[34] J. Pejic, 'The Protective Scope of Common Article 3: more than meets the Eyes' *International Review of the Red Cross* (2011) 9 (88) 225
[35] Geneva Conventions (n 25)
[36] Protocol Additional to the Geneva Conventions 1949 and Relating to the Protection of Victims of Non-International Armed Conflict of 8 June 1977 (AP II) Article 17, Article 1(2)
[37] H Haider, 'International Legal Frameworks for Humanitarian Action: Topic guide'(March 2023) <https://www.gsdrc.org> Accessed 2 February 2024
[38] G Hans-Peter, 'International Humanitarian Law and the Protection of War Victims' (30 November 1998) <https://www.oas.org/dil/esp... > Accessed 6 December 2023
[39] AP I (n 26) Articles 50
[40]Ibid, Articles 51 & 41
[41]Ibid, Article 52
[42] International Organization for Migration (IOM), 'UN Migration – Key Migration Terms' (5 July 2019) <www.iom.int/key-migration-terms> Accessed 6 January 2024
[43] Ibid.
[44]< https://www.ourmigrationstory.org.uk> Accessed 3 February 2024
[45] Cambridge Dictionary. <https://dictionary.cambridge.org> Accessed 3 February 2024

residence necessitated by such reasons as armed conflict, natural disaster, among others. During armed conflict, millions of people are displaced as a result of direct or indirect acts of the parties to the conflict constituting violations of IHL. The purpose of IHL is to ensure that the parties to the conflict balance consideration for humanity against military necessity so as to avert such issues as migration. It is this shared humanity that gives International Humanitarian Law its relevance, its legitimacy, and its universal sense or acceptability[46]

3. IHL and Migration

Although IHL does not provide specific and direct rules on migration, it nevertheless provides some general rules the violation of which may result in migration. The first of such rules is that prohibiting direct attack against civilians;[47] civilian objects;[48] and objects indispensable to the survival of civilian population.[49] Articles 51(1)[50] and 13(1)[51] respectively provide that "the civilian population and individual civilians enjoy general protection against dangers arising from military operations." On the other hand, Articles 51(2)[52] and 13(2)[53] respectively prohibits "acts or threats of violence the primary purpose of which is to spread terror among the civilian population." To further strengthen this protection, Article 51(4) forbids indiscriminate attacks. Indiscriminate attacks that are not directed at a specific military target;[54] those attacks that utilize methods or tactics inappropriate for targeting a specific military objective;[55] or those that employ methods or tactics that cannot be controlled as stipulated by this Protocol. As a result, they have the effect of affecting both military targets and civilians or civilian objects without discrimination[56]. Furthermore, Article 51(5) outlines examples of indiscriminate attacks, such as bombardment of cities, areas, or towns where civilians or civilian objects are densely concentrated, as well as attacks that can be reasonably expected to result in disproportionate and incidental loss of civilian life, harm to civilians, and destruction of civilian objects.

More so, Article 48[57]requires that at all times; parties to the conflict must distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives. In the same vein, reprisal against the civilian population;[58] and civilian objects[59] are forbidden. Other provisions of IHL implying the prevention of migration is the prohibition against the use of starvation of civilians as a method of warfare.[60] Nevertheless, where starvation is inevitable, Articles 70[61] and

[46]E Fillion, 'International Committee of Red Cross ICRC in Nigeria: Facts and Figures - January - June 2019' <https://www.icrc.org> Accessed 3 February 2024
[47] AP I (n 26) Article 51(1); AP II (n 39) Article 13(1)
[48] AP I (n 25), Article 52
[49]Ibid,Article 54
[50] AP I (n 25)
[51] AP II (n 39)
[52] AP I (n 25)
[53] AP II (n 39)
[54] AP I (n 25), Article 51(4)(a)
[55] AP I (n 25), Article 51(4)(b)
[56]Ibid, Article 51(4)(c)
[57] AP I (n 25)
[58]Ibid, Article 51(6)
[59]Ibid,Article 54(4)
[60]Ibid, Article 51(1)
[61] AP I (n 25)

18[62] requires relief actions to be undertaken by relief societies with the consent of the High Contracting Parties, in order to assist civilians lacking basic supplies. Article 71[63] also accords respect and protection to such relief personnel for the benefit of civilians.

Important also to preventing migration during armed conflict, is the prohibition against the use of civilians or population movements to shield military objectives.[64] Article 74[65] requires the High Contracting Parties and parties to the conflict to facilitate in every possible way the reunion of families dispersed as a result of armed conflicts. Importantly, IHL forbids forced displacement.[66] The Rules on forced displacement exist by virtue of Customary International Humanitarian Law.[67] These Rules are also reflected under Articles 28 & 48 of the Geneva Convention Relative to the Protection of the Civilian Persons in Time of War, 1949; Article 51(7) of the AP I; and Article 17 of the AP II, which all prohibit the movement of the civilian population. Forced displacement constitutes War Crime or Crime against Humanity under Articles 8(2)(b)(vii), 8(2)(e)(vii) and 7(1)(d) respectively of the Rome Statute of the International Criminal[68] as the case may be. Article 57(1)[69] requires parties to a conflict to take constant care in the conduct of military operations to spare the civilian population, civilians and civilian objects. These rules provide the basis for the prevention of migration during armed conflicts. Hence, there is a very strong link between the violation of these IHL rules and the incidences of conflict-related migration.

4. Armed Conflict as a Trigger for Migration

Armed conflict occurs when there is a confrontation involving the armed forces of states, prolonged armed violence between governmental authorities and organized armed groups, or conflicts among organized armed groups.[70] Whenever armed conflict ensues, humanitarian crises invariably follows. One of these crises is the displacement of civilians. When displaced by armed conflicts, the victims move in search of safer abode. While such movement may at times be confined within a country where the armed conflict is occurring, in other instances, it may necessitate crossing international borders.

It is trite that individuals have the right to freedom of movement from one place to another.[71] This right also implies the right to flee one's country for whatever reason one may deem fit. In situations of armed conflict, the victims in the exercise of their right of freedom of movement flee their countries of origin across international borders for fear of what the armed conflict may cause them. This is against the background that armed conflicts are often characterized by acts posing serious threat to the lives, wellbeing and property of the civilian population, in clear

[62] AP II (n 39)
[63] AP I (n 25)
[64] Geneva Convention Relative to the Protection of Civilians in Time of War, 1949 (GC IV) Article 28; (n 25), Article 51(7); AP II (n 39), Article 13
[65] AP I (n 25)
[66] Henckaerts, Jean-Marie, and Louise Doswald-Beck, (eds) *Customary International Law*, Vol. 1, Rules (Cambridge University Press, 2005), Rules 129-133; (n 76) , Articles 28 & 48; (n 25), Article 51(7); (n 25), Article 17(1) & (2)
[67] Henckaerts, Jean-Marie, and Louise Doswald-Beck, (eds) ((n 78) Rules 129-133
[68] 1998
[69] AP I (n 25)
[70] International Committee of the Red Cross (ICRC), (n 34)
[71] International Covenant on Civil and Political Rights (ICCPR), 1966, Article 12 & 13; Convention on the Rights of the Child, Article 10; Convention on the Elimination of All Forms of Racial Discrimination, Article 15.

violation of the basic rules of International Humanitarian Law.[72]Such acts include direct attacks against civilians and civilian objects;[73] acts and threats of acts the primary purpose of which is to cause fear and terror among the civilian population;[74] destruction of objects indispensable to the survival of the civilian population;[75] reprisals against civilians[76] and civilian objects,[77] blocking of humanitarian access for civilians in need of humanitarian assistance,[78] starvation as a method of warfare and a host of other acts.[79] These and other acts exacerbate humanitarian crises and the victims are forced to move out of the comfort of their homes, deprived of security, shelter, food, water, livelihood and community support.[80] These hardship are sometimes at the expense of their lives.[81] When these happen, the victims of the conflict are first forced to flee the immediate battle zone in search of safety, security and shelter.[82] This trend is very evident in the Russia-Ukraine, Sudanese, Ethiopian-Tigray, Yemeni, Syrian, and the Democratic Republic of Congo wars, and recently in Gaza, among a host of other armed conflicts raging across the world. For instance, reports show that from 2000-2020, the number of displacements associated with armed conflicts rose from 21 million to 41 million.[83] On the other hand, the UNHCR Global Report of 2022 shows that the Russia-Ukraine war has resulted in the World's fastest growing displacement since the World War II as nearly one third of Ukrainians have been forced to flee their homes.[84] While about 5.9 million of these Ukrainians are internally displaced by 2022, 5.7 million have already crossed international borders seeking refuge across Europe.[85] In fact, Poland alone has received about 3.5 million Ukrainian migrants from 24 February 2022 when the armed conflict ensued to May 2022.[86] The Sudanese war is by no means different with regards to this trend. The IOM Migration Agency had also recorded the displacement of about 4 million people in the Sudanese conflict within just a little over 100 days of the commencement of the conflict, with 926,841 Sudanese already seeking refuge in Egypt, Libya, South Sudan, Chad, Ethiopia, and the Central African Republic, while 3.02 million persons remain internally displaced.[87] Although, it may be argued that some of these conflict-related migrations are anticipatory, it is also true that civilians have known the trends and would not like to take the risk of staying back and watching while the worse happens to them. Hence, in order to ensure their safety, the victims of armed conflict migrate to safer countries. The implication is that, the more the incidences of armed conflicts, the more humanitarian crises exacerbates, and the more humanitarian crises heightens,

[72] AP I (n 25) Article 48 & 51
[73]Ibid, Article 51 & 52
[74]Ibid,Articles 51(6) & 52(1)
[75] AP I (n 25), Article 54
[76]Ibid, Article 51(6)
[77]Ibid, Article 52(1)
[78]Ibid, Article 70 & 71
[79]Ibid, Article 54(1)
[80] ICRC, 'Internal Displacement in Armed Conflict–Facing Up to the Challenges' (November 2009) <https://www.icrc.org> Accessed 3 February 2024
[81]Ibid.
[82]Diakonia International Humanitarian Law Centre, 'Displacement and IHL' <https://www.diakonia.se/ihl/resources/international-humanitarian-law/ihl-displacemen... > Accessed 3 February 2024
[83] World Migration Report, 2020 cited in A Targba (n 11)
[84] UNHCR Global Report 2022, 'Ukraine Situation' <www.reporting.unhcr.org> Accessed 5 February 2024
[85]Ibid.
[86] M Duszczyk & P Kaczmarczyk, 'The War in Ukraine and Migration to Poland: Outlook and Challenges' *JEL*: F22, o15, R23 (2022) 57 (3) <www.intereconomics.eu.. > Accessed 7 2024
[87] International Organization for Migration (hereinafter referred to as IOM), 'Sudan Conflict Displaces Nearly 4 million (2 August 2023) <www.news,org> Accessed 17 January 2024

the more the victims opt to migrate to safer countries. The incidences of conflict-related migration are thus caused by armed conflicts which are often owing to the violations of the basic rules of IHL facilitating the protection of those not taking active part in the conflict.

5. IHL Violations Responsible for Migration

International Humanitarian Law crystallises once armed conflict ensues. The purpose of IHL in this case is to regulate the conduct of the parties and to protect those who are not or are no longer taking active part in the hostilities.[88] One of the major beneficiaries of IHL are however, civilians.[89]

As a general rule, civilians are protected against direct attacks and the effects arising from military operations.[90] The protection is also extended to civilian objects;[91] and objects indispensable for the survival of the civilian population.[92] To re-enforce this protection, indiscriminate attacks are forbidden.[93] Hence, directing attack against civilians or civilian objects or even objects indispensable for the survival of civilian population is unlawful.[94] To facilitate this protection too, medical personnel and humanitarian agents attending to civilians in situations of armed conflict are also protected.[95]However, despite these lofty provisions, "civilians bear the brunt of armed conflicts"[96] as contemporary armed conflicts witness massive violations of these IHL rules facilitating the protection of persons not taking active part in armed conflict.[97] These violations include murder, forced disappearance, torture, cruel treatment, outrages upon personal dignity, rape and other forms of sexual violence, reprisals against both civilians and civilian objects, human-shielding, blocking of humanitarian access, direct attacks on relief agents working for the protection of those taking no active part in conflict, destruction of objects indispensable for the survival of the civilian population, indiscriminate attacks such as bombshell, airstrikes in civilian populated areas and the like.[98] The on-going Russia-Ukraine;[99] Israel-Gaza,[100] the Democratic Republic of Congo and Sudanese wars are clear and compelling examples of these violations.[101]

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[88] UO Umozuruike, *Introduction to International Law* (3rd edn, Spectrum Books Limited, 2005) 212

[89] International Committee of the Red Cross (ICRC), 'International Humanitarian Law and the Challenges of Contemporary Armed Conflicts, *International Review of Red Cross*, ' (2007) 89 (867) 720

[90] AP I (n 25), Article 51; AP II (n 39), Article 13

[91] AP I (n 25), Article 52(2).

[92]Ibid, Article 54.

[93]Ibid, Article 51(4).

[94]Ibid,Article 48, 52 & 54.

[95]Ibid,Article Articles 15 & 20.

[96] International Committee of the Red Cross (ICRC), (n 92) 719

[97]Ibid.

[98]International Committee of the Red Cross (ICRC), (n 92) 719-720

[99] Madeline Halpert, 'Russia Committed Clear Violations of Humanitarian Law and War Crimes, OSCE Says' (13 April 2022) <https://www.forbes.com> Accessed 6 February 2024

[100] OCHA, 'Alleged Violations of International Humanitarian Law in the Israel-Palestinian Conflict: A Simple Explainer' (2 November 2023) <https://www.reliefweb.int> Accessed 6 February 2024

[101] Ruba Alhenawi, Hamdi Alkhshali and Sana Noor Haq, 'Sudan Civil War Spiraling out of Control, UN Says, As more than 1 million flee' (16 August 2023) <www.cnn.com.org> Accessed 7 February 2024

In the on-going Israel-Gaza war, for instance, at least more than 17,000 Palestinians and 1,400 Israelis have lost their lives following the October 7 offensives by both Hamas and Israel.[102] On the part of Israel, the war has been characterized by collective punishment; protracted blockade; recurrent airstrikes resulting in high civilian casualties (particularly among children); alleged use of prohibited weapons like white phosphorous in densely populated areas of Gaza, all in violation of the principle of distinction and proportionality.[103]

Palestinian armed groups were not also left out of these violations as they intentional target Israeli civilians, indiscriminately fire rockets into Israeli territories, and employ human shielding tactics.[104]

Again, the violation of IHL is not different in the Russia-Ukraine war as at least 10,000 civilians, including 560 children have been killed and over 18,500 injured since the invasion of Ukraine by Russia in February 2022.[105] There has also been reports of widespread violations of IHL including direct attacks against civilians and civilian objects, torture, and mistreatment of prisoners of war.[106] The attacks extends to critical civilian infrastructure such as electrical grids and water processing plants, execution of civilians in places of detention, and deportation of children.[107] Amnesty International further reported the establishment of bases and the employment of weapons system by Ukraine in populated residential areas, schools and hospitals, with the consequence of exposing the civilian population to dangers of attack.[108] Reports also has it that Ukrainian military stationed personnel near homes, apartments' buildings, and agricultural warehouses.[109] Attacks were also lodged from civilian areas in violation of International Humanitarian Law.[110] On the other hand, Russia carried out attacks in populated areas thereby resulting in the killing of civilians and destruction of civilian infrastructure.[111] The United Nations has in fact documented attacks where explosive weapons were used indiscriminately in populated areas by Russian armed forces.[112] Attacks were also directed on civilians who were attempting to flee.[113] Both Russia and Ukraine were reported to have located military objectives within or near civilian populated areas thereby exposing civilians to dangers of attacks.[114] The

[102] Mitchell McCluskey and Richard Allen Greene, 'Israel Military says 2 Civilians Killed for every Hamas Militant is a 'Tremendously Positive' Ratio given Combat Challenges' (5 December 2023) <www.cnn.com> Accessed 6 February 2024
[103]Ibid.
[104]Ibid.
[105] United Nations, 'Civilian Deaths in Ukraine War Top 10,000' (21 November 2023) <https://ukraine.un.org> Accessed 6 February 2024
[106] J Pejic, 'Expert Q & A on IHL Compliance in Russia's War in Ukraine', (7 April 2023) <www.justsecurity.org> Accessed 7 February 2024
[107] J Pejic, (n 109)
[108]MN Schmitt, 'Ukraine Symposium – Amnesty International's Allegations of Ukrainian IHL Violations' (8 August 2022) <www.lieber.westpoit> Accessed 8 February 2024
[109]Ibid.
[110]Ibid.
[111]Ibid.
[112]Ibid.
[113] United Nations Human Rights Office of the High Commissioner, 'UN Commission has found an Array of War Crimes, violation of Human Rights and International Humanitarian Law have been committed in Ukraine' (18 October 2022) <www.ohchr.org/en/press-> Accessed 7 February 2024
[114]Ibid.

UN Commission has also documented incidences of rape, sexual violence, torture, unlawful detention and summary executions in areas occupied by Russia.[115]

Furthermore, in Sudan, in the war that broke out between the Rapid Support Force (RSF) and the Sudanese government force since April 2023, about 3,900 people civilians children have be reportedly killed by both parties to the conflict.[116] There were also reports of gender-based violence and sexual assault, which according to reports, have increased by 50% since the beginning of the war.[117] There were further reports of widespread attacks on health facilities, destruction of water supply, communication and other community facilities; looting of humanitarian facilities; and warehouse, thereby frustrating aid response.[118] Other violations include deadly airstrike which for instance killed not less than 17 civilians in Khartoum;[119] and the failure to respect truce by both parties.[120] As a consequence of these violations, the number of displaced individuals increased significantly as victims fled heavily impacted regions, such as Khartoum, in a bid to safeguard their lives[121]. Following this trend, approximately 2 million people have been displaced, with around 600,000 individuals crossing international borders[122].

In the Democratic Republic of Congo, the violations of International Humanitarian Law reached an alarming level.[123] The Allied Democratic Forces (ADF) were said to be responsible for targeted attacks against civilians in the eastern provinces of the Democratic Republic of Congo thereby resulting in the tragic deaths of over 1,000 civilians while leaving dozens injured[124]. The UN Joint Human Rights Office in the DRC has also documented the use of heavy weapons, including mortars, AK47s, machetes, and knives, in assaults on villages.[125] These attacks have led to the complete destruction of entire communities, including schools and health facilities, and have involved the abduction and recruitment of women and children.[126] The attacks have been both widespread and systematic. Thus, from January 1, 2019, to January 31, 2020, a staggering total of 1,066 civilians have lost their lives; 176 injured; 717 abducted; 59 children recruited; and numerous schools and hospitals targeted and looted.[127] Regrettably, the Sudanese armed forces are also guilty of these violations.[128] Thus, records show that the Forces *armees de la Republique democratique du Congo* (FARDC); the *Police Nationale Congolaise* (PNC); and members of *Legion Nationale d'intervention* (LNI) have been responsible for the killing of 14 civilians; and

[115]Ibid.
[116] J van Moorsel & Bonfiglio, "Mixed Migration Consequences of Sudan's Conflict – Round 2 (5 May 2023) <https://www.reliefweb.net> Accessed 8 February 2024
[117]Ibid.
[118]Ibid.
[119] J van Moorsel & Bonfiglio, "Mixed Migration Consequences of Sudan's Conflict – Round 2 (5 May 2023) <https://www.reliefweb.net> Accessed 8 February 2024.
[120]Ibid.
[121]Ibid.
[122]Ibid.
[123] OCHA, 'Report on the Violations of Human Rights and International Humanitarian Law by the Allied Democratic Forces armed group and by Members of the Defense and Security Forces in DRC, between 1 January 2019 and 31 January 2020' (6 June 2020) <www.reliefweb.int/report> Accessed February 2024
[124]Ibid.
[125]Ibid.
[126]Ibid.
[127]Ibid.
[128]Ibid.

arbitrary arrest and detention of 297 civilians.[129] The result is lack of confidence in law enforcement agents and massive movement of civilians across international borders.[130]

It is pertinent to note that the violation of IHL has negative effect on the civilian population as it in particular precipitates migration.[131] This is made obvious in the Israel-Gaza war where nearly half a million Israelis have fled the country since the commencement of the war on 7 October 2023.[132] On the other hand, in Russia, following the Russian invasion of Ukraine, more than 300,000 Russians and residents have left Russia by mid-March 2022; 500,000 by the end of August 2022; and an additional 400,000 by early October 2022.[133] In Ukraine too, while about 5.9 million of Ukrainians are internally displaced by 2022, 5.7 million have already crossed international borders seeking refuge across Europe.[134] In Sudan on the other hand, the International Organization for Migration (IOM) Migration Agency has recorded the displacement of about 4 million people just within a 100 days of the commencement of the war, while 926,841 Sudanese are already seeking refuge across the borders of Sudan.[135] This goes to show the link between armed conflict and migration.

6. The Principle of Distinction - A Key to Preventing Migration

From the analysis so far, it is crystal clear that IHL violations trigger migration during armed conflicts.[136] It is, nevertheless important to point out at this juncture that these violations primarily revolve around indiscriminate attacks resulting precisely from the violation of the principle of distinction.[137] This is well explained by the Israeli-Gaza, Russia-Ukraine, Sudan and Democratic Republic of Congo wars, among others. These wars have been characterized by indiscriminate attacks.[138]

Indiscriminate attacks are those attacks which are not directed at a specific military objective;[139] or attacks which employ a method or means of combat which cannot be directed at a specific military objective;[140] or those which employ a method or means of combat the effect of which cannot be limited as required by this Protocol,[141] and which strike both military objectives and civilians or civilian objects without distinction.[142] The emphasis is on distinguishing between civilians and civilian objects on the one hand; and combatants and military objectives on the other hand.

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[129]OCHA, (n 123).
[130]Ibid.
[131] Voice of Africa, 'UN: Sudan Conflict Displaces over 1.3 Million' 24 May 2023 <www.voanews.com> Accessed 7 February 2024
[132] Mohammed Sio, 'Nearly Half a Million People Depart Israel amid Gaza War: Report' Zman Magazine 7 December 2023 <https://www.aa.com> Accessed 8 February 2024
[133] Van Brugen, Isabel, 'Putin's Mobilization backfires as 3,7000 Flee Russia in Two Weeks' Newsweek 4 October 2022 <https://www.newsweek.com> Accessed 7 February 2024
[134] Voice of Africa, (n 137)
[135] J van Moorsel & Bonfiglio, (n 122)
[136] Amnesty International, (n 9)
[137] Prohibiting direct attacks on civilians and civilian objects.
[138] AP I (n 25), Articles 48, 51 & 52
[139]Ibid, Article 51(4)(a)
[140]Ibid, Article 51(4)(b)
[141]Ibid.
[142]Ibid,Article 51(4)(c).

As far as IHL is concerned, there are only two classes of persons and objects – civilians and combatants; and civilian objects and military objectives.[143] While civilians and civilian objects are protected against direct attacks,[144] combatants and military objectives are legitimate targets.[145] The principle of distinction is an important indices for drawing the line between these persons and objects, for the purposes of protection.[146] Thus, Article 48[147] provides:

> *In order to ensure respect and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.*

The implication is that, in any armed conflict, attacks are only limited to combatants and military objectives.[148] For the purposes of clarity, combatants are "members of the armed forces of a Party to a conflict…"[149] consisting 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 represented by a government or an authority not recognized by an adverse Party.[150] In other words, combatants are persons not being civilians. On the other hand, military objectives are "those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage." These are lawful targets.[151]

On the other hand, civilians and civilian objects are entitled to protection.[152] "A civilian is any person who does not belong to one of the categories of persons referred to in Article 4A (1)(2)(3) and (6) of the Third Convention and in Article 43 of this Protocol;"[153] while "the civilian population comprises of all persons who are not civilians."[154] Put differently, civilians are persons other than combatants. Civilian objects on the other hand, are "all objects which are not military objectives."[155] Whereas combatants and military objectives are legitimate targets;[156] civilians and civilian objects are protected against direct attack.[157] This is the position and the spirit of IHL.

It is imperative to draw the line between protected persons and objects and legitimate targets as doing otherwise may trigger migration. Hence, acts such as direct attacks on civilians, destruction of civilian facilities such as schools, churches, hospitals, sources of water supply and

[143]AP I (n 25),Article 48, 51, & 52.
[144]Ibid.
[145]Ibid, Article 48 & 52.
[146]Ibid, Article 48.
[147] AP I (n 25).
[148]Ibid,Article 48.
[149]Ibid,Article 43(2).
[150]Ibid,Article 43(1).
[151] Ibid, Article 52.
[152]Ibid,Articles48, 51 & 52.
[153]Ibid, Article 50(1).
[154]Ibid,Article 50(2).
[155]Ibid, Article 52(1).
[156]Ibid, Articles 48 & 52(2).
[157]Ibid, Articles 48 & 52(1).

other critical civilian objects, are not supported by the principle of distinction. Again, airstrikes and bombardment of civilian concentrated areas, violate the principle of distinction.[158] These and other acts are clearly indiscriminate as they strike both civilians/civilian objects and military objectives without distinction.[159] Civilians are adversely acted by these acts hence, the reason for their movement across international borders for safety.

Respect for the principle of distinction among other things requires that parties to a conflict limit attacks to military objectives.[160] Hence, directing attack or using a method of warfare such as airstrikes that may target both military objectives and civilians and civilian objects such as schools, medical facilities, farmlands and water sources, violates the principle of distinction.[161] Again, the principle of distinction frowns at the use of such method of warfare like airstrikes, bombardment or bomb-shelling particularly in civilian populated or residential areas.[162] So also is the use of cluster munitions and other indiscriminate acts and methods of combat. Human shielding tactics,[163] where civilians are used to protect military objectives or even the siting of military objectives close or within civilian residential areas are also prohibited as they expose civilians to dangers of military operations. Where civilians are assured of their safety, security and well-being through respect for the principle of distinction which facilitates their protection, the tendency to migrate will be averted. Thus, the principle of distinction is the gateway and the key to preventing migration.

7. Conclusion, Recommendations and Policy Implications

The paper examined the intersection between armed conflict and migration and the relevant IHL rules for averting the incidences of migration. It is the finding of the paper that armed conflicts precipitates migration. This is especially where the principle of distinction which forbids direct attacks against civilians is violated. The finding of the paper is significant against the backdrop that it will serve as a roadmap for policy makers (such as government agencies, organizations and other relevant stakeholders) to make informed decisions geared towards averting situations that will result to armed conflicts in the first instance. Nevertheless, where armed conflicts are inevitable, the finding of the paper will help policy makers to put in place mechanisms for the protection of victims of armed conflict thereby forestalling their movement across international borders. The finding of this paper will also serve as a basis for further research in a related area. This is particularly so because migration has become a global issue requiring urgent attention. To address the challenges of this paper, it is recommended as follows:

a. States must take preventive measures in peacetime to avert the incidences of armed conflict in the first instance. Such measures will include equitable distribution of resources since this is often one of the reasons for internal armed conflicts.

b. Where armed conflicts are inevitable, States must ensure that the victims of armed conflict are provided with the required basic needs such as food, clothing, shelter and

[158]AP I (n 25), Article 51(5)(a).
[159]Ibid,Article 51(4)(c).
[160]Ibid,Article 48.
[161]Ibid, Article 51.
[162]Ibid, 51(5)(a).
[163] Geneva Convention Relative to the Treatment of Prisoners of War, 1949, Article 23; (n 76), Article 28; (n 25), Article 57(7); & Rome Statute of the International Criminal Court, 1998, Article 8(b)(xxiii)

medical services. This could be achieved by establishing or empowering relief agencies to discharge this responsibility.

c. State must rehabilitate and provide rehabilitative services to victims of farmed conflict so as assure them of their well-being, community support, and security.

d. The parties to a conflict must also allow humanitarian access for civilians in need of humanitarian assistance as lack of access to basic needs has the tendency of facilitating migration.

e. Relief agents must also be granted unimpeded access to civilians in need of essential supplies. This can be made possible by among other things removing all bottle neck such as taxes and unnecessary visa restrictions.

f. Importantly, High Contracting Parties must demonstrate commitment to their obligations under the Geneva Conventions by holding those who violate IHL rules accountable through diligent investigations, prosecutions, and penal sanctions.