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Forgotten Victims of Armed Conflict: Challenges Faced By Persons With  
Disabilities

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## Contents

Abbreviations .....	4
Acknowledgement.....	5
Preface.....	6
1. Introduction.....	7
1.1. Background.....	7
1.2 Purpose and Research Question .....	8
1.3. Structure.....	9
1.4. Delimitations .....	10
2. The Meaning of Armed Conflict under International Law.....	10
2.1. The Definition under International Law .....	10
2.2. The Definition of Different Armed Groups.....	13
2.2.1. State Armed Groups .....	13
2.2.2. Non-State Armed Groups .....	14
2.2.3. Transnational/International Armed Groups: Political, Religious, Non-State, Civil Rebellion, Foreign State-Sponsored .....	15
3. The persons with disabilities .....	17
3.1. Current International Sources .....	17
3.1.1. The United Nations Convention on the Rights of Persons with Disabilities .....	18
3.1.2. Geneva Conventions.....	19
3.1.3. European Convention on Human Rights .....	20
3.2. Persons with Disabilities at Risk during the Armed Conflict .....	22
3.3. The Specific Situation/Needs of Persons with Disabilities during Armed Conflict.....	24
3.4. Serving the Needs of Persons with Disabilities in Situations of Armed Conflict .....	26
3.5. Humanitarian or Security Corridors / Zones .....	28
4. The Legal Protection and Policies for Persons with Disabilities during Times of Armed Conflict .....	29
4.1. International Humanitarian Law .....	30
4.2. International Human Rights Law .....	31
4.3. Other Protections .....	34
4.3.1. United Nations .....	34
4.3.2. NATO .....	37
5. The Problems and Challenges .....	38
5.1. Practical Challenges.....	38
5.2. Normative Challenges .....	42
6. Recommendations.....	44
6.1. Recommendations of International Organizations .....	44

6.2. Personal Recommendations.....	47
7. Conclusion .....	49
Bibliography.....	50

## **Abbreviations**

AP II	Additional Protocol II
API	Additional Protocol I
APIII	Additional Protocol III
ATO	Anti-Terrorist Operation
AUCO	European Association for the Rights of Persons with Disabilities
CRC	Convention on the Rights of Child
CRPD	Committee on the Rights of Persons with Disabilities
DFS	Department of Field Support
DPKO	UN Department of Peacekeeping Operations
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
EU	European Union
GV	The Geneva Convention
HIV	Human immunodeficiency virus
IAC	International Armed Conflict
ICCPR	International covenant on Civil and Political
ICESCR	International Covenant on Economic Social and Cultural Rights
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
IDP	Internally displaced person
IHL	International Humanitarian Law
IHRL	International human rights law
NATO	North Atlantic Treaty Organization
OCHA	Office for the Coordination of Humanitarian Affairs
OHCHR	Office of United Nations High Commissioner
PoC	Postal Operations Council or Protection of Civilians
PTSD	Post Traumatic Stress Disorder
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
USAID	United States Agency for International Development

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## **Preface**

I had to leave my home in 2012, in the beginning of the armed conflict in Syria. I had no other choice but to leave after my home was surrounded by guns and helicopters. All of the people living in my neighborhood had already left. We, my mom and me, remained as the only family left in the neighborhood due to my disability. My uncle decided to come to our neighborhood risking his life in order to help evacuate us. I have always had concerns about accessibility, as a woman using a wheelchair, since my childhood so, I was extremely reluctant to leave my home. However, I realized that if I insisted on staying, I would be risking the lives of my mom and my uncle as they would not leave without me. Our journey to reach the safe zone lasted six hours. In the meantime, I came up in my mind with two questions: Are not these parties to the armed conflict aware that they are putting civilians' lives in danger? Are not they aware that not all of the civilians have the same ability in escaping from the conflict and saving their life?

In the same year, just after two months, I arrived to Sweden. This moment of escaping and these two questions occupied my mind and became the only thing in my mind day and night. Since I am the President of the Cultural Forum for People with Special Needs in Syria, I began to work from Sweden in order to support other persons with disabilities who have been experiencing the same difficulties in Syria or in the other countries where they have escaped. At the same time, I have realized that the available resources, both legal and non-legal, about the situation of persons with disabilities in armed conflict were limited. This reality has led me to choose this topic for my Master Thesis.

My purpose in this Master is to create a document, which indicates the challenges, and difficulties, which persons with disabilities, including me, have been experiencing because of the armed conflict in Syria. I would like to identify some of the deficiencies in legal sources and some of the practical problems in order to improve the implementation of the existing legal framework. In this regard, I also added my personal recommendations in order to overcome the challenges as a person who experiences disability first hand. I hope that this Thesis would be a good resource, which reveals and sheds light on the problems in question.

## **1. Introduction**

### **1.1. Background**

In the last ten years, different places in the world started to be affected from armed conflict. Some recent examples are Libya, Syria and Iraq. These armed conflicts make life hard for a lot of people including those who were able to escape from the affected places. Considering the ongoing-armed conflicts throughout the world, the role of the existing sources of International Law such as the Geneva Conventions or Customary Law regarding the protection of civilians has become more significant than ever. These related sources are broadly accepted by States and include comprehensive rules, which are applicable in case of armed conflicts. However, they cannot provide adequate protection for civilians who are in a more vulnerable situation than other civilians such as children, women and particularly persons with disabilities.

That persons with disabilities are vulnerable is due to two main reasons. First, their vulnerability is created from their disability. Having a disability may cause additional risks for many different reasons. For example: if they lack the ability to physically move quickly; or if they are not aware of what war means and the physical danger it creates; or if they are unable to physically access humanitarian aid even if it is an emergency situation.

The second reason is the deficiencies of the protection of civilians with disabilities in legal understanding and in practice. As it will be discussed in this Thesis, the specific needs of persons with disabilities in case of armed conflict are rarely regulated in any existing legal framework. The related Articles mainly oblige the States parties to take necessary measures in general. However, there is not any enforcement of the detailed provisions such as specific obligations that correspond to the needs of the persons with disabilities during an armed conflict such as arranging for advance warning prior to attacking and implementing accessibility in the public evacuation.

As to the deficiencies in practice, humanitarian and medical assistance are not modified in a way that persons with disabilities can get sufficient help mostly due to two reasons. First, during emergency assistance, service providers may accidentally cause more harm because of their lack of training. For example, a person may need to be carried in a special manner due to his/her disability and attempting to carry him/her without proper training mostly results in creating injuries. Secondly, humanitarian assistance may not be accessible and reachable by the person with the disability. Although resources maybe located in accessible places, the toilets, food or clean water may not be reachable. Furthermore, other specific medical needs of persons with disabilities may not have been considered and made available such as products for preventing pressures sores or urinary catheterization products, to name only a few examples.

Some of the challenges can be overcome through improving legal instruments or by implementing humanitarian services, which address the above-mentioned needs. In this regard, this Thesis aims to draw attention to how the current legal sources are not adequate and that persons with disabilities in armed conflicts need more legal protection.

## **1.2 Purpose and Research Question**

The primary purpose of this Thesis is to point out and to raise concerns about the deficiencies in the protection of persons with disabilities in case of armed conflict. Obviously, the Geneva Conventions as the main legal sources of international humanitarian law refers to disability. Furthermore, the United Nations and other NGOs who work on this topic have made many noteworthy efforts. It is clear that States parties, NGOs, international organizations, intergovernmental organizations and activists always mention the vulnerable situation of person with disabilities or describe some of their protection activities, which are made during armed conflict. However, a description of the special needs of persons with disabilities has still not been identified in sufficient detail, the voices of persons with disabilities are not directly listened to and there are not any efforts to prepare a legal document that would specifically regulate the protection of civilians with disabilities by defining the

specific needs of those persons and the legal obligations of States parties. Furthermore, the humanitarian assistance provided by international and national organizations is not sufficient and continues to have deficiencies. In this regard, this Thesis explores: what are the challenges that persons with disabilities encounter; what kind of legal protection exists; if these protections are sufficient; and some recommendations.

### **1.3. Structure**

This Thesis is divided into seven chapters. Chapter 1 is the introduction, which aims to provide a background, research question and purpose, research methodology and delimitations. Chapter 2 is divided into three sub-parts. The first part explains the legal definition of persons with disabilities. The second part lists the main international sources, which may provide protection for persons with disabilities in case of armed conflict. The third part identifies and analyses the challenges faced by the persons with disabilities during the armed conflict and other emergency situations and their vulnerability. It aims to give information about why these persons are vulnerable and how their situation is documented or expressed by experts. Chapter 3 defines armed conflict and its types, briefly, and identifies the parties to armed conflict and the different types of armed groups. Chapter 4 aims to make a deeper analysis regarding legal protection and policies for the protection of persons with disabilities in situation of armed conflict. It begins with, to what extent international humanitarian law and international human rights law guarantees the protection of civilians with disabilities. Then it analyses the actions and approaches of UN and NATO about the rights and protection of these persons. Chapter 5 includes some of the challenges faced in situations of armed conflict. The purpose of this Chapter is to indicate what kind of problems in practice prevent the enjoyment of their rights and the receiving of sufficient protection. Furthermore, it analyses why the existing legal framework does not provide sufficient protection and what are the deficiencies. Chapter 6 makes recommendations in order to overcome the challenges and improve the conditions of the persons in question. The first part of Chapter 6 presents the recommendations given by the expert. The second part provides my personnel recommendations in light of my personal experiences, which were stated in the Preface. The last Chapter is the conclusion part that briefly summarizes the Thesis.

## **1.4. Delimitations**

This Thesis aims to describe some of the challenges faced by persons with disabilities in situations of armed conflict. The challenges regarding other issues such as education and work are not included. Furthermore, all of the different types of the disability or how they are defined in other fields are not explained in this Thesis. It should be also noted that the topic of the Thesis is broad and comprehensive. Therefore, the topic is examined in general and the main headings are specified.

## **2. The Meaning of Armed Conflict under International Law**

### **2.1. The Definition under International Law**

The term armed conflict is the main subject of International Humanitarian Law. This Thesis does not aim to analyze whether armed conflict exists or not in certain situations. Therefore, the general features of armed conflict will be pointed out. As there is not any settled definition, the different provided definitions will be given.

As per Article 31 of the Vienna Convention on the Law of Treaties “[a] *treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*” For this reason, the context, the object and the purpose of the Geneva Convention should be looked at to interpret the meaning of the armed conflict.

The International Criminal Tribunal for the former Yugoslavia (ICTY) suggested a definition of armed conflict in a general sense: “*an 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.*”<sup>1</sup>

The International Committee of the Red Cross (ICRC) stated its opinion on the definition. According to the ICRC, there are two types of armed conflict:

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<sup>1</sup> ICTY, *The Prosecutor v. Dusko Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A, 2 October 1995, para. 70

international armed conflicts, opposing two or more States and non-international armed conflicts, between two armed groups which are governmental or non-governmental armed groups.<sup>2</sup>

The Commentary of the Geneva Conventions of 1949 specifies that, "*any difference arising between two States and leading to the intervention of armed forces is an armed conflict within the meaning of Article 2, even if one of the Parties denies the existence of a state of war. It makes no difference how long the conflict lasts, or how much slaughter takes place.*"<sup>3</sup>

In this regard, the question is, when does armed conflict exist between two States such that international humanitarian law applies.<sup>4</sup> War, armed conflict and occupation can be considered as inter-state conflict.<sup>5</sup> The formal declaration of war between two States is a type of inter-state armed conflict. However, it can be accepted that war in the traditional sense has been changing. The other situation is armed conflict that exists between States. As explained above, the term is not defined. However, based on the Tadic judgment, IHL would apply in case of any use of force by one State against another State. The duration of the intervention or the number of victims are not relevant in order to be accepted as IAC.<sup>6</sup> Occupation may also be another type of inter-state conflict. Article 2 common to the Geneva Conventions states that IHL applies to "*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*". For example, the Human Rights Council accepted that Israel's occupation of Lebanon between July 13<sup>th</sup> 2006 and September 8<sup>th</sup> 2006 is considered as international armed conflict.<sup>7</sup>

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<sup>2</sup> International Committee of the Red Cross (ICRC) Opinion Paper, How is the Term "Armed Conflict" Defined in International Humanitarian Law? March 2008

<sup>3</sup> J. Pictet, Commentary on the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, ICRC, Geneva, 1952, p. 32.

<sup>4</sup> Akande, "Classification of Armed Conflicts: Relevant Legal Concepts", Wilmshurst (ed.) International Law and the Classification of Conflicts (OUP, 2012). p.11

<sup>5</sup> *ibid*

<sup>6</sup> 'Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations' (2009) 91(873) International Review of the Red Cross 69, 72 (Vité, Typology), p. 72

<sup>7</sup> United Nations, Human Rights Council, Report of the Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1, A/HRC/3/2 23 November 2006, parag. 314

As to the definition of non-international armed conflict, there are two main legal sources: Common Article 3 to the Geneva Conventions of 1949 and Article 1 of Additional Protocol II (AP II). Common Article 3 also applies to the non-international armed conflicts. Article 1 of the AP II refers to the Common Article 3 by stating that, ” *This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application shall apply to all armed conflicts which are not covered by Article 1 [ Link ] of the Protocol Additional to the Geneva Conventions of 12 August 1949.*”

For the NIAC, two criteria are usually used:<sup>8</sup>

- There should be a minimum level of intensity in the hostilities.
- Non-governmental groups involved in the conflict should be organized armed forces.

In other words, they have a certain command structure and have the capacity to sustain military operations. In the Haradinaj case, the Trial Chamber emphasizes that intensity includes several criteria such as the type of weapons and other military equipment used; the extent of material destruction; the number of casualties; the number, duration and intensity of individual confrontations, the number of persons and type of forces partaking in the fighting and the number of civilians fleeing combat zones.<sup>9</sup>

In the same case, for the assessing of organization criteria, some of the indicative criteria are the existence of a command structure and disciplinary rules and mechanisms within the group; the existence of a headquarters; the fact that the group controls a certain territory; the ability of the group to gain access to weapons, other military equipment, recruits and military training; its ability to plan, coordinate and carry out military operations, including troop movements and logistics; its ability to define a unified military strategy and use military tactics; and its ability to speak with

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<sup>8</sup> International Committee of the Red Cross (ICRC) Opinion Paper, How is the Term "Armed Conflict" Defined in International Humanitarian Law?, March 2008

<sup>9</sup> Prosecutor v. Ramush Haradinaj et. al., case No. IT-04-84-T, Judgement of 3 April 2008, p. 27

one voice and negotiate and conclude agreements such as cease-fire or peace accords.<sup>10</sup>

## **2.2. The Definition of Different Armed Groups**

### **2.2.1. State Armed Groups**

According to the International Customary Law, pointed out by ICRC, “*The armed forces of a party to the conflict consist of all organized armed forces, groups and units which are under a command responsible to that party for the conduct of its subordinates.*”<sup>11</sup>

This definition is stipulated in Article 43(1) of the AP I. It states that “*The armed forces of a Party to a conflict consist 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. Such armed forces shall be subject to an internal disciplinary system which, 'inter alia', shall enforce compliance with the rules of international law applicable in armed conflict.*”

This definition applies to the armed groups of the State. If the State as a party to the armed conflict recognizes that a certain armed group belongs to that State and acting on behalf of it, this armed group will be considered as State armed forces.<sup>12</sup>

There may be some cases that the armed groups do not belong to a State or the State does not explicitly recognize the armed groups. However, a State can be still considered responsible for the actions of that armed group, and the NIAC may turn into international conflict. In the Tadic case, the ICTY ruled that if the nature and degree of the relationship between an organized armed group and a State reached a level of ‘overall control’, the State may be responsible for acts of a non-state group.<sup>13</sup> Therefore, an overall control test should be applied in order to determine if the non-state organ can be described as de facto organ of such State. The Appeal Chamber of

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<sup>10</sup> Prosecutor v. Ramush Haradinaj et. al., case No. IT-04-84-T, Judgement of 3 April 2008, p. 33

<sup>11</sup> ICRC, Customary International Human Rights Law, Rule 4, Definition of Armed Forces

<sup>12</sup> Keiichiro Okimoto, The Relationship Between a State and an Organized Armed Group and its Impact on the Classification of Armed Conflict, Amsterdam Law Forum, 2013, p. 34

<sup>13</sup> Ibid.

the ICTY stated that, *”In order to attribute the acts of a military or paramilitary group to a State, it must be proved that the State wields overall control over the group, not only by equipping and financing the group, but also by coordinating or helping in the general planning of its military activity.”*<sup>14</sup>

In this regard, the ICTY decided that the Army of the Republic of Srpska is considered as acting under on behalf of and under the overall control of Federal Republic of Yugoslavia. Therefore, the armed conflict between Bosnia Herzegovina and Bosnian Serbs was classified as an international armed conflict.<sup>15</sup>

### **2.2.2. Non-State Armed Groups**

A traditional approach accepts that only States are bound by international obligations. However, considering the evolving practice in the Security Council and in the reports of some special rapporteurs, non-State actors may be bound with IHL under certain circumstances.<sup>16</sup> As per to Geneva Conventions, International Humanitarian Law binds the non-state armed groups as well as state armed groups. Therefore, it is important to be able to distinguish a group, which uses violence from a group considered as a party to the conflict.

It is difficult to accept a single definition of armed groups since there are many types of armed groups with different characteristics such as rebel groups, militias, and organizations led by warlords and criminal networks.<sup>17</sup> Non-state armed groups, which are party to the armed conflict must observe IHL rules. Terrorist groups can also be considered as armed groups such as Islamic State of Iraq and Syria (ISIS) and Al Qaeda.<sup>18</sup>

International lawyers, social scientists and practitioners from international governmental and non-governmental provide various definitions for the non-state

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<sup>14</sup> ICTY, IT-94-1-A, Prosecutor v. Tadic, the Appeal Chamber, parag. 131

<sup>15</sup> ICTY, IT-94-1-A, Prosecutor v. Tadic, the Appeal Chamber, parag. 162

<sup>16</sup> OHCHR, International Legal Protection of Human Rights in Armed Conflict, 2011, p.28

<sup>17</sup> Claudia Hofmann and Ulrich Schneckener\*, Engaging non-state armed actors in State and peace-building: options and strategies, International Review of the Red Cross, Volume 93 Number 883 September 2011, p. 2.

<sup>18</sup> Christopher L. Blakesley and Dan E. Stigall, Non-State Armed Groups and the Role of Transnational Criminal Law During Armed Conflict, 48 Geo. Wash. Int'l L. Rev. 1 (2015), p.1

armed groups.<sup>19</sup> AP II does not mention the term disability, but the provisions protect persons with disabilities as civilians. Therefore, the criteria for non-state armed groups can be still considered for the definition of armed groups. According to the meaning of Article 1 of AP II, generally accepted requirements include: being armed forces or organized armed groups acting under responsible command; being able to carry out sustained and concerted military operations by exercising over territory; and being able to implement AP II to the GCs.<sup>20</sup>

The Human Rights Council states that an armed group should, “*exercises significant control over territory and population and has an identifiable political structure*” to be called an armed group that must respect human rights norms, such as Hezbollah.<sup>21</sup> Situations like rebellions, tensions, a mere riot, anarchy, uprising and internal disturbances in a State are not considered as non-international conflict under the international humanitarian law.<sup>22</sup>

LTTE (Liberation Tigers of Tamil Eelam or Tamil Tigers), in the north of Sri Lanka, Lord’s Resistance Army (LRA) in Uganda or Palestinian Hamas can be considered as examples of non-state armed groups.<sup>23</sup>

### **2.2.3. Transnational/International Armed Groups: Political, Religious, Non-State, Civil Rebellion, Foreign State-Sponsored**

Transnational armed groups have not been defined in any of the Geneva Conventions and its Protocols. However, it does not mean that different types of armed groups would be excluded from the concept of armed conflict within the scope of the IHL. Although, it was not mentioned, those who consider the ‘war on terror’ to be an armed conflict, started to use the concept transnational armed groups since September 11<sup>th</sup>, 2001.<sup>24</sup>

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<sup>19</sup> Keith Krause and Jennifer Milliken, Introduction: The Challenge of Non-State Armed Groups, Pages 202-220 Journal of contemporary Security Policy, Vol. 30:2, 2009, p. 203

<sup>20</sup> International Committee of the Red Cross (ICRC) Opinion Paper, How is the Term "Armed Conflict" Defined in International Humanitarian Law?, p.4

<sup>21</sup> UN, Human Rights Council, A/HRC/2/7, para. 19.

<sup>22</sup> Daragh Murray, Human Rights Obligations of Non-State Armed Groups, Bloomsbury, 2016.,

<sup>23</sup> Gravingholt J., Hofmann C, Klingebiel S, Development Cooperation and Non State Armed Groups, German Development Institute, 2007, p.22

<sup>24</sup> Sassoli Marco, Transnational Armed Groups and International Humanitarian Law, Occasional Paper Series, 2006, p. 1.

According to the one of the provided definitions in *Academica*, “*A transnational armed group can be described as a non-state armed actor which operates beyond the territorial borders of a single state and carries out serious and violent acts intended to cause fear, death, serious bodily injury and property damage to a person, group or general population in order to force a government or international organization to perform or refrain from performing a particular act.*”<sup>25</sup>”

The existence of the concept of the transnational armed group is also recognized by the United Nations. The Human Rights Council stated in its Special Session that “*the international community should be concerned about the networks that Boko Haram had created with other international armed groups, such as with Al-Shabab and the Islamic State*”.<sup>26</sup>

This type of armed group is considered as challenging since they are not regular; it is not easy to recognize and to respond to.<sup>27</sup> They can be religious, political, non-state, foreign-state sponsored and so on. A State may control or direct transnational armed groups.<sup>28</sup> There are also some situations where actions of non-state transnational armed groups cannot be attributable to any other State such as the situations in the so called ‘war on terror’<sup>29</sup>. Furthermore, Al-Qaeda is accepted as a religious transnational armed group.<sup>30</sup> They may carry out not only terrorist violence but also political violence.<sup>31</sup>

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<sup>25</sup> Anna Marie Brennan, *Investigating the accountability of Transnational Armed Groups under International Law for armed attacks*, *Snapshots of Doctoral Research at University College Cork* 2011, p.1

<sup>26</sup> UN Human Rights Council, *Special Session in light of terrorist attacks and human rights abuses by Boko Haram*, 2015

<sup>27</sup> Program on Humanitarian Policy and Conflict Research Harvard University, *Transnationality, War and the Law, A Report on a Roundtable on the Transformation of Warfare, International Law, and the Role of Transnational Armed Groups*, April 2016,

<sup>28</sup> Sassoli, *Transnational Armed Groups and International Humanitarian Law*, p.

<sup>29</sup> Mindia Vashakmadze, *The Applicability of International Humanitarian Law to Transnational Armed Conflict*, p.1. EUI Working Papers, 2009/34. p.1

<sup>30</sup> Mohammad-Mahmoud Ould Mohamedou, *Program on Humanitarian Policy and Conflict Research Harvard University, Non-Linearity of Engagement Transnational Armed Groups, International Law, and the Conflict between Al Qaeda and the United States in 2005*, p.

<sup>31</sup> Anicée Van Engeland, *Civilian Or Combatant?: A Challenge for the 21st Century*, Oxford University Press, 2011. p.101

It is not certain yet at the international level whether existing rules of IHL should be applied to the transnational armed groups, which is a party to the conflict.<sup>32,33</sup>

### **3. The Persons with Disabilities**

All conventions related to the human rights cover and protect persons with disabilities at the same level as with persons without disability. However, there is no settled definition made at the international level for persons with disabilities. This section will firstly provide definitions. Then, the vulnerability and needs of persons with disabilities during the armed conflict will be given.

#### **3.1. Current International Sources**

Persons with disabilities were not specified within the original International Human Rights Instruments but are assumed to fall within the definition of persons and the definition of civilians and noncombatants. Therefore, persons with disabilities as persons and as civilians would have the same protections as those guaranteed to persons without disabilities, as civilians, under International Human Rights and Humanitarian Law. According to the list made by United Nations, some of the core international and regional human rights Conventions that have provisions concerning persons with disabilities are:

- Convention on Rights of the Children,
- ILO Convention concerning Vocational Rehabilitation and Employment (Disabled Persons);
- African Charter of Human and People's Rights (art. 18(4));
- The African Charter on the Rights and Welfare of the Child (article 13);
- International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights.<sup>34</sup>

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<sup>32</sup> Sassoli, Transnational Armed Groups and International Humanitarian Law, 2006

<sup>33</sup> Brennan, Investigating the accountability of Transnational Armed Groups, p.6

<sup>34</sup> UN, Overview of International Legal Frameworks For Disability Legislation, International Legal Framework, <http://www.un.org/esa/socdev/enable/disovlf.htm#overleg2>

The characterization of disability is non-exhaustively made in these instruments. This chapter will introduce the main international and regional conventions, which specifically characterize, state or refer to the term and would be the main sources during the armed conflict. These Conventions are:

- The United Nations Convention on the Rights of Persons with Disabilities;
- Geneva Conventions;
- European Convention on Human Rights.

Their scope for protections within armed conflict will be specified in later chapters.

### **3.1.1. The United Nations Convention on the Rights of Persons with Disabilities**

The United Nations Convention on the Rights of Persons with Disabilities (hereinafter CRPD) and its Optional Protocol, which was adopted in 2006 and entered into force in 2008, can be considered as the main international instrument covering and stating the rights of persons with disabilities with the highest amount of ratifications/accessions. The CRPD aims to provide for the protection and the dignity of persons with disabilities. The rights of PWDs are asserted across different kinds of subjects, which includes: health; education; work; right to life and employment; and the implementation of these rights are framed.<sup>35</sup> The Convention promotes positive attitudes and behavior towards persons with disabilities and challenges prejudice, negative stereotypes, stigmas and any harmful practices.

As of July 2017, 174 countries worldwide have ratified/accessed the Convention and many regional integration organizations have signed.<sup>36</sup>

The Committee on the Rights of Persons with Disabilities (hereinafter the Committee) has been established to monitor the implementation of the Convention, examining any individual complaints, and receiving regular reports submitted by State parties in order to provide suggestions and general recommendations.<sup>37</sup>

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<sup>35</sup> Beckman, Paula J., Abera, Nicole, Sabella, Thomas, Podzimek, Kimberly & Joseph, Lenisa (2016). From rights to realities: Confronting the challenge of educating persons with disabilities in developing countries. *Global Education Review*, 3 (3). 4-27. p.8

<sup>36</sup> UN, Overview of International Legal Frameworks For Disability Legislation, International Legal Framework, <http://www.un.org/esa/socdev/enable/disovlf.htm#overleg2>

<sup>37</sup> OHCHR, website, <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>

The Optional Protocols state that persons with disabilities have an equal right to petition the court for justice due to any violations of the rights contained within the Convention.

Based on Article 1 of the CRPD, the purpose is “*to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.*”<sup>38</sup>

Disability is characterized non-exhaustively as those “*who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.*”<sup>39</sup>

The UN has expressed that, “*this minimum list of persons who may claim protection under the Convention does not exhaust the categories of the disabilities, which fall within it nor is intended to undermine or stand in the way of a wider definition of disabilities under national law (such as persons with short-term disabilities)*”.<sup>40</sup>

### **3.1.2. Geneva Conventions**

The four Geneva Conventions and its additional protocols have been considered as the bedrock of modern international humanitarian law for sixty years.<sup>41</sup> The authors were trying to regulate the fighting of wars and attempting to limit the barbarities that occur in war. The most relevant Conventions, which include the term ‘disability’ for the purpose of this thesis, are the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949;<sup>42</sup> and the Protocol Additional to the Geneva Conventions of 12 August 1949; and relating to

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<sup>38</sup> UN General Assembly, Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106, available at: <http://www.refworld.org/docid/45f973632.html>

<sup>39</sup> *ibid*

<sup>40</sup> UN Programme on Disability, Frequently Asked Questions, <http://www.un.org/esa/socdev/enable/faqs.htm#definition>.

<sup>41</sup> The Universality of IHL — Surmounting the Last Bastion of the Pacific, Victoria University of Wellington Law Review (New Zealand), p. 135  
Volume 41, Number 2, August 2010

<sup>42</sup> Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.

the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977).<sup>43</sup> The Additional Protocol II does not specifically have an article or the term for disability expressly. Thus it does not provide legal definition for the disability. Instead, it gives protection to wounded and sick people but does not define the meaning of wounded and sick. However, it may be argued that the meaning of wounded and sick is the same as AP I. In any case, persons with disabilities are protected as civilians under AP II.

The GC IV of 1949 contains 159 articles and is concerned with the protection of civilian populations during war and especially civilians in enemy occupied areas. Most of the articles deal with the status and treatment of civilians and it specifically spells out the obligations of the occupying power towards the protection of these populations and its obligations to provide humanitarian relief to populations in occupied areas.

The AP I stipulated in Article 8(a) that: *“the terms ‘wounded’ and ‘sick’ mean persons ... who, because of ... physical or mental disability, are in need of medical assistance or care ... and other persons who may be in need of immediate medical assistance or care, such as the infirm”*.

It should also be noted that the International Committee of the Red Cross (ICRC) works under the GVs, APs and its Status as an independent organization. The ICRC has also conducted a study in order to identify customary IHL rules. The study identified 161 rules of customary IHL<sup>44</sup>, which were commonly accepted and used as references. Customary Rules is also binding for States and this study by the ICRC will be used as references in this Thesis while referring to these rules.

### **3.1.3. European Convention on Human Rights**

The Council of Europe drafted the European Convention on Human Rights (ECHR) in 1950 and it entered into force on September 3, 1953. Disability is not explicitly

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<sup>43</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

<sup>44</sup> ICRC, Customary international humanitarian law, 29 OCTOBER 2010, retrieved from <https://www.icrc.org/en/document/customary-international-humanitarian-law-0>.

mentioned in the European Convention on Human Rights Articles. However, Article 14 of ECHR stipulates the prohibition of discrimination. The discriminatory grounds are listed in this article. Although disability is not specified, the list is not exhaustive. Based on ECtHR decisions, disability is also one of the violations considered discriminatory grounds.

The European Union has become a party to an international human rights convention for the first time in its history by ratifying the CPRD in 2009.<sup>45</sup> In this regard, the ECtHR has created new jurisprudence in light of the CRPD and the CRPD has become a key instrument in EU-countries, in order to re-examine perceptions on persons with disabilities and to promote their domestic legal reform.<sup>46</sup>

Based on the articles and standards contained in the UNCRPD, the ECtHR has positively pushed the issue of discrimination and intolerance against persons with disabilities in two recent cases. The first case is the case of *Glor v Switzerland* (*Glor v Switzerland*, Application No. 13444/04, 30 April 2009). The court said that “*The European Court of Human Rights has held that discrimination against a person living with diabetes constituted discrimination on the ground of disability*” in conjunction with Article 8 . In the second case, although the applicant did not make any claim for the violation of discrimination, the court actually acknowledged that persons with mental disability suffered discrimination in the past. It concluded that “*an indiscriminate removal of voting rights, without an individualized judicial evaluation and solely based on a mental disability necessitating partial guardianship, cannot be considered compatible with the legitimate grounds for restricting the right to vote.*”<sup>47</sup> It was accepted as a groundbreaking decision in academic.<sup>48</sup>

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<sup>45</sup> COUNCIL DECISION of 26 November 2009, 2010/48/EC, Official Journal of the European Union, 27.1.2010, 23/35, retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010D0048&rid=1>.

<sup>46</sup> Arie Rimmerman, *Disability and Community Living Policies*, p.114 March 29, 2017, Cambridge Publications

<sup>47</sup> *Alajos Kiss v Hungary*, Application no. 38832/06, 20 May 2010)

<sup>48</sup> János Fiala-Butora\* Michael Ashley Stein\*\* Janet E. Lord\*, *The Democratic Life of the Union: Toward Equal Voting Participation for Europeans with Disabilities*, *The Democratic Life of the Union: Toward Equal Voting Participation for Europeans with Disabilities*, p.79.

### **3.2. Persons with Disabilities at Risk during the Armed Conflict**

A vulnerable group has not been defined universally in an applicable way for armed conflicts.<sup>49</sup> For this reason, in a particular conflict setting, the scope and circumstances of the conflict such as actors, causes and outcomes make a difference for the vulnerable groups.<sup>50</sup> Besides the adverse effect of armed conflicts generally, vulnerable groups of civilians are exposed to more significant impacts on their lives. The extent of their vulnerability can depend on their social, economic, political, cultural and ethnic position but it can also be based only on the severity of their disability. These groups can be women, children, and elderly persons, persons with disabilities, indigenous peoples, minorities and LGBTI persons. In light of the topic of this Thesis, persons with disabilities are considered as one of the most marginalized people in the world even in peace times.<sup>51</sup> Furthermore, new means and methods of warfare can create new and consequential outcomes for persons with disabilities.<sup>52</sup> Their physical, mental, intellectual or sensory conditions make them more vulnerable than the persons without disabilities.

Disasters and humanitarian crises have a more disproportionate impact on persons with disabilities compared to the general population, since they are in higher risk in these situations due to the exposed insufficient awareness, accessible evacuation, response and humanitarian aids.<sup>53</sup>

Their vulnerability and the obstacles that they face during armed conflict may show itself in different ways, as described by the different institutions. Human Rights Watch (HRW) has stated that risk of abandonment, neglect and lack of equal access

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<sup>49</sup> <http://www.fp7-frame.eu/wp-content/uploads/2016/08/08-Deliverable-10.1.pdf>. P.13

<sup>50</sup> The United Nations Office for Risk Disaster Reduction, Issues of Vulnerability with Specific Reference to Gender in the Asia Pacific: Post - 2015 Framework for Disaster Risk Reduction, 19 July 2003, accessed on 9 April 2014, 3-4

<sup>51</sup> Barron, L. & Ncube, J. (2010). Poverty and Disability. London, UK: Leonard Cheshire International.

<sup>52</sup> Mugabi, Ivan, Protection of Vulnerable Groups during Armed conflicts, 2014, US China Law Review, Vol: 11.

<sup>53</sup> UN, Addressing the vulnerability and exclusion of persons with disabilities: the situation of women and girls, children's right to education, disasters and humanitarian crises, CRPD/CSP/2015/4

to food and health care is much more for persons with disabilities during conflict.<sup>54</sup> The research conducted in northern Uganda revealed, “ *that disabled women were, on average, more exposed to cases of physical or sexual violence during the concluded armed conflicts in some districts of Northern Uganda.*”<sup>55</sup> If the persons with disabilities are also part of the abovementioned vulnerable groups, their vulnerability is exacerbated. According to the submission of the International Disability Alliance, women with disabilities are much more marginalised on account of their gender and disabilities. Therefore, they may be left behind unprotected to violence and attack during the conflict, while whole communities may be left to other regions<sup>56</sup> The World Health Organization further stated in its report in 2013, that in emergency situations, persons with disabilities may lose their assistive devices such as spectacles, hearing and mobility aids and may be less able to escape from hazards.<sup>57</sup>

In its resolution 1894 (2009), the Security Council highlighted the particular impact that armed conflicts have on persons with disabilities. In its resolutions 2217 (2015) and 2225 (2015), the Security Council expressed concern over the situation of persons with disabilities, including abandonment, violence and lack of access to basic services, and emphasized the need for humanitarian activities to include persons with disabilities, especially children with disabilities.

Their vulnerability and exclusion does not only arise from their physical or mental conditions. The lack of awareness of humanitarian organizations during relief efforts is also the other reason.<sup>58</sup> According to reported experiences, a proper evacuation plan without an accessible transportation system and facilities is not sufficient or it

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<sup>54</sup> Human Rights Watch, People with Disabilities at Added Risk in War, Displacement, Ensure Equal Access to Services, December 3, 2015. Retrieved from <https://www.hrw.org/news/2015/12/03/people-disabilities-added-risk-war-displacement>

<sup>55</sup> Mugabi, Ivan, Protection of Vulnerable Groups during Armed conflicts, 2014, US China Law Review, Vol:11, p.1275.

<sup>56</sup> IDA submission to the Committee on the Elimination of Discrimination against Women, Day of General Discussion on women in conflict and post conflict situations. 49th session, 18 July 2011.

<sup>57</sup> WHO, Guidance Note on Disability and Emergency Risk Management for Health, 2013. p.9.[http://apps.who.int/iris/bitstream/10665/90369/1/9789241506243\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/90369/1/9789241506243_eng.pdf)

<sup>58</sup> Routledge Advances in Disability Studies, Crises, Conflict and Disability Ensuring Equality, Edited by David Mitchell, Valerie Karr, 2014.

has been thought that persons with disabilities needed complex medical services. Therefore, these persons are more likely abandoned and turned away.<sup>59</sup>

Additionally, the lack of political will, ignorance, and their exclusion from the data can be considered as other circumstances that make them vulnerable. For example, Uganda has not provided a clear definition for the term ‘disability’ at the national level.<sup>60</sup> Sierra Leone approaches persons with disabilities from the perception of charity rather than human rights.<sup>61</sup> Kenya does not have a sufficient plan to ensure their protection in case of emergencies.<sup>62</sup> According to UN, the registration of persons with disabilities who were internally displaced was not complete, which causes their exclusion from aid services and social protection.<sup>63</sup> There are only a few articles and reports, which are collected on persons with disabilities internationally.<sup>64</sup> Relevant and reliable data on persons with disabilities is much less available in countries in armed conflict.<sup>65</sup>

In what circumstances and why persons with disabilities are vulnerable can be discussed in many pages. Besides their physical and mental situation, the lack of awareness, the lack of political will and the lack of information are also reasons of being vulnerable.

### **3.3. The Specific Situation/Needs of Persons with Disabilities during Armed Conflict**

During times of armed conflict, persons with disabilities should be under the same protection as that provided to persons without disabilities. However, the restriction of ability to perform an activity due to a impairment, puts persons with disabilities into

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<sup>59</sup> UN, Addressing the vulnerability and exclusion of persons with disabilities: the situation of women and girls, children’s right to education, disasters and humanitarian crises

<sup>60</sup> CRPD/C/UGA/CO/1 2016

<sup>61</sup> United Nations. “Moving Forward Together, From National Commitment to Concrete Action: Report on the Rights of Persons with Disability in Sierra Leone”, 2011.

<sup>62</sup> CRPD/C/KEN/CO/1 2015

<sup>63</sup> CRPD/C/UKR/CO/1 2015

<sup>64</sup> Eva Studer, Respect and Promotion of the UN Convention on the Rights of Persons with Disabilities during Armed Conflicts, CERAH working paper, 2015 – 2016, <https://www.cerahgeneve.ch/files/5614/8163/3251/WP32-Respect-Promotion-UNconvention-Rights-Persons-with-Disabilites-Armed-Conflicts.pdf>

<sup>65</sup> supra 64, p.26.

a specific and vulnerable situation. Therefore, they need special attention, planning and implementation besides the general protection provided under the general provisions of human rights instruments. Usually, information is not accessible for persons with disabilities.<sup>66</sup> The person who has hearing or visual impairments may never hear or recognize any warnings. Persons using a wheelchair, crutches, prostheses, or white canes may not access humanitarian aid spots or be evacuated during the armed conflict. According to the documentation made in Iraq, persons with hearing or visual impairments could not hear or see warning shots made by soldiers at checkpoints.<sup>67</sup> Mental and intellectual disabilities also have a further risk on understanding dangerous events clearly. It has been documented that persons who did not fully understand the circumstances and necessity of total obedience to soldier's orders are sometimes shot.<sup>68</sup>

As stated by USAID in their publication in 2016, in the Ukraine, persons with disabilities contacted Oleh Driuma, *Chairman of the European Association for the Rights of Persons with Disabilities (AUCO)*, as they especially needed special conditions for evacuation.<sup>69</sup> Considering this report, the degree of vulnerability of any civilian group, especially persons with disabilities, is determined by its social and economic opportunities to access and obtain some form of practical assistance to secure shelter and support. This report further contained comments from children and adults with disabilities about their problems of evacuation from warfare areas, their integration into safer communities and the general observance of the human rights of IDPs with a disability.

Children with disabilities depended on their families, which makes their situation even harder. For example, in Kenya, children with disabilities are being abandoned by their families and the documented information on deaf, blind and deaf-blind children is not sufficient.<sup>70</sup> The situation of women with disabilities is exacerbated

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<sup>66</sup> CRPD/C/UGA/CO/1 2016; CRPD/C/KEN/CO/1 2015

<sup>67</sup> The War Report: Armed Conflict in 2013. P.394

<sup>68</sup> Supra note 64

<sup>69</sup> USAID and Ukrainian Helsinki Human Rights Union, «RIGHTS OF PERSONS WITH DISABILITY IN THE ARMED CONFLICT IN THE EAST OF UKRAINE».ANALYTICAL REPORT OF THE UKRAINIAN HELSINKI HUMAN RIGHTS UNION. 2016. p. 28

<sup>70</sup> CRPD/C/KEN/CO/1 2015

due to their gender, they have been abused and mistreated more than men with disabilities.<sup>71</sup>

The needs of persons with a disability are shaped in light of the scope of their vulnerability and their specific situation as explained above. Their main needs, in terms of the armed conflict, can be stated as the needs, which occur during the warning, evacuation, humanitarian aid and planning and registration. Warnings should be made in a way that all people including persons who are deaf and the blind can understand. All evacuation and humanitarian aid activities should be planned while considering the need for accessibility. Additionally persons with disabilities should be registered properly in order to not be excluded from humanitarian aid. How these needs could be met will be explained below.

#### **3.4. Serving the Needs of Persons with Disabilities in Situations of Armed Conflict**

Conflict situations can change very quickly, at some moments they are very dangerous with shooting and explosions going on constantly and sometimes the situation is seductively quiet with violence happening occasionally or even not at all for periods of time. The safety of civilians with disabilities can very rapidly change depending on the exposure of civilians with disabilities during an active or a general level of violence and their access to the safety of shelter and support, which can be provided in formal refugee camps or in the informal housing and shelters provided in the communities not being actively targeted by violence.

As the occurrence of violence decreases, the responsibility of State parties and humanitarian relief organizations directly increases to proactively provide shelter and to support adults and children with disabilities in a manner that is accessible and non-discriminatory.

The UNHCR has stated that specific attention should be given to persons with disabilities and shelters must be in compliance with their specific needs.<sup>72</sup>

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<sup>71</sup> Supra note 64

<sup>72</sup> UNCHR, Handbook for the Protection of Internally Displaced Persons, Global Protection Cluster Working Group, 31 Mar 2010, <http://www.unhcr.org/4c2355229.pdf>. P.238.

As stipulated in Article 11, States are responsible to take necessary steps to ensure their protection. Necessary steps include serving their needs because persons with disabilities may be injured or have already died due to a lack of assistance. The UN Committee emphasizes the importance of Article 11 as stated in international summits regarding crises.<sup>73</sup> A plan should be made by considering the special needs of persons with disabilities.

The President of the Security Council, in a statement delivered on February 12, 2014 during consideration of the issue “Protection of Civilians in Armed Conflict”, reaffirmed that “*parties to armed conflict bear the fundamental responsibility of taking all feasible steps to ensure the protection of affected civilians, and to meet their basic needs, including the specific needs of persons with disabilities.*”<sup>74</sup>

While it maybe difficult for State parties and humanitarian organizations to provide for the needs of adults and children with disabilities in refugee camps and informal shelters within local communities, however they are still obligated under international human rights law to provide for their needs in an accessible and non-discriminatory manner. The UN has stated in its thematic study that “*It is equally important that persons with disabilities be identified in situations of risk and during the recovery phase. Lack of systematic identification can lead to the exclusion of persons with disabilities from program assistance and resources, including water, shelter and clothing. When contingency plans are being designed, the ability to map the location of the target population and to compile information on their support needs can help to address them better.*”<sup>75</sup>

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<sup>73</sup> Statement on Disability Inclusion in the Third World Conference on Disaster Risk Reduction and Beyond (September 2014). Retrieved from <http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15184&LangID=E>, Statement of the Committee on the Rights of Persons with Disabilities on disability inclusion for the World Humanitarian Summit – adopted during the Committee’s 14th session, held, from 17 August to 4 September 2015 in Geneva.

<sup>74</sup>UNSC, Security Council Issues Presidential Statement Reaffirming Commitment to Protection of Civilians in Armed Conflict, SC/11274, 2014. <http://www.un.org/press/en/2014/sc11274.doc.htm>

<sup>75</sup> UN, HRC, Thematic study on the rights of persons with disabilities under article 11 of the Convention on the Rights of Persons with Disabilities, on situations of risk and humanitarian emergencies, A/HRC/31/30, 2015. p.9.

The UN commented in its Statement on Disability Inclusion for the World Humanitarian Summit that, *“moving and transferring persons with disabilities requires handling techniques to avoid injury or further injury. Accessibility for and the inclusion of persons with disabilities must be included in conflict situations.”*<sup>76</sup>

The UN Committee suggested a national plan to guarantee the protection of persons with disabilities during emergencies and the inclusion of them in the national policies.<sup>77</sup> It further suggested that the refugee camps should be monitored in order to make sure that health facilities, sanitation, education and appropriate shelter are accessible for them.<sup>78</sup>

### **3.5. Humanitarian or Security Corridors / Zones**

In order to increase the protection of civilians from the harmful effects of armed conflict, parties to a conflict can try to create a humanitarian or security zone. Humanitarian zones may not be respected permanently. If humanitarian zones are established, all necessary resources must be available to protect the civilian population, which includes persons with disabilities. The decision to establish a humanitarian zone should be done with caution in order to make sure that the protection of civilians living outside the zone is understood, agreed-upon and will be observed and that civilians will also be able to seek asylum in other countries. Just like humanitarian zones, the implementation of a security zone must always be demilitarized and considered as providing temporary shelter and is not being created in order to provide a permanent sanctuary or to provide amnesty.

The numerous and continuing violations of International Humanitarian Law can only be stopped and reduced if both parties to the conflict commit to implementing practical measures for protecting civilians and especially civilians with disabilities. The responsible authorities of both conflicting parties must implement training,

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<sup>76</sup> UN, Statement on disability inclusion for the World Humanitarian Summit, Committee on the Rights of Persons with Disabilities. <http://www.un.org/disabilities/documents/WHS/Statement-of-the-on-disability-inclusion-for-WHS.pdf>

<sup>77</sup> CRPD/C/KEN/CO/1 2015

<sup>78</sup> *ibid*

regular supervision and the ongoing evaluation of the conduct of all persons under their command towards the protection of civilians. Specific orders for the protection of all civilians, including civilians with disabilities, must be given by the superior officers of both conflicting parties in order to stop any illegal actions by their Armed Forces or militia and they must suppress any violations against civilians and report those violations to the appropriate authorities.<sup>79</sup>

According to the First and Fourth Geneva Convention, parties may make agreement for safety zones that is mutually recognized.<sup>80</sup> Fourth GC further provides the possibility of “*neutralized zones intended to shelter from the effects of war the following persons.*”<sup>81</sup> These zones are intended to shelter wounded people who include the persons with disabilities. During Bangladesh’s war of independence, the war in the South Atlantic and the conflicts in Cambodia, Chad, Cyprus, Nicaragua, Lebanon, Sri Lanka and the former Yugoslavia.<sup>82</sup>

Safe routes and humanitarian zones are considered as options by UNHCR. It stated that safe routes can facilities the population’s life-saving needs. Furthermore, after humanitarian negotiations with parties to a conflict are over, humanitarian zones or security zones can be established. However, UNHCR asserted that these kind of attempts should be made with the careful assessment and clearance by experienced security staff because, as demonstrated by some cases in the past, such arrangements caused serious threats for civilians instead of protecting them.<sup>83</sup> Human Rights Watch also suggests creating humanitarian zones for IDP refugees within Afghanistan.<sup>84</sup>

#### **4. The Legal Protection and Policies for Persons with Disabilities during Times of Armed Conflict**

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<sup>79</sup> ICRC, Protection of victims of armed conflict through respect of International Humanitarian Law 16-09-1999, retrieved from <https://www.icrc.org/eng/resources/documents/misc/57jpzn.htm>

<sup>80</sup> First Geneva Convention, Article 23; Fourth Geneva Convention, Article 14.

<sup>81</sup> Fourth Geneva Convention, Article 15

<sup>82</sup> ICRC, Customary IHL, Rule 35. Hospital and Safety Zones and Neutralized Zones, retrieved from [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule35#Fn\\_54\\_1](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule35#Fn_54_1)

<sup>83</sup> *ibid*

<sup>84</sup> Human Rights Watch, Afghanistan and Refugees: Need for Humanitarian Action, October 10, 2001 retrieved from <https://www.hrw.org/news/2001/10/10/afghanistan-and-refugees-need-humanitarian-action>

#### **4.1. International Humanitarian Law**

Despite the fact that IHL establishes rules for all civilians including persons with disabilities, it also set out some specific rights and obligations for specific categories of persons. Persons with disabilities are within these categories. States and all parties to the armed conflicts have obligations of protecting persons with disabilities in situations of risk. Furthermore, States are responsible to consider the specific needs of persons with disabilities.

Therefore, the protection of persons with disabilities is referred to in customary IHL and in the GC IV. According to the customary IHL as stated by the ICRC, “*The elderly, disabled and infirm affected by armed conflict are entitled to special respect and protection.*”<sup>85</sup>

As per Article 16 (2) of GV IV Relative to the Protection of Civilian Persons in Time of War, “*The wounded and sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect.*” The infirms are in special status as they are “*in a state of weakness which demands special consideration.*”<sup>86</sup> Commentary specifies that the term respect refers to “spare, not to attack” and the term protect means “to come to someone's defense, to give help and support”. Commentary further states that the protection of infirms covers their protecting against pillage, ill-treatment and to prevent the dead from being robbed. As persons with disabilities are also in vulnerable situation, they are also considered as infirms.<sup>87</sup>

As per Article 21, Convoys of vehicles or hospital trains on land or specially provided vessels on sea, carrying infirms and civilian hospitals shall be respected. This article promotes the rights of persons with disabilities to receive medical treatment. Persons with disabilities should also be priorities in case of evacuating from besieged or encircled areas according to the Article 17.

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<sup>85</sup> ICRC, Customary IHL, Rule 138.

<sup>86</sup> Jean S Pictet (ed), ‘IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War’ (Commentary, International Committee of the Red Cross, Geneva, 1958) 134 (‘IV Geneva Convention Commentary’).

<sup>87</sup> Hart Naomi, Crock Mary, Mccallum Ron and Saul Ben, Making Every Life Count: Ensuring Equality and Protection for Persons with Disabilities in Armed Conflict, Monash University Law Review (Vol 40, No 1), p. 153

Article 30 of the GV III Relative to the Treatment of Prisoners of War regulates under the Chapter III, Hygiene and Medical Attention, states that *”Special facilities shall be afforded for the care to be given to the disabled, in particular to the blind, and for their rehabilitation, pending repatriation.”*

The International Conference of Red Cross and Red Crescent adopted a Plan of Action in previous years between 2000-2003, which was accepted in 1999 in 27<sup>th</sup>. According to this Plan, all parties to an armed conflict should take protective measures for persons with special vulnerabilities, like persons with disabilities and should take effective measures to guarantee that every attempt is made to protect, respect and save the lives of the civilians.<sup>88</sup>

The World Conference on Human Rights also adopted the Vienna Declaration and the Programme of Action. In this Conference, States and parties to armed conflicts should follow international humanitarian law and concern for the violations that particularly affect persons with disabilities.<sup>89</sup>

#### **4.2. International Human Rights Law**

Human rights are rights inherent in all human beings regardless of nationality, sex, color, religion, language, origin, place of residence or any other status.<sup>90</sup> Fundamental rights are universal, inalienable, interdependent and indivisible. International Human Rights Law obliges States to respect, protect and fulfill their human rights obligations. Many of the human rights enshrined in Universal Declaration of Human Rights are accepted as part of customary international law.<sup>91</sup>

Among the widely accepted human rights treaties are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic

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<sup>88</sup> ICRC, 27th International Conference 1999: Resolution 1, 06-11-1999 Resolution <https://www.icrc.org/eng/resources/documents/resolution/27-international-conference-resolution-1-1999.htm>

<sup>89</sup> UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23, available at: <http://www.refworld.org/docid/3ae6b39ec.html>

<sup>90</sup> OHCHR, What are human rights?, <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>

<sup>91</sup> *Ibid.*

Social and Cultural Rights (ICESCR). In order to decide if human rights law provides protection to persons with disabilities, the applicability of human rights law in situation of armed conflict should be discussed. The applicability of human rights law during armed conflict has been broadly discussed over the years.<sup>92</sup> Human rights treaties do not stipulate that they are not applicable during armed conflict.

According to the International Court of Justice, the protections guaranteed by human rights conventions, including social economic and cultural rights, do not cease in case of armed conflict. On the question of the relationship between IHL and IHRL, it stated that there can be three possible situations during armed conflict: *some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law.*<sup>93</sup>

The Human Rights Council also acknowledged that IHRL and IHL are mutually reinforcing and complementary.<sup>94</sup> It also considered that human rights law should be protected equally and it should continue to apply in armed conflict, *taking into account when international humanitarian law is applied as lex specialis.*<sup>95</sup> The Human Rights Committee also recalled that the ICCPR is applicable in case of armed conflict.

Furthermore, article 4 (2) of the ICCPR stipulates non-derogable rights. These are Article 6 (right to life), 7 (prohibition of torture), 8(1) and 8(2) (prohibition of slavery and servitude), 11 (prohibition of imprisonment for debt), 15 (not being held for an offence that was not a crime at the time it was committed), 16 (right to recognition as a person before the law) and 18 (freedom of thought, conscience and religion).

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<sup>92</sup> Lubell, Noam, Challenges in applying human rights law to armed conflict, International Review of the Red Cross, Volume 87 Number 860 December 2005, p. 737.

<sup>93</sup> ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 9 July 2004, ICJ Reports 2004, Parag.102-113.

<sup>94</sup> Human Rights Council, Resolution 9/9. Protection of the human rights of civilians in armed conflict,

<sup>95</sup> *ibid*

In this regard, so long as *lex specialis* principles are not applied, international human rights provides protection. The amount of force to be used against enemy combatants can be accepted as one of the situations where *lex specialis* principle is determined.<sup>96</sup> As a result, considering that persons with disabilities are civilians, it can be assumed that IHRL would protect them any time during the armed conflict.

Article 11 of CRPD stipulates the situations of risk and humanitarian emergencies by stating that, “*States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.*”

It also further states in the preamble that, “*human rights instruments are indispensable for the full protection of persons with disabilities, in particular during armed conflicts.*”

The CRPD Committee emphasized the obligation to guarantee that all emergency-related information must be accessible to persons with different types of disabilities<sup>97</sup> such as using sign language for a deaf person.

The Convention on the Rights of Child (CRC) provides further protection for children with disabilities. Article 38 (4) of the CRC stipulates that, “*States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.*” Article 23 of the CRC regulates the rights of the children with disabilities. It states that “*mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance*”.

The Committee on the Rights of the Child also enshrined that State parties are obliged to ensure access to sufficient health and social services to children with

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<sup>96</sup> OHCHR, International Legal Protection of Human Rights in Armed Conflict, New York Geneva, 2011, p. 67.

<sup>97</sup> CRPD/C/SLV/CO/1, para. 26; CRPD/C/DEN/CO/1, para. 31

disabilities affected by armed conflict.<sup>98</sup> The Committee on the Rights of Persons with Disabilities (CRPD Committee) has urged that States should ensure the safety of all children with disabilities and prioritized these children in conflict-affected areas.<sup>99</sup>

In this regard, the Articles of ICCPR and ECSCR, especially prohibition of torture, right to life and prohibition of slavery, provide human rights protection to persons with disabilities. Furthermore, the CRPD also obliges States to give special attention to ensure the protection and safety of persons with disabilities.

### **4.3. Other Protections**

#### **4.3.1. United Nations**

The above-mentioned International Human Rights treaties are led by the UN and are monitored by its Committees. These treaties are binding for all States. Besides the obligations and the Committee documents based on binding treaties, the UN emphasizes the protection of persons with disabilities in case of armed conflict repeatedly in other ways and through other organs, especially the Security Council and the Human Rights Council.

The Security Council has mentioned persons with disabilities explicitly in its resolution called The Protection of Civilians in Armed Conflict. *“It stressed that the particular impact that armed conflict has on women and children, including as refugees and internally displaced persons, as well as on other civilians who may have specific vulnerabilities including persons with disabilities and older persons, and stressing the protection and assistance needs of all affected civilian populations”*<sup>100</sup>

The President of the Security Council delivered a statement entitled “Protection of Civilians in Armed Conflict” on February 12<sup>th</sup> 2014. The statement reaffirmed that parties to armed conflict have responsibilities for taking all feasible measures to meet

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<sup>98</sup> CRC/C/GC/9, para. 55

<sup>99</sup> See CRPD/C/UKR/CO/1, parag 14.

<sup>100</sup> Security Council, Press Release, Security Council, Expressing Deep Regret over Toll on Civilians in Armed Conflict, Reaffirms Readiness to Respond to Their Deliberate Targeting, SC/9786, November 2009.

and to protect the affected civilians including the specific needs of persons with disabilities.<sup>101</sup>

Additionally, The Office of United Nations High Commissioner (OHCHR) prepared a report to lay out the standards on human rights of persons with disabilities in case of risks, disasters and humanitarian emergencies. The OHCHR further indicates a harmonized interpretation of article 11 of CRPD. The report is called, “*A thematic study on the rights of persons with disabilities under Article 11 of the Convention on the Rights of Persons with Disabilities, on situations of risk and humanitarian emergencies*”. It highlights the particular impact of the armed conflict on persons with disabilities. It gives recommendations and guidelines to the States. It stresses that not being able to access humanitarian assistance, sufficient shelter, communication and means of transportation results in violation of the human rights of persons with disabilities.

The report further emphasizes that the obligation on giving effective warning prior to an attack must be accessible, otherwise, this non-inclusive manner would be discrimination on the basis of disability.<sup>102</sup>

The UN also provides protection to civilians, including persons with disabilities, during its operations. UN Security Council Resolution 1270 sent its peacekeepers to Sierra Leone in 1999 to use force to protect civilians ‘*under imminent threat*’ of harm or death. In 2006, the UN passed Resolution 1672 to commit *to take action to protect civilians in armed conflict*. In 2010, the UN Department of Peacekeeping Operations (DPKO)/Department of Field Support (DFS) reinforces the protection of civilians as one of the most important outcomes from UN military interventions.

Additionally, at the UN World Humanitarian Summit in Turkey in 2016, The Charter on Inclusion of Persons with Disabilities in Humanitarian Action was endorsed with

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<sup>101</sup> UN Security Council, *Statement [made on behalf of the Security Council, at the 7109th meeting of the Security Council, held on 12 February 2014, in connection with the Council's consideration of the item entitled "Protection of civilians in armed conflict"]*, 12 February 2014, S/PRST/2014/3, available at: <http://www.refworld.org/docid/5301c41c4.html>

<sup>102</sup> UN, Human Rights Council, *Thematic study on the rights of persons with disabilities under article 11 of the Convention on the Rights of Persons with Disabilities, on situations of risk and humanitarian emergencies*, A/HRC/31/30. P.49.

the participation of State parties; UN agencies; the international civil society community; and global, regional and national organizations of persons with disabilities.

The Charter contains the responsibility to include persons with disabilities in all humanitarian efforts and activities, including a statement on the protection of civilians with disabilities during situations of risk and armed conflict. It stated that, *“We recognize that further progress towards principled and effective humanitarian action will only be realized if humanitarian preparedness and response becomes inclusive of persons with disabilities, in line with the humanitarian principles of humanity and impartiality, and the human rights principles of inherent dignity, equality and non-discrimination.”*

*“We recall the obligations of States under international human rights law, in particular the Convention on the Rights of Persons with Disabilities, international refugee law and further stress the obligations of States and all parties to armed conflict under international humanitarian law, including their obligations under the Geneva Conventions of 1949 and the obligations applicable to them under the Additional Protocols thereto of 1977, to respect and protect persons with disabilities and pay attention to their specific needs during armed conflicts<sup>103</sup>.”*

This new Charter, which was developed and written by humanitarian organizations and actors to promote the inclusion of persons with disabilities into humanitarian activities, has a primary focus on providing humanitarian safety, security and relief, during and after armed conflict and disasters. However, the Charter did not include how these recommendations and obligations could be operationalized. Furthermore, it refers to the existing treaties and policies, but does not offer any new legal analysis or suggestions for practical implementation. The United Nations works to provide social and humanitarian aid throughout the world in order to help persons with disabilities during an armed conflict.

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<sup>103</sup> World Humanitarian Summit, Charter on Inclusion of Persons with Disabilities in Humanitarian Action, retrieved from, <http://humanitariandisabilitycharter.org/>

### 4.3.2.NATO

The North Atlantic Treaty Organization (NATO) was created in 1949 by Western countries and all NATO countries, except the United States, have signed and ratified the UNCRPD. In this regard, these countries have adopted the UNCRPD and have agreed to legally enforce all of the Articles on the participation of its soldiers in NATO military activities, wars and conflicts. In this regard, NATO military forces must comply with the principles and Articles of the UNCRPD, including Article 11.

Besides the protections provided by the UNCRPD, although NATO has not issued any policy specific to persons with disabilities, NATO has a policy to protect civilians. In July 2016 at the Warsaw Summit, NATO adopted a new NATO policy for the Protection of Civilians and promised that NATO will, *“identify and implement lessons learned on the protection of civilians, including through a gender-sensitive approach, in all relevant areas of operations and missions, as well as in training and education”*.

In addition, the new NATO policy in paragraph 9 states that *“the Protection of Civilians (persons, objects and services) includes all efforts taken to avoid, minimize and mitigate the negative effects that might arise from NATO and NATO-led military operations on the civilian population and, when applicable, to protect civilians from conflict-related physical violence or threats of physical violence by other actors, including through the establishment of a safe and secure environment.”*

Additionally in paragraph 14, it further states that, *“NATO and its partner nations, shall, as appropriate, integrate the protection of civilians from the outset of NATO and NATO-led operations, missions and other Council-mandated activities. As such, a PoC perspective should be included in the planning and conduct of operations and missions, training, education and exercises, lessons learned, as well as defense and security-related capacity building activities.”*<sup>104</sup>

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<sup>104</sup> NATO, NATO Policy for the Protection of Civilians, Press Release (2016) 135 Issued on 09 Jul. 2016. Retrieved from [http://www.nato.int/cps/en/natohq/official\\_texts\\_133945.htm?selectedLocale=en](http://www.nato.int/cps/en/natohq/official_texts_133945.htm?selectedLocale=en), [http://www.nato.int/cps/en/natohq/official\\_texts\\_133945.htm?selectedLocale=en](http://www.nato.int/cps/en/natohq/official_texts_133945.htm?selectedLocale=en)

The Center for Civilians in Conflict immediately issued a press release after NATO's announcement stating that: "NATO's new policy sets a strong foundation for the protection of civilians in future operations by capturing the hard-learned lessons over the past 13 years in Afghanistan... This policy, once implemented, will standardize and strengthen NATO's capabilities on civilian protection and harm mitigation, including capabilities to learn from those operations that have harmed civilians and adjust tactics in order to avoid harm. It will allow the Alliance to work more closely with civil society organizations, and to train Allied security forces to better protect civilians on their own. Notably missing from this policy, however, is a standing commitment to make amends for harm done to civilians. We will continue to push at NATO HQ to ensure <sup>105</sup>civilians are recognized and that amends are made for harm suffered."

In this regard, it would be correct to claim that NATO does not provide specific protection to persons with disabilities. Furthermore, the protections offered to civilians are also quite new. However, at least it is important that NATO takes steps toward this purpose.

## **5. The Problems and Challenges**

Earlier chapters describe the Conventions and instruments that provide protection to persons with disabilities during the armed conflict. However, there are still challenges that cause barriers for persons with disabilities to be able to benefit from the same protection coverage as received by persons without disabilities. These can be either practical or normative challenges.

### **5.1. Practical Challenges**

We have previously established earlier in this Thesis, the scope of the legal protection of persons with disabilities during times of armed conflict under international human rights and humanitarian law, since it is either implied under

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<sup>105</sup> Center for Civilians in Conflict, <http://civiliansinconflict.org/resources/pr/nato-new-protection-of-civilians-policy>, <http://civiliansinconflict.org/resources/pr/nato-new-protection-of-civilians-policy>

protection of civilians, inter alia, as in the Geneva Conventions or is explicitly stated as in Article 11 under the CRPD. However, as can be seen from the United Nations Security Council Report's 7<sup>th</sup> *Cross-Cutting Report on the Protection of Civilians in Armed Conflict*, which started being issued in 2008, that the actual practice of protecting civilians with disabilities is rarely successfully accomplished whether by State actor or non-State actor within armed conflict situations or within peace keeping missions.

The reasons behind the problem of civilians with disabilities facing more difficulties in their search for protection and safety during armed conflict can be defined mainly as the lack of knowledge and/or implementation by State actors and non-State actors about the protection needs of persons with disabilities. In addition, organizations and the responsible persons who provide humanitarian assistance generally are not aware of many of the barriers persons with disabilities face on a daily basis. This is especially true for those adults or children whose type of disability is not well known or is not easily visible, and therefore, often encounter difficulties due to the lack of knowledge or the specialized resources. For example, persons with intellectual disabilities are not always recognized and their specific needs are not raised, compared to the needs of those with a visible disability, due to the lack of awareness.<sup>106</sup>

The HRW report stressed that many aid agencies did not know that persons with disabilities had to crawl into public toilets or that food distribution points were not accessible in IDP camps in Central African Republic.<sup>107</sup>

Some humanitarian organisations apply restrictive attitudes such as not including many persons with disabilities in their programme, having misinformed opinions on the cost of such programmes and worrying that specialist skills and programmes are needed to meet all the needs of persons with disabilities.<sup>108</sup>

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<sup>106</sup> Brigitte Rohwerder (2013) Intellectual disabilities, violent conflict and humanitarian assistance: advocacy of the forgotten, *Disability & Society*, 28:6, 770-783. p.779

<sup>107</sup> Human Rights Watch, Central African Republic: People With Disabilities Left Behind, April 28, 2015, <https://www.hrw.org/news/2015/04/28/central-african-republic-people-disabilities-left-behind>

<sup>108</sup> Harris, A. with Enfield, S. 2003. *Disability, Equality and Human Rights – A Training Manual for Development and Humanitarian Organizations*. Oxford: Oxfam (in association with Action on Disability and, Development (ADD)). P. 29-32 cited from Brigitte Rohwerder (2013) Intellectual

This is why international organizations such as UN and International Red Cross/Red Crescent call on all parties to armed conflict to take the necessary steps to provide protection for civilians with disabilities and to provide guidelines for implementation. For example, the United Nations at the 7568th meeting of the Security Council issued a document in order to provide some international direction about good practices for securing the protection of civilians with disabilities during armed conflict and peacekeeping missions.

The challenges in practice mainly happen in three phases: during the warning and evacuation phase, while accessing humanitarian assistance and when getting appropriate assistance in conformity with their specific needs.

As explained in earlier chapters, if circumstances permit, parties to armed conflict are obliged to give effective advance warning of attacks to the civilian population. For example, before attacking Southern Lebanon, Israel warned the civilian population through the distribution of leaflets and via radio and loudspeakers, as well as by telephone calls.<sup>109</sup> This warning is suitable for persons without mental disabilities or for persons who are both blind and deaf.

During evacuations, persons with disabilities are less often evacuated due to poor preparation or inaccessible facilities.<sup>110</sup> A United Nations survey conducted in 2013 with more than 5,000 persons with disabilities from 126 countries indicated that only 20 percent of persons with disabilities could evacuate immediately during the sudden hazard.<sup>111</sup>

Another example, in the USAID report on the armed conflict in the East of Ukraine, persons with disabilities were more vulnerable to the need for evacuation and support services due to the non-accessibility of roads or any available transportation. Each

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disabilities, violent conflict and humanitarian assistance: advocacy of the forgotten, *Disability & Society*, 28:6, p.780.

<sup>109</sup> ICRC, *Customary International Humanitarian Law*, ed. By Jean-Marie Henckaerts & Louise Doswald-Beck eds., 2005. p.406-7.

<sup>110</sup> Making Every Life Count: Ensuring Equality and Protection for Persons with Disabilities in Armed Conflicts. P. 149 [https://www.monash.edu/\\_\\_data/assets/pdf\\_file/0011/139835/mccallum.pdf](https://www.monash.edu/__data/assets/pdf_file/0011/139835/mccallum.pdf)

<sup>111</sup> United Nations Office for Disaster Risk Reduction, “UN global survey explains why so many people living with disabilities die in disasters”, press release, 10 October 2013.

individual case needed an individual evacuation route and many volunteers to help, so not all persons with disabilities were evacuated.<sup>112</sup>

During the implementation of most humanitarian assistance activities, adequate shelter, programme assistance, means of transportation are generally inaccessible for persons with disabilities.<sup>113</sup> Their needs cannot be met. One of the reasons is the lack of systematic identification during preparing the programme of assistance.<sup>114</sup> The humanitarian assistance organizations or the State parties generally do not have any knowledge about the specific needs of the various types of disabilities. The wheelchair, the hearing aid or the walking stick are the visible symbols marking a person with a disability. However, there are also persons with a disability who are invisible to the humanitarian aid organizations or the government agencies but they may need to be moved to prevent bedsores, they may need special foods because of diabetes, they may need special medicine or medical devices for their urinary system or for their digestion.

Together with the above-mentioned reasons, it should also be noted that not all States have sufficient economic resources or sufficiently trained personnel during times of armed conflicts. Performing the obligation to provide protection for civilians during armed conflict requires a budget and the prioritization of government authorities. The number of aid workers available during an evacuation, providing for the specific needs of various disabilities when providing humanitarian assistance and the need to make everything accessible for every type of person with a disability would require a substantive budget. Considering that armed conflicts typically have a huge financial impact on the parties to the armed conflict, often the humanitarian budget is not available or is not sufficient.

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<sup>112</sup> USAID and Ukrainian Helsinki Human Rights Union, «RIGHTS OF PERSONS WITH DISABILITY IN THE ARMED CONFLICT IN THE EAST OF UKRAINE».ANALYTICAL REPORT OF THE UKRAINIAN HELSINKI HUMAN RIGHTS UNION. 2016. p. 28

<sup>113</sup> See “Addressing the vulnerability and exclusion of persons with disabilities: the situation of women and girls, children’s right to education, disasters and humanitarian crises” (CRPD/CSP/2015/4), para. 21.

<sup>114</sup> UN Thematic study on the rights of persons with disabilities under article 11 of the Convention on the Rights of Persons with Disabilities, on situations of risk and humanitarian emergencies. A/HRC/31/30, 2015.

For example, according to the report of Save the Children on Child Protection in Emergencies, 28 of 60 States do not have adequate funding levels to meet even the most basic needs of children in these situations.<sup>115</sup> It is well understood and accepted that international contributions plays a vital role in providing funds to meet emergency situations. In this regard, the economic situation of the State parties and the amount of resources and the effective utilization of international contributions may also be considered as practical challenges.

## **5.2. Normative Challenges**

The many obstacles to providing sufficient protection for citizens with disabilities during armed conflict do not occur only from the lack of disability knowledge and the lack of effort by the parties to armed conflict. Existing national legal frameworks and customary international law are also seen as not comprehensive or specific enough in order to meet all of the needs of persons with disabilities. Not only international Instruments but also national laws or legal frameworks do not cover the statutory legal obligations and guidelines in any detail regarding defining different types of disabilities and their required special needs during times of armed conflict.

Disability, has historically been perceived as the responsibility of the medical field. Furthermore, disability is usually a topic that many people do not have sufficient knowledge about except for the most well known types of disabilities. Therefore, just pro forma guaranteeing the protection of civilians with disabilities with that general phrase in some law or regulation does not automatically translate into meeting the needs of all civilians with disabilities nor does it force State actors to implement efficient and appropriate actions.

The Geneva Conventions IV, as a primary source of IHL, does not use the word 'disabled' but instead uses the word 'infirm'. However, the Additional Protocol I mentions the physical or mental disability in order to define wounded or sick person. The term disability is often considered vague and not sufficiently identified. Surprisingly, persons with disabilities are not even separately regulated in the GVs.

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<sup>115</sup> Save the Children, Protecting Children in Emergencies Escalating Threats to Children Must Be Addressed, VOL.1, NO.1 SPRING 2005, [http://www.savethechildren.org/atf/cf/%7B9def2ebe-10ae-432c-9bd0-df91d2eba74a%7D/policy\\_brief\\_final.pdf](http://www.savethechildren.org/atf/cf/%7B9def2ebe-10ae-432c-9bd0-df91d2eba74a%7D/policy_brief_final.pdf)

Thus, the legal requirement for the protection of civilians with disabilities should be viewed as instructive for all parties to armed conflict and as a priority when giving assistance and protection to civilians. For example, deafness may not make the person medically infirm in terms of the traditional IHL.<sup>116</sup>

The protection of civilians with disabilities is even less specifically addressed under IHL in cases of non-international armed conflict. Common Article 3 does not use the word disability but instead uses “the wounded and sick”, which can be interpreted as disabilities. *“The characterization of disability in this specific IHL context is preventive in character, not protective of individuals falling within the disability category.”*<sup>117</sup>

The CRPD is the most comprehensive IHL document for persons with disabilities and it provides for the general protection of persons with disabilities during armed conflict under Article 11. However, Article 11 is not specifically regulated in cases of armed conflicts and does not impose specific obligations on State actors. Therefore, the CRPD is not sufficient IHL to address the challenges during armed conflict in order to provide protection for citizens with disabilities.

Apart from these two Conventions, there are not any globally accepted instruments, which corresponds to the specific activities or the specific needs required in order to protect persons with disabilities during armed conflict.

Furthermore, many State actors do not have an action-plan or legal framework, which covers all of the specific types and needs of persons with disabilities. Therefore, in cases of armed conflict, thematic studies of UN guidelines or of the Resolutions of the Security Council become the primary and only sources available in order to provide guidance for parties to armed conflict and for organizations providing humanitarian assistance services. Although the advisory content of these documents is comprehensive, each State has different geographical features and

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<sup>116</sup> Disability, Human Rights and the Limits of Humanitarianism, ed. By. Gill Michael, Cathy J. Schlund-Vials. Janet E. Lord, Persons with Disabilities in International Humanitarian Law – Paternalism, Protectionism or Rights?, chapter9 p.164

<sup>117</sup> Janet E. Lord, Persons with Disabilities in International Humanitarian Law – Paternalism, Protectionism or Rights?. p.165

different economic resources, which can affect any evacuation plans and the successful inclusion of persons with disabilities during evacuation. Without successfully identifying all persons with disabilities and their needs, considering the realistic situation of the State actor, international documents may not be helpful. The first step in order to provide assistance is to be able to identify and locate all adults and children with disabilities and to properly understand the environmental area from the perspective of accessibility issues typically encountered by persons with disabilities and their family members.

For all of these reasons, it can be claimed that due to the lack of adequate identification, prioritization and protection of persons with disabilities within national and international instruments, parties to the armed conflict typically do not feel legally compelled to pay attention to the needs and vulnerability of the persons with disabilities. Furthermore, humanitarian assistance organizations are always encountering financial and logistical obstacles in their efforts to provide immediate and appropriate resources for displaced civilians with and without disabilities.

## **6. Recommendations**

### **6.1. Recommendations of International Organizations**

The International Organizations have provided some recommendations for addressing the difficulties encountered by persons with disabilities and how to improve the situation of the persons with disabilities in case of armed conflict. Among the different approaches, four leading recommendations are provided here: Participation of persons with disabilities, Identifying persons with disabilities, Training and educating those who have an active role during armed conflict and Taking measures to eliminate inaccessibility.

Persons with disabilities should be included in the planning and arranging of humanitarian assistance, the evacuation plan and other any actions taken during armed conflict. This is significant in order to be aware of the risks and needs. Thus persons with disabilities may enjoy their rights the same as persons without disabilities enjoy. The UN Secretary- General Ban Ki-moon used the words of Firoz

Ali Alizada by stating that, “Persons with disabilities are the biggest untapped resource for disaster planners around the world.”<sup>118</sup>

Persons with disabilities can play a significant role, as expressed by the International Disability and Development Consortium, if they can participate in planning and implementing the program, the equal benefit from mainstream assistance for persons with all different kinds of disability would be secured.<sup>119</sup> This is also reinforced by the UN, which has stated, “Humanitarian aid, rescue, relief and rehabilitation should therefore meet the needs of the whole civilian population and also include the participation of persons with disabilities in all stages of emergency response planning and implementation”.<sup>120</sup>

Human Rights Watch said that in order to develop a more effective and inclusive response, that persons with disabilities should be consulted and engaged in humanitarian assistance.<sup>121</sup>

There should be also sufficient data available regarding the situation and different types of disabilities. This lack of information becomes a barrier for meeting their needs and taking effective measures. The Women’s Refugee Commission stressed that in many cases, the government, UNHCR or other partners do not have an accurate number of displaced persons with disabilities. Even if data is collected, due to the lack of technical expertise, the identification and categorization of different kinds of disabilities cannot be accurate.<sup>122</sup> The UN stated in its guidance in case of forced displacement, that procedures and a system should be made to identify persons with disabilities as they are often overlooked during the registration process,

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<sup>118</sup> UN, Persons with Disabilities Central to Disaster Resilience Initiatives, Secretary-General Says in Message for International Observance, Press Release, SG/SM/15383-ENV/DEV/1389-OBV/1267 9 OCTOBER 2013, <http://www.un.org/press/en/2013/sgsm15383.doc.htm>

<sup>119</sup> International Disability and Development Consortium, Emergency & Humanitarian Assistance and the UN Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, London. p.5. [https://www.ucl.ac.uk/lc-ccr/lcstaff/maria-kett/iddc\\_conflict\\_and\\_emergencies\\_taskgroup](https://www.ucl.ac.uk/lc-ccr/lcstaff/maria-kett/iddc_conflict_and_emergencies_taskgroup)

<sup>120</sup> HRC, Progress report of the research-based report of the Human Rights Council Advisory Committee on best practices and main challenges in the promotion and protection of human rights in post-disaster and post-conflict situations, A/HRC/27/57, p.17.

<sup>121</sup> <https://www.hrw.org/news/2015/12/03/people-disabilities-added-risk-war-displacement>

<sup>122</sup> The Women’s Refugee Commission, DISABILITIES AMONG REFUGEES AND CONFLICT-AFFECTED POPULATIONS, June 2008. P.3, [http://siteresources.worldbank.org/DISABILITY/Resources/280658-1239044853210/5995073-1246917381414/INT0001sk\\_DisabilitiesRefugeesConflictPopulaJune2008.pdf](http://siteresources.worldbank.org/DISABILITY/Resources/280658-1239044853210/5995073-1246917381414/INT0001sk_DisabilitiesRefugeesConflictPopulaJune2008.pdf)

especially for those who have just been born.<sup>123</sup> The UN has stressed that, “*collecting information through comprehensive needs assessments that disaggregate data by age, sex and impairment can facilitate risk management, planning and the implementation of risk reduction strategies.*”<sup>124</sup> Identification is a significant activity in order to protect vulnerable persons during the contingency, evacuation and warning process. Additionally, the specific needs of identified persons with disabilities should be added into the program’s assistance plan in order to meet their specific needs, including water, shelter, medicine, toilet, medical equipment and clothing.

All actors who would have a role implementing policies and guidelines in order to provide and differentiate protection, which is effective for the needs of persons with disabilities, these actors should be trained and educated.<sup>125</sup> The Committee on the Rights of Persons with Disabilities has urged State parties, in its Concluding Observations, to take steps to provide disability-awareness training to all potential persons charged with the protection, evacuation and security in situations of risk including armed violence and emergencies.<sup>126</sup> The World Health Organization has stated that it is important to, “*create a development plan to increase disability knowledge, expertise and skills among staff, community workers and volunteers*” before and after any emergency.<sup>127</sup>

The States, parties to armed conflicts and any organizations playing a role in protecting civilians should take effective measures to make all responses and actions such as evacuation, providing information and humanitarian assistance accessible. The UN has stated that all information on emergency and humanitarian relief should be given in accessible ways and formats accessible to persons with different kinds of

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<sup>123</sup> UNHCR, WORKING WITH PERSONS WITH DISABILITIES IN FORCED DISPLACEMENT, 2011. P.9. <http://www.unhcr.org/4ec3c81c9.pdf>

<sup>124</sup> UN, HRC, Thematic study on the rights of persons with disabilities under article 11 of the Convention on the Rights of Persons with Disabilities, on situations of risk and humanitarian emergencies, A/HRC/31/30, 2015. p.10.

<sup>125</sup> The War Report: Armed Conflict in 2013, edited by Stuart Casey-Maslen, Oxford University Press, 2014. p.410:

<sup>126</sup> UN Concluding Observations on the Initial Report of Mexico, CRPD/C/AZE/CO/1, para. 25, and UN Concluding Observations on the Initial Report of Azerbaijan\*, CRPD/C/MEX/CO/1, para. 22

<sup>127</sup> World Health Organization, Guidance Note on Disability and Emergency Risk Management for Health, 2013. P.18 [http://apps.who.int/iris/bitstream/10665/90369/1/9789241506243\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/90369/1/9789241506243_eng.pdf)

disabilities.<sup>128</sup> It is important for the safety of persons with disabilities, and especially for those who have the disability of hearing loss or intellectual disability. Then, persons with disabilities can escape, be evacuated and reach humanitarian assistance including food, water and shelter.

## **6.2. Personal Recommendations**

For the last 50 years, persons with disabilities and other legal and academic professionals have promoted a new perspective for societies, which is based on human rights thinking and equality under law, and which is described as the social model of disability. In the social model, those physical, organizational and attitudinal barriers present in society, which leads to discrimination, causes disability. The elimination of these types of discrimination, therefore, would require a restructuring of how society is organized. All barriers that would prevent any individual from participating in society are the problem, not the individual, so they must be removed. Therefore, persons with disability should not encounter barriers in their daily life.

The international community must become more aware of the special needs and risks of civilians with disabilities during armed conflict. All States parties, international organizations and the general public should always remember that adults and children with disabilities are the forgotten victims of war and armed conflicts. All States parties, international organizations and the general public should become more aware that civilians with disabilities often have limited or no access to pre-existing evacuation plans, humanitarian assistance activities and many other international or national efforts to provide for the needs of the civilian population during war and armed conflicts.

International and national humanitarian assistance activities are usually arranged in a manner that the victims of war and armed conflicts should reach the designated civilian gathering places in order to receive humanitarian assistance services such as food, water or shelter. However, in many of the war, armed conflict or emergency situations, civilians with disabilities often cannot safely arrive at designated

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<sup>128</sup> UN, Concluding observations on the initial report of El Salvador, adopted by the Committee at its tenth session (2–13 September 2013) CRPD/C/SLV/CO/1, para. 26 and UN, Concluding observations on the initial report of Gabon\* CRPD/C/GAB/CO/1, para. 27

IDP/refugee camps and if they can arrive at these camps, adults and children with disabilities encounter inaccessible housing and other humanitarian services. There are many different types and degrees of disabilities and it may not be possible for the authorities to arrange for the appropriate accessibility of all humanitarian assistance services in all cases. However, the authorities responsible for organizing and implementing humanitarian assistance camps and services, which will meet the needs of adults and children with disabilities, would effectively reach a larger number of civilians with disabilities if their planning also included pro-active outreach activities to identify the hidden adults and children with disabilities who are present in the camps and who are still located in the surrounding cities and rural areas.

International organizations, academics, professionals, lawyers and nonprofit organizations, which have the opportunity to produce books, magazine articles and other scholarly publications should educate themselves more thoroughly about the issues encountered by civilians with disabilities during war and armed conflicts and choose to publicize these issues more often to a global audience. It is generally understood that the public and professional interest regarding understanding, prioritizing and publicizing the intersection of the various issues confronting civilians with disabilities during war/armed conflict is typically less important when compared to other war/armed conflict issues. Therefore, the availability of scholarly or official publications, which address the various issues encountered by civilians with disabilities, is limited for accessing information, gaining knowledge or for writing academic articles.

Governments and non-state actors should continue their efforts to better understand their obligations under international human rights law to protect civilians with disabilities and should feel more responsibility to improve the understanding and implementation of accessible humanitarian assistance services for adults and children with disabilities.

The organizations and leaders of the various international and national disability human rights movements must also become better educated about the various issues affecting civilians with disabilities during wars and armed conflict and pro-actively participate in national and international policy discussions on how to protect civilians

with disabilities. It is understood why it maybe difficult to achieve proactive policy discussions on these issues during official meetings because the topic of civilians with disabilities during war and armed conflicts is often ignored or lacks a high priority. In addition, other important issues such as women or children centric activities are usually highly prioritized and the available humanitarian assistance resources are mostly reserved for addressing these issues. Therefore, most organizations or professionals that want to concentrate their efforts on the challenges encountered by civilians with disabilities during war and armed conflicts usually are not able to find any available funds to develop their work. In this regard, any professional or scholarly research, articles and practices related to this topic should be encouraged. Lastly, all individuals and organizations, which are interested and committed to advancing the understanding and enforcement of the protection of civilians with disabilities during armed conflicts, should work together with each other rather than conducting their work separately.

## **7. Conclusion**

Persons with disabilities have been facing difficulties in all situations of armed conflict. Some of the challenges arise from the fact that the legal framework is not sufficient to provide effective and full protection. The existing legal regulations may not be enough due to the practical challenges as explained below. Earlier chapters tried to draw attention to the fact that States and international organizations should work together in order to improve the existing regulations and their implementation. Otherwise, persons with disabilities would continue to not enjoy their rights under IHRL and IHL. They will remain as the forgotten victims of the armed conflict.

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