

Review Article

INTERNATIONAL PROTECTION FOR VICTIMS OF SEXUAL VIOLENCE DURING ARMED CONFLICT

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Abstract

Given the suffering of children born out of sexual violence in times of armed conflicts and holding them and their mothers accountable for crimes they were not responsible for, we tried to state the importance of the protection that should be provided to these kids and treat them like the rest of their peers in terms of registering the baby, providing the health care and education. We discussed this by explaining the definition of sexual violence, basic rules for protecting kids in general, and finally the international efforts to protect children born out of sexual violence. The study concluded that international organizations should strive to provide the necessary protection for these children.

Keywords: Crime; Conflict; Sexual violence; Victims; War.

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INTRODUCTION

Cases of war and armed conflict are real situations that have been associated with people throughout their long history. War and conflicts are often accompanied by a lot of cruelty and violations that fall victim to people who are not parties to these wars, and despite the fact that war and armed conflicts have been prohibited under the United Nations Charter except in Specific cases exclusively. The phenomenon of conflict has remained one of the established facts in human reality, the international community, and at all levels of human existence and always the majority of its victims are civilians, children, women, and isolated people who need special protection.

Given the problems faced by children born as a result of sexual violence during armed conflicts and the seriousness of this on the internal and international community, we raised the talk about the importance of protection that should be borne by the international and internal community towards these children and their mothers, as they bear the result of a crime they haven't committed.

The Study Problem

The problem of this study lies in the prevalence of the phenomenon of children born as a result of sexual violence in times of armed conflict since the Second World War, and recently what terrorist organizations did with captive women in Iraq and Syria and the resulting inferior view of them and their children who were born as a result of that sexual violence and the lives of these children and their mothers are exposed to danger by their communities.

The Importance of Studying

The importance of the research stems from the fact that it deals with the issue of protecting children born as a result of sexual violence in times of armed conflict, based on the special importance of that protection due to its relationship to the current reality, as reality and historical facts confirmed the that these children and their mothers are in greatest need of protection, especially with the inferior view of society to them besides holding them accountable for crimes they did not commit.

Objectives of the Study

Explaining what is meant by sexual violence against women. Introducing ways of protecting children in general in international humanitarian law. Focusing on the international efforts made to protect children born of sexual violence in times of armed conflict.

The study hypothesis

The availability of international protection to protect children born of sexual violence in times of armed conflict.

Study limits

The study tries to focus on protecting children born as a result of sexual violence in armed conflict, and not others.

Structure of the study

The first topic: sexual violence against women during armed conflict.

The first requirement: What is meant by armed conflict?

The second requirement: sexual violence during armed conflict.

The second topic: protecting the children born of sexual violence during armed conflicts

The first requirement: the concept of the child and protection in international law.

The second requirement: protecting children born as a result of sexual violence in times of armed conflicts.

The first topic

Sexual Violence against Women during Armed Conflict

We will address sexual violence against women during armed conflicts through two requirements; the first: we indicate what is meant by armed conflict? And the second: we show what sexual violence against women is in armed conflict?

The first requirement: What is meant by armed conflict?

International humanitarian law deals with armed conflicts, which are considered the centerpiece of implementing that law, and armed conflicts are divided into international and non-international conflicts. The emergence of new conflicts led the international humanitarian law to deal with these conflicts through research and study.

First: International armed conflicts:

The four Geneva Conventions stipulated in the first paragraph of the second common article that they apply in the case of declared war or any other armed conflict that arises between two or more of the High Contracting Parties even if one of them does not recognize the state of war.

It is mentioned that the Hague Convention on the Law of War limited the application of the Convention to the declared war. The Hague Conference in 1907 dealt with, among other things, the issue of how the war started, and it decided on that:

1- Military actions must not commence except after unambiguous prior notification, and such notification is either in the form of a justified war declaration or in the form of a final warning in which the war is considered to exist between the two parties if the state to which the warning is issued does not respond to the requests of the state that directs it.

2- The occurrence of war must be notified without delay to the neutral countries, and the war on these countries has no effect before reporting to them using any means even telegraph is accepted.

From the foregoing, we find that the main difference between the Hague Agreement for the Ground War Rules and the four Geneva Conventions is that the agreements expanded the concept of international armed conflict to include armed conflict alongside the declared war, according to the four conventions.

The four Geneva Conventions also added in the third paragraph of the second article a provision that broadened the scope of the obligations of the warring countries to include the validity of these agreements, states of declared wars and armed clashes, whatever they may be, even if one of the parties to them does not recognize the establishment of a state of war. Thus, the text of this article cut the way for states to adhere to the pretexts and allegations that these countries might make in order to evade their obligations, so there is no longer any need for any formal declaration of war or recognition of the state of war until these agreements take effect, rather the occurrence of hostilities, whatever they may be, are sufficient for the operation of the law of war, which was later called the international humanitarian law, given that it is no longer limited to wars in the traditional sense that was contained in the Hague Agreements, but rather includes all kinds of international armed conflicts, and will apply to international armed conflicts, whether all warring parties are parties to the agreements or not, the obligation remains in Confronting states parties towards their number, whatever, and thus the four Geneva Conventions converged with the implications of the Hague Agreements of 1907. The absence of some formal conditions is no longer a reason for non-compliance and an excuse that states adhere to for not implementing their obligations imposed on them by the law regulating and managing the hostilities.

The four agreements expanded the concept of international armed conflict to include the occupation, as stated in the second paragraph of Article Two ((The agreement also applies in the case of all cases of partial or total occupation of the territory of one of the High Contracting Parties even if this occupation does not face armed resistance)) Article 42 of Hague regulations determines the principle according to which a territory is occupied and consequently the relevant rules apply to it, which is that the region must have become "(already under the authority of a hostile army)" and the second paragraph adds further clarification and says ("((The occupation includes only the region in which this authority has settled, and this de facto status entails two obligations defined by Article 43, the first of which is that: and this status quo entails two obligations defined by Article 43, the first of which is that ((The Occupying Power shall take all possible measures to restore public order and security and ensure them as possible)) and the second is that the occupying state must respect ((laws In force in the country unless it is absolutely not possible)))

Second: Non-international armed conflicts

The fact of the matter is that the term non-international armed conflicts only devotes as a general rule to armed conflicts that take place within the borders of the state's territory between the existing authority on the one hand and a group of revolutionaries or rebels on the other hand. The fact is that general international law has settled in the statement of the law applicable to those Disputes over referral here as a general rule to the internal law of the state within which unrest, disturbances and various forms of insurgency have arisen so that it has been agreed upon the applicability of the regional

state law in the face of those acts and the consequent subjection of the rebels as a general rule to For statutory criminal punishment determined by the state if the insurgency failed.

Note that the conflicts that are more prevalent today are characterized by a non-international character, and one of the characteristics is that a non-international conflict arises between people who know the political and economic background, social organization, culture and customs of each other. Therefore, the study of non-international armed conflicts goes through two historical stages, the first under general international law, i.e. before 1949 and the second under international humanitarian law, i.e. after 1949 with the emergence of the Geneva Conventions and in 1977 with the emergence of the first additional protocol.

1- Non-international armed conflicts under general international law

And the rules of international law were not concerned with the issue of this type of armed conflict or those involved in it or the effects of it, except in one case when the governments of the countries that appear on their lands recognized the rebels or revolutionaries as combatants, and they enjoyed, according to this, recognition of some rights in the face of Their government, which is that they are treated in the event of arresting them as prisoners and not as traitors criminals, and the countries usually resorted to recognize this kind in order to exempt themselves from taking responsibility for the damages caused to foreigners who are on their lands or that are caused to other neighboring countries, as a result of the civil war and if the case is different from the aforementioned, the situation of the internal armed conflict was dealt with, based on the measures taken by the state regarding internal measures that mostly expressed extreme cruelty and negative effects on human rights, as well as the lack of controls on the behavior of the rebels or revolutionaries who lead the armed conflict against their governments, or even with respect to Conflicts that occur between members of the same state without being directed at the government .

2- Non-international armed conflicts under international humanitarian law:

Determining what is meant by armed conflict is not of an international character is not easy and is one of the very precise issues in international humanitarian law. Discussions at the Geneva Diplomatic Conference and projects submitted by various delegations predict a desire to limit the application of Article III to internal armed conflicts that meet certain conditions and which Reveal the establishment of an organization opposed to the legitimate government. However, the most correct opinion is the interpretation of the concept of the term armed conflict, which is not of an international nature, broadly, regardless of the differences between members of delegations that participated in the Geneva Conference on this issue, and then the phrase "not of an international character". An international character that is constantly subject to the interpretations and observations of countries. The International Committee of the Red Cross has worked to expand the interpretation of the concept of conflict not of an international character to intervene based on the text of the Common Common Article 3 of the Geneva Conventions to protect the victims of internal armed conflicts. Many committees were formed to study the problems related to the implementation of the common third article One of the Geneva Conventions is aimed at extending their application as widely as possible. The Committee of Experts charged with examining the issue of assistance to victims of internal conflicts 1962 considered that armed conflict in the concept of Article Three is in place as it reveals the hostile action directed against the government. Of the legitimacy of a collective nature and extent of minimum regulation.

Geneva Conventions of 1949:

The reference to non-international armed conflicts came in the third common article among the four Geneva Conventions. The

article did not explicitly indicate what these wars are intended for the purposes of the application of its provisions. Rather, it is noted here that Article Three has exceeded the use of the term civil war when it explicitly affirmed that its provisions go out in the face of armed conflicts of the same nature. The non-international character, as the article stipulates that the conflict be non-international, providing two elements, one of which is that the armed conflict must meet the nature of its generality in terms of its size and geographical scope, and on the other hand, the necessity for the rebels to fulfill the organization's principles that are represented in their subjection to organized leadership and Respect for the requirements of humanity during the conflict. Therefore, the term internal armed conflict is considered a very broad expression that allows to make any state of chaos or rebellion and even gang activities and attack police stations covered by the provisions of M / 3 and for his sake, a proposal was presented in light of the diplomatic conference held to put the four Geneva Conventions guaranteed Establishing a list that includes a set of conditions that must be met by the rebel party against the government so that the joint M / 3 can be applied to it.

Non-international armed conflicts under the second Additional Protocol.

The first article of the protocol stipulates that this protocol, which develops and complements the third common article of the Geneva Conventions concluded on August 12, 1949, without modifying the current conditions for their application in confronting armed conflicts not covered by the first article of the protocol to the Geneva Conventions concluded on August 12, is not modified. 1949 Concerning the Protection of Victims of International Armed Conflicts (Protocol Annex I) that revolves in the territory of one of the High Contracting Parties between his forces and dissident armed forces or other organized armed groups exercising under responsible command over part of his territory from control enabling it to carry out continuous and coordinated military operations and to implement this protocol.

The second requirement: What is meant by sexual violence against women during armed conflict.

International conventions mostly dealt with women's issues and imposed special protection for them, especially in the four Geneva Conventions of 1949 and their Additional Protocols of 1977. Especially the international criminal court systems, despite the presence and abundance of texts that impose protection, but these texts were not fair to them and did not It has a definition of these crimes and defines its elements, so we look at the definition of the crime of sexual violence against women as a crime against humanity in international humanitarian law, then we turn to the definition of the crime of sexual violence against women in international criminal law.

First: Defining the crime of sexual violence against women as a crime against humanity in international humanitarian law agreements.

Sexual violence against women is a flagrant violation of the rules of international humanitarian law if committed during international armed conflict or non-international armed conflict, as the latter obliges all parties to the conflict to refrain from using sexual violence as a method of war according to geneva, and this is what we find while extrapolating provisions and articles of agreements The four and the two additional protocols to it, as we read through the provisions of the third convention of the four Geneva Conventions of 1949 for the protection of prisoners of war dealt with the protection of women during captivity and while in transit in detention, but the countries did not enhance the protection provided for in international conventions, but rather tolerated and deliberately used women as a weapon of war.

We also find that Article 27 of the Fourth Convention of the four Geneva Conventions of 1949 note that it prohibited rape or any form of sexual abuse and decided to provide special protection for women, stating that "women must be protected in particular against any attack on their honor, especially rape,

and Forced prostitution or any other offense or any indecent assault.

The same principle is also found in Article 76, Paragraph 1 of the First Additional Protocol, which states that "women must be the object of special respect, especially against rape and forced prostitution, and against any other form of indecent assault."

As for the second additional protocol, we find Article 4, paragraph 1, which states that "all persons who participate directly or who cease to take part in hostilities, whether their freedom is restricted or not, their person, their honor, their beliefs, and their practices - of their religious rites must be respected", and they must in all cases be treated humanely without any unfair discrimination. And also they must be kept alive.

Second: Defining the crime of sexual violence against women as a crime against humanity in international criminal law.

The examiner of the texts of the statute of the International Criminal Court concludes that sexual violence crimes were received as criminal acts without specifying them, and there was no definition of sexual crimes, nor a definition of its founding elements since this issue was left to the Preparatory Committee charged by the diplomatic conference of Rome to prepare the procedural rules and evidentiary rules that fall within The jurisdiction of the International Criminal Court while sexual violence has been explicitly included among the crimes falling within the jurisdiction of the permanent International Criminal Court.

Because the former Yugoslavia and Ronda tribunals are a historical precedent for international criminal justice, the International Criminal Court has extracted from its jurisprudence judgments, and it has relied on these case law. Article 7 of the ICC statute stipulates the first paragraph that sexual violence must be of the same degree of severity with the other stipulated acts.

In paragraph (g) in terms of the effects of prejudice to the human and personal dignity of the victim of physical and mental integrity similar to the effects of sexual crimes contained in the same article, this is to enable it to distinguish between it and simple sexual acts, despite its handling of images of sexual violence and its elements And its definition, however, all the agreements brought together the elements of the crime of torture and crimes of sexual violence as it was considered as a systematic means within the state's plan to humiliate and insult in order to obtain information, on this basis the International Criminal Court has broad authority to adapt if it does not display the photos in Article 7.

Third: The legal adaptation of the crime of sexual violence against women.

To prosecute individuals responsible for crimes of sexual violence committed against women during wars of armed conflict, it is necessary to clarify the nature of these crimes and the legal basis on which they are based, bearing in mind that sex-based crimes were not international or even national crimes in past centuries and crimes of sexual violence We find the rape that Sir Matthew-Hill said about it: "Rape is an accusation that is easy to direct and difficult to prove, and it is more difficult to defend a defendant in it. In the event of rape, it is the victim who is tried and not the defendant.

while the international law and the national judicial organs of countries are developing these practices has become prohibited today, as it is considered a practice of persecution, and the crime of sexual violence has become an international crime that has been defined as a crime of genocide, a war crime, or a crime against humanity.

Sexual violence against women as a crime of genocide.

International law punishes crimes of sexual violence committed against women and these crimes are pursued by the international criminal judiciary in cases of international and non-international armed conflicts that are considered in

breach of the rules of international law. Crimes of sexual violence if committed with the intent to cause physical or mental harm or to eliminate the group in whole or in part, then these Crimes instantly are considered crimes of genocide, and these acts include rape, sexual and sexual organs or sexual servitude, in accordance with the provisions of paragraph (b) of Article (2) of the Convention on the Prevention and Punishment of the Crime of Genocide, It states that "causing serious bodily or spiritual harm to members of the group is one of the acts upon which the crime of genocide is based"

Sexual violence against women as a war crime.

Rape, which was common during armed internal wars and wars against terrorism, was not adopted as a war crime despite the provisions of the Hague Conventions and the Geneva Conventions, which attempted to provide a great deal of protection to women, and stipulated that they would not be subjected to such heinous and cheap transactions. The Geneva Convention of 1949 concludes from it that it considers rape and all other forms of sexual violence as war crimes if they are committed during international or non-international armed conflicts, without the need to prove that there are a methodology and a criminal intention to commit these acts, as they are crimes against humanity.

As for the International Criminal Court, crimes of sexual violence committed against women have been adopted on the basis of Article 8 of its statute regarding grave breaches of laws and customs of war, and it is considered by the court when it is committed within the framework of a plan or policy or in the context of a large-scale perpetration process in the sense that these are included Violations are according to a policy established by the state and its perpetrators in order to achieve a specific goal of terrorizing the population, expelling it, interrogating or taking revenge.

Sexual violence against women as a crime against humanity.

Sexual violence is considered not so long ago as an assault on the honor of women, which led to reducing the seriousness of the criminal act from the rest of international crimes, as it was often not punished internationally or nationally, but the grave violations that occurred in the modern era, especially in Yugoslavia and Rwanda, as well the crimes committed before during the Second World War by the Nazis, made sexual violence crimes against women during international and non-international armed conflicts a crime against humanity. In order to be of an international characteristic the crime against humanity it has to be committed on the order of the state in which the victims of violence reside in its territory or on the basis of its tolerance for those who commit it since in this case, it is clear that the state violates its obligations and assaults on rights of international humanitarian importance .

Among the material characteristics of the crime that can be adapted as a crime against humanity, we mention two main characteristics .

1- The element or elements that establish this crime can be determined simply because the definition of these acts is mentioned in Article 7 exclusively and not by example.

2- Every element constituting the crime must be defined specifically and cannot be diligently understood and interpreted broadly, in the application of the general principle that criminal laws are of a specific literal interpretation, as stipulated in Article 7 of the Statute of the International Criminal Court.

In this regard, we must point out that despite the consolidation of the rules of international protection for women in light of contemporary international laws, the reality of the situation in areas of armed conflict (Iraq - Syria) confirmed the violation of that protection by terrorist organizations that controlled large areas of the two countries and this has resulted in numerous victims of women and children, which resulted in legal problems, and that requires researching legal mechanisms to restore protection for women and rehabilitate them within

society, as the problem lies in determining the fate of women who were victims of the terrorist organization, either because they lost their husbands belonging to the terrorist organization due to absence, loss or murder, Or for those who have been raped and abused, as for women who have lost their husbands belonging to terrorist organizations, the state's responsibility towards them is determined by identifying women who have not been found guilty of their crime and the need to rehabilitate them through social programs to engage in society and enjoy their rights, or if their conviction is proven through the investigation courts and the decision of the competent court The law must take its course, and for women of foreign nationalities, legal procedures must be applied against them through diplomatic channels, and on the fate of women who have been raped or held captive, they have the right to claim compensation from the state based on The constitutional rights referred to in the 2005 Iraqi constitution, the Compensation for Victims of War and Military and Terrorist Acts Law No. 20 of 2009 and amended by Law No. 57 of 2015 otherwise the state is responsible to the international and internal community as a result of a violation of its obligations in the field of safeguarding human dignity and rights.

The second topic

Protecting children born of sexual violence during armed conflict

We will discuss the protection of children born as a result of sexual violence during armed conflict, through two requirements. The first: We clarify the concept of the child and the rules of protection at the international level, and the second: Mechanisms to protect children born due to sexual violence in armed conflict.

The first requirement: the concept of the child and the rules of protection in international humanitarian law.

First: the concept of the child:

There are many definitions that were presented regarding the term child, and below we review some of the proposed definitions of children in international law:

- In the Convention on the Rights of the Child dated 11/20/1989 AD: "For the purposes of this agreement, a child means every human being below the age of eighteen, unless he reaches the age of majority before that according to the law applicable to it"

- As stated in Convention (182) on the worst forms of child labor: "The term child in the concept of this Convention applies to all persons under the age of eighteen" - As stated in the African Charter on the Rights of the Child, the following: "A child is every human being below the age of eighteen years"

- As stated in the Optional Protocol to the Rights of the Child on the involvement of children in armed conflict: "States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of eighteen years do not take a direct part in hostilities"

From the foregoing, we find that the definition of the child and the definition of childhood stage, even though it was mentioned in many international documents, it is not precisely accurate, except for some specific agreements such as international labor agreements where the age stages in which the child is allowed to work are mentioned, although The rights of the child agreement of 1989 defined the child and his rights, but they neglected the rights of the child before birth, and for this reason, the jurists considered that omission a mistake has been taken on that agreement .

Second: The protection provided for a child under international humanitarian law:

Child protection according to international humanitarian law ranges from general protection to special protection and protection from the effects of hostilities, and we will try to address all of this as follows:

1- General protection of children as civilians: Article 27 of the Fourth Geneva Convention of 1949 stipulates the protection of the civilian population during armed conflicts, including

children, and articles 21 and 32 of them stipulate the prohibition of any physical or moral coercion of protected persons. General protections for children can be highlighted as a civilian population as follows:

Establishing safe areas and treatment centers: Safe areas mean those regions that are protected from the dangers of fighting and hostilities, and that benefit from them - according to Article 15 of the Fourth Geneva Convention.

Not neglecting children under the age of fifteen: It goes without saying that it is very difficult for a child under the age of fifteen years to bear the horrors and sufferings of war, this is the reason that led the Fourth Geneva Convention to stipulate that parties of the conflict must take all necessary measures to ensure that children under the age of fifteen years who have been orphaned or separated from their families due to the war will not be neglected, facilitate their maintenance and practice their religion and educate them in all cases, and if necessary, their education by persons belonging to the same traditions, as well as facilitating their accommodation throughout the duration of the conflict.

Investigating the identity of children under the age of twelve: The Fourth Geneva Convention stipulates that the parties to the conflict or the protective state - if any - should take all necessary measures to investigate the identity of all children under the age of twelve, by carrying a billboard to verify identity Or by any other means .

2- Special protection for children as civilians: The Fourth Geneva Convention established special protection for children through articles 27-34 in an attempt to protect this category from the consequences of what is happening in hotbeds of armed conflict, fields of war and war. The aspects of this protection can be illustrated as follows:

Humane treatment of children: The Fourth Geneva Convention stipulates the need for the parties of the conflict to respect people - including children - their honor, family rights, and religious beliefs ... and to treat them in a manner befitting human beings at all times, and to protect them from all forms of threat and violence, by taking preventive and security measures towards these people Protected persons due to the circumstances of the war, and they may not be exploited in any way to exercise any physical or moral coercion in order to obtain information from them, as well as collectively punish them and curtail them for crimes they did not commit, nor should they be taken as hostages with the intention of bargaining their countries, or Conducting medical scientific experiments on them.

In the event of committing one of the aforementioned or other acts, the international legal responsibility of the party to the conflict, whether these violations are committed by civilian or military agents, without prejudice to the individual responsibilities that can be exposed.

Take special measures for the benefit of children: by focusing on the needs and rights of displaced children and refugees within the territories of states, and trying to set international standards for protection and care for children victims of international conflicts.

Prohibition of Forced Transfer of Children: Article 43/01 of the Fourth Geneva Convention states: "Protected persons may not be transferred to a country that is not a party to this Convention." Article 49 of the same convention also prohibited the forcible expulsion of civilians - including children - in the occupied territories, in which it reads: "Forced or mass transfer of protected persons or their exile from occupied territory to the territory of the occupying Power is prohibited ...".

5-Special protection for children from the effects of hostilities: The Fourth Geneva Convention and the two additional protocols have established special protection for children from the effects of hostilities, which we will try to explain as follows:

Banning the recruitment of children into hostilities: "Child soldier" is a term that does not correspond to any specific legal status in the texts of international humanitarian law, and accordingly the failure to define "child soldier" complicates attempts to determine the legal status of this group of children and the slow pace of Building their own legal protection. But what legal protection does international humanitarian law provide for a child soldier?

Article 3/03 (c) of Additional Protocol II to the four Geneva Conventions of 1977 declares that children under the age of fifteen years may not be enlisted in armed forces or groups, and their participation in hostilities may not be permitted.

Among all matters relating to the protection of children is the defense to accepting the return of "child soldiers" to their homes after the end of the armed conflict, and exempting them from legal liability.

Protection of the child as a prisoner of war: Article 1/45 of Additional Protocol I defines that a prisoner of war is a person who participates in hostilities and is in the power of the opponent. The protection of a "child soldier" during a non-international armed conflict is a matter of concern that The international humanitarian law does not recognize as a combatant or as a prisoner of war, and therefore there remains a special protection category for the protection of the rule of law, and Article 3/4 (d) of Additional Protocol II applies to which indicates that children participating in hostilities continue to enjoy protection, Even if they were captured by the hostile forces, where he came Which states: "remain the special protection provided by this article for children under fifteen in effect that if they took part in the hostilities."

Non-implementation of the death penalty on children: International humanitarian law stipulated that children should be exempt from the death penalty - as a special protection group - as its rules stipulated the following:

Article 68/04 of the Fourth Geneva Convention states: "A sentence of execution for a protected person under the age of eighteen years at the time of the offense may not be executed." Article 5/77 of Protocol I to the four Geneva Conventions states that if in exceptional cases it occurs, and despite the ban on such a ruling, it cannot be implemented due to a crime related to armed conflict, on persons who have not reached the age of eighteen at the time Committing this crime.

Article 4/6 of the second Protocol of the four Geneva Conventions states that "death sentences may not be imposed on persons under the age of eighteen at the time the crime was committed ...".

The second requirement: the protection of children born of sexual violence in armed conflict

The protection of children born due to sexual violence in times of armed conflict is highlighted through international action and the work of international organizations in this framework, where:

The United Nations, the Government of Iraq, and the Kurdistan Regional Government marked the International Day for the Elimination of Sexual Violence in Conflict by organizing two events in Erbil and Baghdad on June 25 and 26, 2018, respectively. This was the third annual event, the first to be celebrated since the Iraqi government restored areas previously controlled by the so-called Islamic State in Iraq and the Levant (ISIS). The theme of the event was "the ordeal and rights of children born during wars." Speaking from Baghdad, the Deputy Special Representative of the United Nations Secretary-General for Iraq for Political Affairs and Electoral Support Ms. Alice Woolbold called for the protection of children born as a result of rape.

- And she continued that the mandate of the United Nations Assistance Mission for Iraq (UNAMI), which was renewed on 14 June in accordance with Security Council Resolution 2421, explicitly mandates the mission to assist the efforts of the Iraqi government and the efforts of the United Nations team in Iraq

to enhance the protection of children, including the restoration of Rehabilitation and reintegration of children into Iraqi society. UNICEF Representative in Iraq Mr. Peter Hawkins said: "Although there is a legal framework providing children with access to supporting documents, obtaining such documents in practice is very difficult and requires women to publicly disclose what experiences have survived - that is For their families, cultures, clans, and religions are very shameful." For his part, Deputy Representative of the United Nations Population Fund for Iraq, Mr. Nestor Uumuhanji, speaking from the Kurdistan Region, said: "Children born of rape and forced marriages are currently in a suspended legal status and are vulnerable to extremism, trafficking, and exploitation, with wider negative effects on peace and security. Nevertheless, the basic principle of the 1989 Convention on the Rights of the Child is that the safety, well-being and best interests of children must always come first.

- The United Nations Assistance Mission for Iraq (UNAMI) said that the Iraqi government must ensure that children born to women married to ISIS are not subjected to discrimination, marginalization or any other form of violence and abuse and that they are fully protected. This includes policies to ensure adequate birth registration (without discriminatory registration related to the identity of the father, such as an "ISIS terrorist" registering a child "Muslim" when the mother is from a sect other than Islam based on assumptions regarding the father's religion, etc. in order to ensure that these children enjoy all Legal rights and protection due to any citizen and to prevent other risks such as statelessness, abuse, marginalization, exploitation, and trafficking. In addition, it is essential that the government consider policies to support caregivers, such as enabling and supporting nurseries and orphanages, especially those, that provide care for children who may have Special needs.

- Protecting children from discrimination and ill-treatment, according to the recommendations of the International Mission of the United Nations to Iraq.

- Simplify and regulate the rules and regulations related to birth registration in all regions and consider institutional reforms to facilitate access to documents.

- Expanding the availability of alternative civil status offices where requests for documentation or registration can be submitted.

Ensure that children are registered in the civil status identity with the names of their mothers (in personal status and the national identity law to avoid negative social impacts, discrimination and potential exploitation of children born out of wedlock or who have parents from members of the organization (whether by marital consent or those born of rape).

Refrain from registering a child's religion based on assumptions about the father's religion (for example, registering children as Muslims in the belief that their parents are from ISIS

Refrain from recording information about the father on the child's birth certificates, which would expose the child to discrimination, marginalization and possible violence (for example, that the father was a fighter in the ranks of ISIS).

In this regard, it must be said that Iraq is facing legal problems related to the fate of children who have been persecuted and violated their rights and they are legitimate children who are not registered in the competent departments of parents from members of terrorist organizations who are absent or missing or killed and children who are not legal due to rape or the captivity of their mothers. In the first case regarding Legal children who are not registered must be registered in accordance with the fundamental legal rules and after completing procedures to prove lineage and provide it with official documents. Either if the terrorist father is absent or missing, he will follow the rules followed in the texts of the

articles. (87-86-85-88) of the Minors, Welfare Law No. 78 of 1980 identifies the custodian or guardian and decides to establish the lineage. As for the second case, that is, illegitimate children (foundlings or unknown lineage), they follow Article 28 of the Civil Status System No. 32 of 1974. The Personal Status Court is competent to consider the specific procedures regarding these, as well as the Juvenile Welfare Act No. 76 of 1983.

CONCLUSION

It appears through our study of this topic the importance of the existence of international mechanisms in addition to internal mechanisms, in the suppression and rebuke of perpetrators of sexual violence violations, in addition to providing special protection to children born as a result of this violence in times of conflict.

RESULTS

Children born of sexual violence in times of armed conflict are exposed to the inferior view and danger to their lives from society.

Children born of sexual violence in times of armed conflict and their mothers are groups that need special attention as well

Recommendations

- In view of the intent of some states or armed groups not to apply the rules of international humanitarian law, it was necessary to provide real international support for the mechanisms - the International Committee of the Red Cross for example - that ensure respect for those rules, and encourage regulatory and judicial bodies and give them a strong international impulse towards holding the violating parties accountable To the rules of international humanitarian law and provide adequate protection to children born of sexual violence in armed conflict.

Teaching international humanitarian law in military colleges, while stating their importance to soldiers.

Urging and supporting institutions concerned especially with the rights of the child, whether international or national, to rehabilitate and care for children born as a result of sexual violence and their families.

- Countries that have experienced these problems should amend their legislation to provide protection and care

Special for these children and their mothers.

Enforce laws to compensate and rehabilitate women who have been raped or held captive by terrorist organizations.

Directing the competent courts to simplify formalities and facilitate the affairs of women victims of terrorist operations regarding those who demand the separation of their husbands belonging to terrorist organizations, pay attention to organizing the rights of their children and decide to provide identity documents to ensure their protection and their return to society

REFERENCES

First: Books in Arabic:

- 1- John-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Volume 1 (The Rules), ICRC publications, 2007.
- 2- Hazem Muhammad Atalm, Law of Non-International Armed Conflicts, International Humanitarian Law, Manual for Implementation at the National Level, Edition 3, 2006.
- 3- Sharif Atalm, the meaning of international humanitarian law, its historical development and its scope of application, lectures on international humanitarian law, 6th edition, International Committee of the Red Cross 2006
- 4- Salah Al-Din Amer, An Introduction to the Study of Public International Law, Arab Renaissance House, Egypt, 2007

- 5- Ali Sadiq Abu Haif, Public International Law, 12th Edition, Monshaat Al-Maaref, Egypt, 2015
- 6- Fristen Kalshofen - Elizabeth Zgfeld, Controls of Warfare - An Introduction to International Humanitarian Law, International Committee of the Red Cross, 2004.
- 7- Mazri Nassira and Talib Amina, Crimes of Sexual Violence Against Women as a Crime Against Humanity, Faculty of Law and Political Science, University of Abderrahmane Mellara-Bejaia, Algeria, 2014, MA.
- 8- Muhammad Bashir Al-Shafi'i, Human Rights Law, National and International Sources and Applications, Al-Maaref Establishment, Alexandria, 1st edition, 2004.
- 9- Muhammad Mahd Al-Shallalda, International Humanitarian Law, Al-Maaref Establishment, Jerusalem, 2005
- 10- Mahmoud Salim Mohamed Ghazi, The Crime of Genocide, 2nd Floor, University Youth Foundation, Alexandria. 1982. Al-Taher Mukhtar Ali Saad, International Criminal Law (International Sanctions), 1st edition, United New Book House, Beirut, Lebanon, 2000.
- 18- REYNAUD Oriane, THE RIGHTS OF THE CHILD SOLDIER, Contribution of union penne euro to the efforts of the International communité, UNIVERSITÉ LYON 2, 2009.
- 19- Children affected by armed conflicts and peacebuilding - An operational framework, op.cit, p 05.

Second: University Theses:

- 1- Nagham Ishaq Zia, Study in International Humanitarian Law and International Human Rights Law, Ph.D. thesis submitted to the Faculty of Law, University of Mosul, unpublished, 2004.
- 2- Hamza Talib Al-Mawahera, The Role of the UN Security Council in Referring International Crimes to the International Criminal Court, Master's Thesis in Public Law, Faculty of Law, Middle East University, 2012
- 3- Falah Mazyad Al-Mutairi, International Liability of Individuals in the Light of the Evolution of International Criminal Law. Memorandum for Masters Degree, College of Law, Department of Law, Middle East University, 2011.

Fourth: Constitutions and Laws:

- 1- Iraq permanent constitution, 2005
- 2- The Iraqi Personal Status Law in force No. 188 of 1985
- 3- Minors Welfare Act 86 of 1980
- 4- Juvenile welfare law No. 76 of 1983

Fifth: Websites:

- 11- Hammad Wadi Sanad al-Karti, the date of the university extermination, starting from the extermination of the Jews and the Roma, passing through the extermination of the Armenians, and ending with the extermination of the Zaghwawa - Masalit and Fur tribes, and other tribes in the Darfur region, research published on the website: <http://africanjustice53countries.wordpress.com> At 10/12/2018
- 12- Promoting respect for international humanitarian law in non-international armed conflicts, ICRC publications, www.icrc.org, accessed on 5/5/2019
- 13- Ali Abdullah Al-Hamada, Prosecution, and Punishment of Major Crime Offenders before the International Court, Research published on the website <http://www.iccarabic.org>, accessed on 10/12/2018.
- 14- Asmaa Hamid, International Day of Sexual Violence 2018. Under the slogan "The rights of children born in war", the citizen newspaper, on the website. <https://www.elmwatin.com/> Accessed on 6/19/2018
- 15- The United Nations Assistance Mission for Iraq (UNAMI), promoting and protecting the rights of sexual violence victims who have been captured by ISIS / or in areas controlled by ISIS in Iraq in 2017, on the website: <http://uniraq.org> accessed 25/3 / 2018

Sixth: Books in French:

- 16- Children affected by armed conflicts and peacebuilding - An operational framework, op. cit, p 05.
- 17- Children affected by armed conflict and peacebuilding - An operational framework, Canadian International Development Agency, p 06, in