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## People with Disabilities in Armed Conflict

**Abstract.** During armed conflict, people with disabilities are victims of a vicious cycle of violence, social polarization, deteriorating services and deepening poverty. They are among the most marginalized and excluded part of the population affected by the armed conflict. They are at greater risk in situations of conflict, most likely to be left behind when populations flee and also at greater risk of violence and discrimination. The international normative framework related to people with disabilities in armed conflicts is mainly based on human rights law and international humanitarian law. The Convention on the Rights of Persons with Disabilities moves the meaning of disability from regarding persons with disabilities as objects of medical care and charity to recognizing them as subjects with rights. There is still a long way to go in effectively protecting disabled people during armed conflicts. It seems that legal norms in this respect are sufficiently precise. But as often happens, the executive fails. The international community has a highly developed sense of solidarity and empathy for those in need. However, we are constantly observing many imperfections and shortcomings in the procedures and mechanisms of humanitarian aid operations.

**Keywords:** disabled persons, armed conflict, human rights, humanitarian assistance, victims, humanitarian law, convention on disabled persons

### “People with disabilities in armed conflict”

Persons with disabilities are among those most severely affected by the conflict. First of all, conflicts destroy all support systems existing there. The lucky ones may

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escape - but many people with disabilities because of their conditions must remain in the conflict zone after the evacuation of other people, and this makes them even more vulnerable. The prevailing custom in many countries forcing people with disabilities in institutions exposes them to even greater danger, which complicates the task of civil protection. In fact, clusters of people - psychiatric hospitals, orphanages, nursing homes and other institutions - may cause some fighters to use people with disabilities as “human shields”. People with disabilities physical, sensory, intellectual and psychosocial also face barriers hindering their escape and survival of armed conflict (Devandas, Barriga & Quinn, 2017).

People with disabilities constitute 15 percent of the world’s population. During armed conflict, people with disabilities are victims of a vicious cycle of violence, social polarization, deteriorating services and deepening poverty. They are among the most marginalized and excluded part of the population affected by the armed conflict. During the time when all the infrastructure of the state is not working (all systems and services) such people are much more susceptible to violence (Thomas, 2018). People with disabilities are at greater risk in situation of conflict, most likely to be left behind when populations flee. They are also at greater risk of violence and discrimination (CRPD Statement on disability inclusion for the World Humanitarian Summit, 2015). Children with disabilities are the most at risk. We can distinguish six violations of their rights and protection in armed conflict which are on the agenda of the United Nations (UN) Security Council. Those are: killing and maiming, recruitment and use of children, rape and other sexual violence, abduction, attacks on schools or hospitals and the denial of humanitarian access (Thomas, 2018). The second group exposed to the greatest danger are disabled women. Women with disabilities, already in a time of peace are disproportionately exposed to sexual violence, in a dangerous time of war are even more threatened by violence. Besides, of course the co-occurrence of disability and other characteristics, such as race, religion, social group or age, further intensify the challenges in armed conflicts. Being disabled makes life more complicated, but being disabled in the time of war creates the life reality unpredictable.

The main aim of this article is to indicate legal regulations related to the situation of disabled people during armed conflict and to present recommendations to improve the effectiveness of humanitarian activities.

Any reflections on the standards on the human rights of persons with disabilities should be preceded by defining the term “*disabled person*”. The concept of disability has evolved over the years. First, it was seen as set of medical problems that need correction and rehabilitation, whose main aim was to make a person integrate into society, be self-sufficient and independent. At the beginning of 1970s the social

model of disability evolved.<sup>2</sup> This social model of disability focused on the barriers such as lack of physical access to buildings, transportation and so on have been created by people (environment). The Convention on the Rights of People with Disabilities (2006) went a step further with defining the social model. It underlined that individuals' impairments have to be taken into consideration through a human rights-based approach. It consists of the treatment of disabled persons with charity, good medical care system, social protection, towards viewing them as people with rights who are able to claim these rights and make decisions by themselves. All of these together will make them an active part of society (Thomas, 2018). Persons with disabilities are those who are usually affected the most disproportionately in any disaster, conflict situation, armed conflicts, natural disasters or any other humanitarian emergencies.

### **The legal framework related to people with disabilities during armed conflict**

The international normative framework related to people with disabilities in armed conflicts is mainly based on human rights law and international humanitarian law. The CRPD has adopted a human rights-based approach to disability. Its regulations focus on the removal of barriers to the inclusion and participation of persons with disabilities in society and on the enjoyment of their rights on an equal basis with others: “(...) *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*” (Convention on the Rights of Disabled People, 2006, art.1 ).

International humanitarian law has been codified under the medical model of disability, which focuses exclusively on the impairment of the person and reflects a paternalistic approach to persons with disabilities. Moreover, neither the Geneva Conventions of 1949 nor the additional protocols of 1977 use the term “*disabled person*”. The protection of these people is implemented on the general principles of the civilian population.

The concept of civilian population has been defined in art. 50 of I Additional Protocol of 1977 to the Geneva Conventions states: “*The civilian population comprises all persons who are civilians*” (I Additional Protocol of 1977 to the Geneva Conventions, 1977, art. 50). According to the victims of international armed conflicts regulations of IV Geneva Convention and I Additional Protocol should be mentioned.

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2 The beginning of 1970s was characterized of the disability rights movements, which argued that just medical approach of disability is oppressive.

By virtue of art. 23 IV of the Geneva Convention (IV Geneva Convention, 1949, art. 23) the parties to receive assistance are named: “(...) *civilians of another High Contracting Party, even if the latter is its adversary* (...) children under fifteen (see Delissen, 1991, Cohn 1994, Bouvier, 1996), expectant mothers and maternity cases” (see Chinkim, 1988-1989, Gardam, 1988, Morris, 1996). According to the non-discrimination principle under art. 13 of the IV of Geneva Convention they should get the humanitarian assistance “*without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the sufferings caused by war*” (IV of Geneva Convention, 1949, art. 13). The possibility of receiving help is also provided under art. 38 IV of the Geneva Convention, for foreigners who entered the territory of one of the parties in the conflict. Under the provisions of the Fourth Geneva Convention, interned persons may also benefit from the assistance (see Sassoli, 1987).

The protection of civilians in non-international armed conflicts was ensured under Article 3 common to all Geneva Conventions and provisions of Additional Protocol I (I-IV Geneva Conventions, 1949, art. 3, I Additional Protocol of 1977 to the Geneva Conventions, 1977). Art. 4 of the Protocol guarantees that “*all persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors(...)* children shall be provided with the care and aid they require (...)”. (I Additional Protocol of 1977 to the Geneva Conventions, 1977, art. 4)

The legal regulations referenced in this fragment are only examples of guarantees provided for the civilian population in humanitarian crisis situations. As disabled people are part of the civilian population, all legal regulations provided for civilians are at the same time a guarantee for people with disabilities. It should be also mentioned that international humanitarian law is focused on older medical terms of disability, which relies on impairment and vulnerability. It uses medical model of approach – in terms of impairments.<sup>3</sup>

The Convention on the Rights of Disabled People has made a link between a human rights -based approach to people with disabilities focusing on the removal of barriers to the inclusion and participation of them in society. It is also important to enjoy their rights on an equal basis with others. The convention was presented as a “*significant paradigm shift*” in the way we think about disability in the world. It requires States Parties to identify and remove barriers in society for people with disabilities and to harmonize social and economic support to facilitate the

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3 III Geneva Convention relative to the treatment of prisoners of war of 1949 refers to: cases of amputation, total blindness or deafness, mental disorder. In this period medical model of disability was predominant.

provision of equal opportunities for them. It requires that States treat people with disabilities seriously, especially their right to make decisions about their own lives (UNHCR, 2015). Article 11 - is a bridge between traditional areas of civil protection in international humanitarian law and a new area of human rights for people with disabilities. It calls for the extension of traditional provisions on the protection of the civilian population to include people with disabilities and a special reference to the protection of their needs. It states 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 armed conflict, humanitarian emergencies and occurrence of natural disasters.*” (Convention on the Rights of the Disabled People, 2006, art. 11). The necessity of such protection is emphasized in the preamble of the Convention, which states that in order to ensure full protection of people with disabilities, in particular during armed conflicts and foreign occupation, it is necessary to comply with relevant human rights documents. Article 11 requires all activities to be undertaken in accordance with the existing obligations of States Parties under international law, including both international humanitarian law and international human rights law. It calls for a more significant convergence between these two areas of international principles. In particular, it focuses on the protection of the safety of persons with disabilities during “*armed conflicts*”, appealing to States to go a step further and indicate them on the general list of vulnerable persons to be assisted (Devandas et al., 2017). Besides article 11 of the Convention on the Rights of Disabled People (CRDP), which directly relates to disabled persons, Article 10 should also be mentioned. It states that: “*States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.*” These two regulations should be analysed together. Every humanitarian action is always taken to protect the right to life. Article 17 of CRDP seems also be crucial while thinking about humanitarian action. It is obvious that “*every person with disabilities has a right to respect for his or her physical and mental integrity.*” Care for gender equality must also be considered in any disability analysis (Convention on the Rights of Disabled Persons, 2006, art.5, 10, 11).

International Humanitarian Law requires that civilians be assisted during armed conflict. The availability of humanitarian aid should be facilitated where the population is insufficiently supplied with food, water and/or medical supplies. In many cases, people with disabilities are in a group of people to whom access is limited or even difficult. These people need help because of isolation, limited mobility, as well as barriers to communication and access to information. The Convention places great emphasis on providing these protection measures for people with disabilities, imposing obligations regarding rehabilitation and the provision of assistive devices and technologies and access to information. The evacuation of

people with disabilities in crisis situations is difficult at best. Restrictions on mobility may relate to the pace of movement. Often evacuation on its own is impossible. Sensory disability (blindness) means the inability to read information on escape routes. Audio warnings are often useless for deaf people. Intellectual disability may mean that standard warnings and messages will be misunderstood. Physical disability means that despite understanding the warnings, such people will have a problem moving to safe areas.

While talking about normative aspects of disabilities during armed conflict we cannot forget about the meaning of soft law, especially UN Security Council Resolutions. International law is a normative system. However, there are situations when issues of international morality, rules of politeness and rules of conduct arising from political documents play an important role in its development. There are also often arguments that a given instrument or document, which is not binding, is a special category called "*soft law*". (Bierzanek, 1987). As M. Bothe (1980) points out, despite the specifics, these standards bind the parties to some extent. In addition, it is believed that, by the nature and importance of the regulated issues, soft law is very important in the general system of international law. (Gold, 1983). As M. Lachs (1963) points out, despite the fact that most UN resolutions are not legally binding, they should not be deprived of any legal significance because in a given situation each such a resolution has certain moral and political dimensions that should be taken into account. The current shape of international relations has introduced some modifications in relation to the evaluation of UN resolutions. The point is that in recent years the United Nations has adopted a significant number of important resolutions and declarations that can play a significant role in shaping the developmental directions of modern international law. Such declarations can be considered in the context of the possibility of a customary law appearing on their basis. They can be considered as examples of the practice of states that led or will lead to the formation of a customary law. Resolutions can accelerate the process of legalizing the practice of states and thus facilitate and shorten the process of identifying customary law. However, there is no doubt that the role of the UN in the context of generating the practice of states is definitely increasing, irrespective of whether it is in effect law-making or merely opinion-forming (Advisory opinion of ICJ, 1996). There is no doubt that international documents, which are not "*treaties*" within the meaning of the Vienna Convention on the Law of Treaties of 1969, and do not have legally binding force, play an increasingly important role in international relations. This is primarily due to the will of the states themselves because they choose a less complicated form of creating relations between them and the fact that violation of their provisions does not give rise to violations of international law and thus does not give rise to premises of international responsibility.

Why not a treaty? As J. Klabbers (1996) points out, there are many reasons why states avoid international agreements. These include, above all, the desire to



build mutual trust between states, to create a preliminary order that, by not being a traditional agreement, will be more flexible and developing in the future. In addition, states believe that international law will in future be overloaded with ineffective treaties, which in effect result in violations of international law norms, international liability and ultimately a weakening of relations between states. He indicates that the advantage is simpler procedures for concluding such an agreement - a consensus is enough. No international conference is required nor ultimately a tedious ratification process. In addition, what seems important in the process of creating soft law is that parties that are not entities under international law can participate (Aust, 1986). According to R. Baxter, if countries have adopted some norms as soft law, then in the future they will not be able to withdraw from their previous position or consider the matter to be outdated, only because it has not been regulated by treaty law, using the arguments about the state's own competences. The implementation of "*soft law*" standards also results from the principle of good faith (Baxter, 1980).

Analysing UN resolutions on humanitarian actions, it is clear at first glance that UN members have great interest in this issue. The number of documents accepted in this regard over the past decades is in the hundreds. Assuming the criteria of the subject of regulation, they can be divided into 4 general groups. The first group deals with general issues regarding the provision of humanitarian aid to victims of natural disasters and similar emergencies. The second group consists of resolutions regarding the strengthening of UN coordination activities during assistance operations. The third group includes resolutions on ways to reduce the incidence of natural disasters, and the fourth includes resolutions that respond to specific situations that require humanitarian aid.

On 20 June 2019 for the first time in history, the UN Security Council adopted a resolution on the protection of disabled people in armed conflicts (UN, 2019). The sponsors of the unanimously voted document were Poland and Great Britain. By the terms of resolution, the 15-member Council called upon all parties to armed conflict to allow and facilitate safe, timely and unimpeded humanitarian access to all people in need of assistance. It further urged them to prevent violence and abuses against civilians in situations of armed conflict, including those involving in killing and maiming, abduction and torture, as well as rape and other forms of sexual violence in conflict and post-conflict situations. The Council emphasized the need for States to end impunity for criminal acts against civilians, including those with disabilities and to ensure they have access to justice and effective remedies and as appropriate, reparation. It called upon all parties to armed conflict to allow and facilitate safe, timely and unimpeded humanitarian access.

Encouraging Member States to ensure that persons with disabilities enjoy equal access to basic services, including education, health care, transportation and information and communications technology (ICT) and systems; the Council further urged States to enable the meaningful participation and representation of persons with

disabilities, including their representative organizations, in humanitarian action and in conflict prevention, resolution, reconciliation, reconstruction and peacebuilding.

Further by the resolution, the Council urged Member States to take steps to eliminate discrimination and marginalization on the basis of disability in situations of armed conflict. It also urged States parties to comply with their obligations under the 2006 CRDP (UN, 2019).

The resolution reaffirms that parties to armed conflict have the main responsibility to take all possible steps to protect civilians. It also recalls that states have the primary responsibility to respect and ensure the human rights of all people within their territory and subject to their jurisdiction as provided for by international law.

The most important demands of the resolution include:

- to take all necessary measures to protect civilians, including those with disabilities
- to realize the need for States to end impunity for criminal acts against civilians, including those with disabilities
- to ensure that people with disabilities have access to justice and effective remedies
- to allow and facilitate safe, timely and unimpeded humanitarian access to all people in need
- to take appropriate measures to ensure that persons with disabilities have full and equal access to all basic services (e.g. education and health care)
- to take all appropriate measures to eliminate discrimination and marginalization of disabled persons in situations of armed conflict.

In their speeches, members of the Security Council emphasized that the resolution was a breakthrough in international law and thanked Poland and the United Kingdom for its preparation. They also expressed gratitude to Russia and China for voting in favour of the resolution despite the reservations they made. Russia claimed that some of the provisions of the document go beyond the mandate of the Security Council; China, in turn, emphasized that the resolution should not violate the law of sovereign countries.

### **Strengthening Humanitarian Action**

With reference to the above, the States responsible for civilians during armed conflict, including disabled persons, should take all possible measures to allow and improve humanitarian aid operations. As already mentioned the number of persons with disabilities facing conflict situations and natural disasters is dramatic. These people are four times more likely to die when a disaster occurs. Disabled persons are often exposed to various violations, even abandonment in risk situations. There



are many aspects to be improved, such as programme assistance, adequate shelter, communication, just to reduce violation of human rights. All persons with disabilities are exposed to many dangers (UNHCR, 2015).

In the thematic study on the rights of persons with disabilities under article 11 of the CRDP, on situations of risk and humanitarian emergencies thematic recommendations are created. They consist of key elements of humanitarian response effectiveness from disability perspective, reducing the exclusion of persons with disabilities and managing risk, serving the needs of persons with disabilities in a situation of conflict and transformation through innovation (Convention on the Rights of Disabled Persons, 2006, art. 11).

Fostering collaboration between local, national and international organizations is crucial to improve humanitarian activities for disabled persons. From the point of view of humanitarian aid, the issue of its efficiency seems to be a key issue determining its effectiveness. Speed, quality and good coordination of activities influence the success of the whole action. There is also need to *“strengthen the collection, management, disaggregation and analysis of information on persons with disabilities in order to foster inclusion and to address discrimination on the basis of disability, not to mention multiple and intersectional forms of discrimination”* (UNHCR, 2015). Adequately and timely delivered information may become essential in emergency periods. The use of innovative and effective communication systems may guarantee that disabled persons will not be excluded from obtaining humanitarian aid.

It is also very important to create a system of identification of disabled persons, just to be sure that the humanitarian assistance arrives on time. Persons excluded from water, shelter or clothing have much less chance to survive. A full and comprehensive database of disabled persons including age, sex and impairments will facilitate humanitarian activities.

Reducing the exclusion of persons with disabilities and managing risk are other important aspects of strengthening humanitarian action. They contain the creation of accessible formats for information before, during and after a risk situation. The appropriate language also should be used. This is important for persons who have for example problems with hearing.

There is also a need to focus on improvement of evacuation systems. A State must ensure that disabled persons are able to take their assistive devices with them or to replace them. Water and sanitation facilities must be accessible for disabled persons. Child protection systems should be age and gender appropriate.

Considering all the recommendations, the role of the country affected by the disaster should be highlighted. It is first and foremost responsible for the fate of its citizens, and it must ensure all the resources for humanitarian aid to be delivered on time. During a natural disaster, the confirmation of this principle can be found in many norms of soft law. As an example, the UNGA

resolutions of 8 February 2005 and 31 March 2006 can be used, which confirm in the same words that the main responsibility for improving the situation and creating conditions for development rests with the Ethiopian authorities – “(...) *the main responsibility for improving the humanitarian situation (...) lies with the government of Ethiopia (...)*.”(UN, 2005, UN, 2006). In a similar way, although underperforming, this obligation is confirmed by other UNGA resolutions, e.g. on humanitarian aid for El Salvador and Guatemala of March 31, 2006. The resolution outlines the commitment of the Salvadoran and Guatemalan authorities to help hurricane victims and asks the international community for further assistance activities - „ *Acknowledging the efforts of the Governments of El Salvador and Guatemala to protect the lives of their nationals and rapidly to assist the affected population*”. This means that the authorities of the countries affected by the natural disaster had already taken assistance measures at the time of adopting the resolution, but they were probably insufficient, hence the appeal to the international community. The earlier undertaking of such actions proves that countries should first respond to emergencies. Similar solutions may be indicated in international humanitarian law. Article 23 of the IV Geneva Convention states that: “*Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians*”. This is a regulation stating the obligation of State Parties to consent to the free transport of all shipments with assistance containing products necessary for survival. On the basis of this article, states are obliged to let medicines and religious objects as well as food and clothing pass freely through their territories. According to art 55 of the same Convention “*Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate.*” This principle was also confirmed in the principles of the International Institute of International Law, in which it was assumed that “*it is the authority that is primarily responsible for protecting and assisting victims in ad hoc situations that occur in their territory and which generate humanitarian needs.*” (International Review of the Red Cross, 1993).

The main aim of this article was to indicate legal regulations related to the situation of disabled people during armed conflict and to present recommendations to improve the effectiveness of humanitarian activities.

The Convention on the Rights of Persons with Disabilities moves the meaning of disability from regarding persons with disabilities as objects of medical care and charity to recognizing them as subjects with rights. The human rights-based approach to disability is a completely new version of the approach to International Humanitarian Law and refuge law. All subjects involved in the provision of humanitarian activities- states, international organizations, non-governmental organizations should change and improve their policies according to the Convention.

International Humanitarian Law and Human Rights Law should be treated and interpreted compatibly with regard to the protection of the rights of persons with disabilities in situation of risk and humanitarian emergency. (Thomas, 2018).

The fundamental principles of a human rights-based approach to disability should contain participation, accountability, non-discrimination and empowerment. Applying these principles is a guarantee that disabled persons will not be excluded.

The practice of several operations has proved that there is often the lack of capacity in field operations supporting persons with disabilities in situation of risk and humanitarian emergency. Every subject involved in a humanitarian action should put lots of effort to build the capacity of stakeholders- military as well as civilian, peacekeeping personnel involved in emergency situations bearing in mind rights of disabled persons (International Review of the Red cross, 1993).

Efforts made on the international level still are not enough. There is an urgent need to harmonize national laws and policies with international instruments protecting the rights of disabled persons. There is a need to ratify the CRPD by the states which have not done it yet.

People with a disability should be involved in humanitarian activities from planning to implementation, data collection, monitoring and evaluation, as well as in recovery and peacebuilding.

Data collection should be improved. There is a need to build the capacity of humanitarian and other personnel collecting data- by disability, age and sex. The responsibility for the fate of the population affected by the disaster is borne by the state effectively exercising power over the territory and, in the name of the principle of subsidiarity, when it turns out that it is unable to meet the basic needs of the victims, it should give consent to qualified entities to carry out aid operations.

There is still a long way to go in effectively protecting disabled people during armed conflicts. It seems that legal norms in this respect are sufficiently precise. But as often happens, the execution fails. The international community has a highly developed sense of solidarity and empathy for those in need. Nobody disputes that armed conflicts mostly affect the weakest, including the disabled. However, we are constantly observing many imperfections and shortcomings in the procedures and mechanisms of humanitarian aid operations.

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