

Abstract

The rules of the humanitarian international law if it was customary or agreement of armed parties disputed obligate them to take care about the main principles that provide the protection for all categories that may be affected by disputes , and it is spent a lot of efforts to re-active this obligation on the armed parties. While these disputes some of actions may be happen by some specified groups of persons against one of the branches of disputing parties to the sake of other side, and it is aim through that to harm the enemy and his munitions and the persons, this actions called the “hostile operations” and it is not considered as an armed dispute but just like an a part of total of that actions the armed dispute consist of.

The regulations of international law arranged the hostile operations , to provide the protections for all categories that engaged in this operations , and according to the development of methods and ways of fight the participations of civilians increased in the hostile operations especially after the second world war and appearing of libration organizations in the third world , and appeared the discrimination’s problem between the engaged and non- engaged in this operations , and the problem complicated between the direct /indirect engaged in these operations and the needing increased to state the ability of protection to the civilians during these operations and also stating the implicated results on the participation of civilians in hostile operations.

The agreements of human international law didn't show this subject clearly but just mentioned it tacitly. And that led the ICRC to search about a clear concept to the direct

participation via adopting a group of experts to find appropriate explanation for this concept and discriminate it from indirect participation.

And we tried through this research explaining the results that ICRC reached additionally to the international judiciary and doctrinal positions about the participation of civilians in hostile operations, some of doctrinal went to that the concept of direct participation must be a strict concept and be enough to protect the civilians and keeping the principle of discrimination.

Some of doctrinal to explain the direct participation in a strict explanation that guarantees protections of civilians, that is, the civilian behavior to reach to level of direct participation must to be a sudden or direct military threat.

And other direction went to the necessity of that the concept of direct participation must be an extensive to implement all needing of necessary armed forces to stop the violence that may happen by unarmed.

In field of doctrinal also the experts of ICRC find in the interpretive guide to the concept of direct participation that this concept consist of two elements "element of hostile actions" and "element of direct participation" which is refer to specified actions happened by persons as a part of hostile operations , and the experts excluded the concept of participation in armed

exertion because it is can't be considered as a direct participation in the hostile operations , the experts reports stated three conditions must be implemented for an action to reach the concept of direct participation in hostile operations which is :

1. limiting the damages.
2. causality relationship.
3. connection with armed work.

In the field of judiciary the American judiciary based on the geographic and temporal closure to determine the actions that can be admitted as direct participation in the hostile operations, the American higher court explained the concept of direct participation via a very strict perspective.

The higher Israeli court considered that any direct participation in hostile operations include the actions that aim to harm the civilians not the armed forces and the court considered the direct participation could be implemented without weapons use, which is include losing the protection for civilians that offered by human international law.

And what is worth pointing, this opinions express the review of ICRC committee in the interpretive guide and also the American and Israeli judiciary, and we can see that the international committee that consist of governmental and non-governmental and international judicial parties must to do the best to expansion the protection for civilians during the armed disputes because of increasing of violations to the human international law during these disputes.