

Protection of UN Staff in Armed Conflict Areas in Afghanistan (Case Study: Death on Anil Raj)

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ABSTRACT

Civilian or United Nations Personnel Protection during wartimes has been regulated in International Humanitarian Law, namely in Geneva Convention IV 1949 regarding Civilian Protection in Times of War and the Convention on the Safety of United Nations and Associated Personnel. Civilians under any circumstances shall get protection as they are not involved in war conflict. On 24 November 2019, a UN officer car was attacked by a grenade in the city of Kabul, resulting in the death of a UN staff member. Problems arise with regard to civilian protection and state responsibility namely whether there are regulations regarding civilian protection in non-international armed conflict and how the responsibilities of the offending state are applied in regards to this case under International Law. This study applies normative legal research method namely by examining library materials and then analyzed based on the theories to get conclusions. The results obtained from this study are that civilian protection is regulated in Article 3 of the 1949 Geneva Convention which prohibits civilians from being made object of attack, and Convention on the protection of UN staff and Associated Personnel in Article 7 that UN staff should not be made object of attack. Furthermore, the responsibility of the state of Afghanistan related to this case can be done by providing compensation or satisfaction.

Keywords: *Civilian Protection, State Responsibility, Afghanistan*

1. INTRODUCTION

Many benefits in human life are obtained from the progress of science and technology. However, technological advances have also led to an increase in all types of crimes such as aircraft piracy, terrorism is rampant everywhere, and the use of technology in the field of weapons of war.[1] Laws of war or often referred to as International Humanitarian Law, have a history as old as civilization human, or as old as the war itself.[2] International Humanitarian Law is formed because war is inevitable. International Humanitarian Law is one of the ways that can be used by the state to participate in reducing the losses caused by wars that occur in various countries. [3]

The loss of casualties from the military in the war is considered a logical consequence, but the existence of casualties from civil society should not occur. Civilians that are not involved in war should be protected. The main sources of humanitarian law are contained in the 1907 Hague Convention and the 1949

Geneva Convention. The Hague Convention defines how the state behaves during military operations and also regulates limiting the tools used in war and the Geneva Conventions are designed to protect civil society and also the military .[9]

Regarding which party can be the object of attack is regulated in the 1949 Geneva Conventions. Geneva Convention IV concerning Protection of Civilians at War Time specifically regulates civilian protection in war. Arrangements regarding civil protection can also be found in additional protocols 1 and 2 of the Geneva Conventions and can also be found in other sources of humanitarian law such as the principle of humanitarian law, namely the principle of distinction.

The distinction principle is an important principle that distinguishes or divides the population of a country that is at war into two groups, namely, Combatants and Civilians.[5] This distinction is needed to distinguish which may be the object of attack and which should be protected.

In the implementation of International Humanitarian Law there are still many obstacles to be upheld. There are still many violations of international humanitarian law. Which happened in the case of non-international armed conflict in

Afghanistan between the Afghan government and the Taliban.

In this case, a UN car was attacked by a bomb in the city of Kabul. Because of the attack, a UN staff member died. According to the Interior Ministry Spokesperson, Nasrat Rahimi, the grenade attack took place on a road that was often passed by UN shuttle staff from a special guesthouse to Kabul and vice versa.[6] The UN staff member who died was Anil Raj. He served in Afghanistan as a staff of the United Nations Development Program in Afghanistan. Under international humanitarian law, protected people are non-combatants. UN staff are included as non-combatants which means they must be protected but in this case there was a violation of International Humanitarian Law.

Civilian protection is regulated in the Geneva Conventions of 1949. The Geneva conventions clearly regulate Civil Protection during War in Geneva Convention IV. In article 3 of the Geneva Convention, it is explained that "People who are not actively involved in the dispute, including members of the armed forces who have laid down their weapons and those who no longer participate due to illness, injury, detention or any other reason, under no circumstances must be treated with humanity." [7]

In Article 3 paragraph 1 (a) also explained that "Acts of violence against body and soul, especially any kind of murder, containment of cruel acts and persecution" is prohibited.[8]

In addition to the Geneva Conventions, regulations for the protection of UN staff are detailed in the Convention on the Safety of the United Nations and Associated Personnel. Article 7 paragraph (1) states that UN staff and related personnel may not be the object of attack.[9] Article 20 letter (g) also stipulates that there is a right to compensation paid in the event of death, disability, injury or illness caused by his duties.[10]

1.2 Formulation of Problems

Based on the Introduction above, the research problems in this legal research are as follows:

1. Are there regulations in regards to civilian protection in non-international armed disputes in Afghanistan?
2. What is the state's responsibility for violating international humanitarian law based on international law?

1.3 Paper Structure

The rest of the paper is organized as follows. Section 2 are the analysis of the problems in this legal research. Section 3 concludes the paper.

2. ANALYSIS

2.1 Civil protection in non-international armed conflict

Armed Conflict is regulated in International Humanitarian Law. Regulations regarding armed conflict are carried out in order to reduce the occurrence of victims from civilians. In the case of non-international armed conflict in Afghanistan, casualties have been caused, namely a UN staff member named Anil Raj. He is a UN staff member in Afghanistan for the United Nations Development Program.[11]

Before we discuss about civilian protection, we will first explain why this case is considered a non-international armed conflict. International armed conflict, occurs when it involves two or more countries. [12] In a non-international armed conflict, the party to the conflict is a country with rebels or belligerents who have controlled part of the territory of the country.

Related to this case, the war with the Taliban can be called a non-international armed conflict because the legitimate government of the Afghan state is in conflict with a group of Taliban who already control some parts of Afghanistan's territory.

Regulations regarding civil protection in armed conflict can be found in the Geneva Convention IV 1949 and the Additional Protocol to the Geneva Convention. International armed conflict is regulated in Additional Protocol I of the 1949 Geneva Convention while non-international armed conflict is regulated in Additional Protocol II of the 1949 Geneva Convention.

In the Geneva Convention IV 1949 concerning Protection of Civilians in Wartime in Article 3 paragraph 1 states that civilians are persons protected in this Convention. In addition, in paragraph 2 it is mentioned that prohibited acts which include acts of violence including murder. Based on Article 3 paragraph 2 violations have occurred in this case because civilians must not be killed. In addition, arrangements regarding civilian protection are also explained in Article 27[13] which mentions the rights of civilians, namely respect for personal and dignity, humane treatment, and protection against all acts of violence.

Again it is emphasized that civilians must be protected from acts of violence.

Regulations regarding civil protection are emphasized in the 1977 Additional Protocol II of the 1949 Geneva Convention relating to the Protection of Victims of Non-International Armed Disputes.

Basically, the Additional Protocol II 1977 was made to supplement Article 3 of the 1949 Geneva Convention.[14] In Article 4 of the Additional Protocol II of the 1949 Geneva Convention it is stated that prohibited acts such as acts of violence such as murder, ill-treatment and containment.[15] Regulations regarding civilian protection in Article 13 explains that civilians must be protected unless they are directly involved in hostilities. In addition to the 1949 Geneva Convention and the 1977 Additional Protocol II, the Principles of International Humanitarian Law also regulates the protection of civilians, namely the Principle of Distinction. Related to this case, the bomb attack on UN cars which caused the death of UN staff was a violation of the Distinction Principle because in the Distinction Principle it was regulated that Civilians should not be the object of attack.

Basically, the distinction principle distinguishes the citizens of a country into two groups, namely combatants and non-combatants. [16] Civilian protection and restrictions on the use of force are emphasized in the principle of distinction against; First, those who do not or no longer participate directly in hostilities; Second, limiting the number of means used, solely to achieve the objectives of the conflict, namely to weaken the enemy's military potential.

The Principle of Distinction is made to know who may be the object of violence and who may not participate in a dispute. With the distinction principle it is clear that civilians should not be objects of violence because they are people who must be protected.

In addition to the Principle of Distinction, there are several International Humanitarian Law Principles relating to civil protection. The first principle that is related is the principle of protection. This principle is given to both combatants and civilians. The second principle is the principle of military importance. This principle basically does not allow civilians to be the object of violence as long as there is no military interest or does not benefit the military. Related to this case the attack on the UN car did not cause any benefits for the military because the attack did not help launch a military operation.

Apart from the 1949 Geneva Convention along with the 1977 Additional Protocol II of the 1949 Geneva

Convention, because the person killed was a UN staff member, there were special regulation regarding UN protection.

Regulations regarding the protection of UN staff can also be found in the Convention on the Safety of the United Nations and Associated Personnel. One of the reasons for the making of this Convention is because of the many attacks on UN staff which result in death or serious injury.[17]

In Article 7 paragraph 1 it is explained that UN staff should not be the object of attack. Also in paragraph 2 of the Article, it also states that the country concerned must take adequate measures to ensure the safety of UN staff and related personnel.[18] In relation to this case, violations of this Article have occurred because a UN staff member has become the object of attack.

Also in Article 9 paragraph 1 of this Convention[19] it states what actions can be classified as crimes, including intentional acts to kill, kidnap, or attack UN staff and related personnel, attack on official premises, personal transportation or transportation used by UN staff and related personnel, make threats, or attempt to attack UN staff and related personnel.

It can be seen by the provisions in Article 9 that the act of killing constitutes a criminal act and is prohibited by this Convention. In addition, Article 7 also explains that UN staff must not be the object of attack.

In addition, in the 1998 Rome Statute there are also arrangements that refer to civil protection. This article can be found in Article 8[20] which explains about crimes that can be tried in the International Criminal Court. One of the crimes is a war crime, namely a violation of the 1949 Geneva Convention which includes the killing of civilians.

Based on the 1949 Geneva Convention along with the 1977 Additional Protocol II of the 1949 Geneva Convention and also looking at the principles in International Humanitarian Law, it is clear that civilians are protected people and are not allowed to be objects of violence. In addition, because the victims were UN staff, the Convention on the Safety of the United Nations and Associated Personnel is also used, which states that UN staff should not be objects of violence and UN staff must be protected. Related to this case, the attack on the UN car violated the Convention on the Safety of the United Nations and Associated Personnel because it had made UN staff the object of the attack.

2.2 State Responsibility for the Death of UN Staff

State Responsibility is an obligations that must be carried out by one country to another country based on international law.[21] State responsibility will arise if the country does not fulfill the obligations that are charged under international law.

Regarding which country is responsible, in this case state responsibility is borne by Afghanistan. Before explaining how the state's responsibility is related to this case, it will be explained in advance whether the country of Afghanistan is an International Legal Subject that bears international rights and obligations.

Based on the Montevideo Convention on Rights and Duties of States 1993 in Article 1, there are four qualifications that must be fulfilled by a country, namely, a) the population; b) territory; c) government; and d) the ability to engage with other countries. Afghanistan has an area of 652,230 km² and a population of 33 million.[22] The government is led by President Ashraf Ghani. Related to the ability to have relations with other countries, it can be seen that the country of Afghanistan became a member of the United Nations in 1946 which means that the state of Afghanistan can already have relations with other countries. Afghanistan's foreign relations are managed by Foreign Minister Salahuddin Rabbani.

Because Afghanistan has fulfilled the requirements that must be met to be called a state based on the Montevideo Convention on Rights and Duties of States, Afghanistan is a country that is subject to international law and holds the rights and obligations of the state to international law.

With the killings of UN staff, it is also necessary to look for the state's responsibility regarding this case. A country's responsibility arises if it does not fulfill the obligations it imposes under international law. The state's responsibilities are regulated in the draft Responsibility of States for Internationally Wrongful Acts.

Before explaining how state responsibilities are related to this case, the state obligations related to the protection of UN staff will be explained first. In the Convention on the Safety of the United Nations and Associated Personnel there are several Articles which regulate state obligations.

In Article 7 paragraphs 2 and 3[23] it is explained about the obligation of the state to provide protection for the UN. The essence of this article is that the state is obliged to ensure security for the UN and related personnel and must take action in order to protect the UN from existing crimes

regulated in Article 9, namely intentional acts such as murder, or attacks on UN staff. [24]

Also in the Convention on the Safety of the United Nations and Associated Personnel Article 10 paragraph 1[25] it is explained that the state must take action to establish jurisdiction for crimes regulated in Article 9 in cases of crimes occurring in the territory of the country or if the offender is a nationality of the country.

Furthermore, Article 11 explains the prevention of crimes against the United Nations. This article explains that the state must take all necessary measures to prevent the occurrence or commission of crimes against the United Nations and related personnel.[26]

Based on the articles in the Convention on the Safety of the United Nations and Associated Personnel, it is clear that the state has an obligation to provide protection and maintain security for the UN and related personnel. With the death of UN staff in this case, it can be said that the State of Afghanistan did not provide sufficient protection for the UN staff.

Next will be explained about State Responsibility. In Article 1 of the Responsibility of States for Internationally Wrongful Acts it is stated that "Every internationally wrongful act of a State entails the international responsibility of that State." [27] Which means that international mistakes result in the arising of state responsibility. What can be called an International Error can be seen in Article 2 which reads as follows [28] "There is an internationally wrong state action when carrying out an action consisting of actions or omissions which: (a) caused by the State based on international law; and (b) constitutes a violation of the international obligations of the State "

Article 2 states that international errors are caused by actions or omissions caused by the state based on international law and violations of international obligations.

In Article 10[29] explained the actions of rebels or other movements. Article 10 explains that rebel groups or other movements can give rise to International Responsibility if the movement becomes a new government or if they succeed in creating a new state in a part of the country that already exists.

Furthermore, Article 12 explains the Existence of a breach of an international obligation which reads as follows: [30] "The existence of violations of international bonds committed by the state occurs when the actions of the state are not in accordance with what is required of the bonds."

Article 12 explains that there can be a violation of international obligations if the actions of the state are not in accordance with what is demanded or required.

Furthermore, Article 28 states that legal consequences will arise if an international error occurs.[31] Article 31 explains about reparation.[32] Article 31 explains that the state has an obligation to make amends. Furthermore, Article 33 paragraph 1 explains the scope of state obligations, namely: [33] “The obligations of responsible States set forth in this section may be owed to other countries, to several countries, or to the international community as a whole, depending specifically on the character and content of international obligations and on the circumstances of the violation.”

This article explains that the obligations of responsible countries are given to other countries, to several countries or to the international community as a whole.

Next is explained about the form of reparation for errors. In Article 34 it is explained about the forms of reparation, namely restitution, compensation, and satisfaction.[34] Article 35 explains the restitution, which is an act that returns the original condition. [35]

Furthermore, Article 36 explains compensation. Compensation is given if restitution is not possible. Providing compensation is done by covering the damage that can be assessed financially. [36]

Next is satisfaction regulated in Article 37. Satisfaction is carried out if restitution and compensation cannot be done. Basically satisfaction is done by acknowledging mistakes or giving an apology or other appropriate ways. [37]

Regarding the State Responsibility, in this case, even though the killings in this case did not occur because of the actions of the state or state organs, state responsibility can still be held in relation to its failure to prevent crime. In the book Tal Becker stated that:[38] “If terrorist operations are not on behalf of the State, the State can only be held responsible for violating its different duties to prevent, and not support terrorist activities.”

Based on this book, even though the occurrence of a crime is not an act of the state, the state may be held liable for violating one of the obligations of the state to prevent the occurrence of the crime.

Based on the Convention on the Safety of the United Nations and Associated Personnel it is stated that the state must provide protection and safeguard the security of UN staff so that there is no crime against UN staff. Related to this case, there has been a violation or negligence in the

protection of UN staff Anil Raj because he was killed on his way.

Based on the Responsibility of States for Internationally Wrongful Acts in Article 2[39] states that “the occurrence of international errors caused by; (a) acts or omissions caused by the state based on international law and; (b) there is a violation of international obligations”, it can be concluded that this arises the responsibility of the state with the death of Anil Raj, in this case Afghanistan.

With a state violation of an obligation, resulting in state responsibility and subsequently, an obligation on reparation As mentioned in Article 34 it is stated that reparations can be done in three ways, namely by restitution, compensation, and satisfaction.[40]

Based on the description of restitution, compensation, and satisfaction, associated with the case under study, the reparations that can be done are giving compensation or satisfaction. Restitution cannot be done because it is not possible for the state to re-establish the situation which existed before the wrongful act was committed. In the case of compensation, it can be done because there are also provisions in Article 20 of the Convention on the Safety of the United Nations and Associated Personnel regarding compensation in the event of the death listed, namely: [41] “Nothing in this Convention will affect the right to obtain appropriate compensation in the event of death, disability, injury or illness caused by peacekeeping services by persons voluntarily donated by countries for UN operations.”

Under this Article, if there is death, disability or injury, they are entitled to compensation. So related to the regulation on State Responsibility, the state can provide compensation as a form of state responsibility. In addition, satisfaction can also be done by giving an apology or other appropriate way.

Based on the Convention on the Safety of the United Nations and Associated Personnel there is also a regulation regarding state obligations in the event of a crime against the United Nations or related personnel that is regulated in Article 13 paragraph 1 which explains that the state must take action based on national law for the purpose of prosecution or extradition in matters the perpetrators are in the territory of the country. This means that the state has an obligation to assist in apprehending perpetrators of crimes.

So state responsibility can also arise due to the failure of the state in carrying out its duties or obligations. The emergence of state responsibility causes the state to make

repairs in the form of restitution, compensation and satisfaction.

Regarding the death of Anil Raj, a UN staff member, led to the emergence of state responsibility due to the failure to prevent crime and failure to protect and maintain security for Anil Raj. The forms of responsibility of Afghanistan that can be done include compensation, that is reparation by giving money, or by satisfaction, namely by apologizing or by taking other appropriate actions. For example, in 1997, the UK enacted a law regulating that crimes against the United Nations or UN staff were crimes against the British state as well. This is an example of a country that does compensation and satisfaction

3. CONCLUSION

Based on the analysis that has been done, the authors draw conclusions that are answers to the following research questions:

1. Regulations regarding civil protection in non-international armed conflicts can be found in the 1949 Geneva Conventions and the 1977 Additional Protocol II of the 1949 Geneva Conventions. In Article 3 paragraphs 1 and 2 of this Geneva Convention it states that basically, civilians are people who must be protected and that acts of violence against civilians are prohibited. Additional Protocol II 1977 was drawn up to emphasize Article 3 of the Geneva Convention that civilians are protected persons. In addition to the provisions in the 1949 Geneva Convention, there is a Principle of Distinction that distinguishes between combatants and non-combatants in order to determine who may be the object of violence and who should be protected. Civilians are included as non-combatants, which are people who are protected and not allowed to become objects of violence. There are also the Principles of Protection given to both combatants and non-combatants, and the Principle of Military Interest which states that civilians should not be subjected to violence as long as it is not beneficial to military interests. Therefore, related to the case because the person killed was a UN staff member, the Convention on Safety of the United Nations and Associated Personnel also applies in this case. In Article 7 paragraphs 1 and 2 states that the UN and related personnel may not be the object of attack and that the country concerned must protect and ensure the safety of the relevant UN personnel. Article 9 also explains that acts such as killing UN staff and related personnel are prohibited.

2. State responsibilities are regulated in the Draft Articles on Responsibility of States for Internationally Wrongful

Acts. State responsibility arises if the state does not fulfill its obligations. In Article 2 it is explained that the occurrence of state errors can arise due to actions or omissions / negligence caused by the state based on international law and violations of international obligations. In the Convention on the Safety of the United Nations and Associated Personnel it is stated that the state must provide protection and maintain the security of the UN staff so that no crimes against UN staff occur. Related to this case, there has been a violation or negligence in the protection of UN staff Anil Raj because he was killed on his way to carrying out UN duties. Related to this case because there has been a violation of this convention, then arises the State Responsibility of Afghanistan. In this case, Afghanistan is required to make repairs as regulated in Article 34 in 3 ways, namely restitution, compensation and satisfaction. Related to this case, the reparations that can be done by Afghanistan is to carry out compensation and satisfaction instead of restitution because restitution be done while compensation can be done because it provides financial compensation for the incident and satisfaction can be done by giving an apology.

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