

STATE RESPONSIBILITY FOR FOREIGN CITIZENS SERVED AS UKRAINE ARMED FORCE: AN INTERNATIONAL HUMANITARIAN LAW PERSPECTIVE

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Citation Guide:

Salsa Anjarwati, Mahfud Fahrazi, Trinas Dewi Hariyana, 'STATE RESPONSIBILITY FOR FOREIGN CITIZENS SERVED AS UKRAINE ARMED FORCE: AN INTERNATIONAL HUMANITARIAN LAW PERSPECTIVE' [2023] 5 (2) Prophetic Law Review 248.

Received:

4 April 2023

Accepted:

11 February 2024

Published:

25 February 2024

DOI:

10.20885/PLR.vol5.iss2.art6



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Abstract

This study discusses the status of civilian foreign citizens who participated in the war to defend Ukraine under international humanitarian law and state responsibility for foreign civilians participating in the war to defend Ukraine under international humanitarian law. The purpose of this research is: to analyse the status of foreign nationals, especially those contained in the Geneva Convention of 1949; and accountability countries that are fair to foreign nationals based on humanitarian law international. The method used in this research is normative. Results from this research that the status of foreign citizens who are involved in fighting for Ukraine are entitled under International Humanitarian Law treated as prisoners of war and entitled to equal treatment of humans. Actions committed by foreign civilian citizens, from each country are obliged to provide accountability to the aggrieved party. The rights of foreign nationals are protected by conflicting countries but do not reduce the privileges of the state against its own citizen. The link between international human rights law and law international humanitarian law is also one of the basic reasons for detaining power does not have the right to commit acts of cruelty.

Keywords: Foreign Nationals, International Humanitarian Law, State Responsibility

A. Introduction

War cannot be avoided with casualties, both from the combatants, civilians, foreign civilians, old and young people and also the consequences of the war can affect anyone who is in the conflict

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area.⁴ The consequences of war include, among other things, violence against a person's body or life, hostage taking, the humiliation of dignity, rape, imposition and execution of crimes without a judicial process that guarantees a person's rights, slavery and trafficking in persons. The United Nations (hereinafter referred to as the UN) as a world organization that participates in maintaining and maintaining world security, has become an obligation to participate in maintaining and maintaining world peace. The existence of human awareness to minimize losses from the war then agreed on the provisions regarding war which is referred to as international humanitarian law. International humanitarian law, which was previously called the law of war, is part of the international law that was first codified. The law of war is the parent or origin of international law.⁵

International humanitarian law regulates the procedures of the conduct of war, the methods allowed in war and the protection of those involved in the war. International humanitarian law aims to protect combatants and non-combatants from unnecessary suffering, guarantee certain human rights of people who fall into the hands of the enemy and enable the return of peace. International humanitarian law can be found in various international agreements such as conventions, protocols, declarations and so on. The main source that can be found in international humanitarian law is the 1907 Den Haag Convention. This convention was produced at the first peace conference at The Hague in 1899, which was then perfected at the second conference in 1907.⁶ The Convention regulates the tools and methods of war, while the Geneva Convention regulates those who are victims of war. The historical background of the birth of the Geneva Convention of 1949 cannot be separated from the events of World War II which ended in 1945. The issuance of this regulation aims to prevent or provide protection to each party who is a victim of the war conflict so that they can avoid all acts of violence that result in fatalities.

All the provisions and rules regarding procedures for warfare and arrangements regarding the protection of war victims, it seems that the disputing parties paid little attention

⁴ Ali Mafrukhin, 'Perlindungan Masyarakat Sipil Dalam Perang Perspektif Siyasa Harbiyah Dan Hukum Humaniter Internasional' (Skripsi, UIN Sunan Kalijaga 2018) 2 <https://digilib.uin-suka.ac.id/id/eprint/32422/1/12370045_BAB-I_IV-atau-V_DAFTAR-PUSTAKA.pdf>.

⁵ Anggie Sere Sitompul, Sulaiman Hamid and Chairul Bariah, 'Perlindungan Terhadap Warga Sipil Sebagai Korban Penyanderaan Dalam Konflik Bersenjata Di Filipina Menurut Hukum Humaniter Internasional' (2017) 2 *Sumatra Journal of International Law* 19, 3; Dewa Gede Sudika Mangku, *Pengantar Hukum Internasional Publik* (1st edn, Lakeisha 2021); Sefriani and Dodik Setiawan Nur Heriyanto, *Hukum HAM, Hukum Humaniter & Hukum Islam Di Abad 21* (1st edn, UII Press Yogyakarta 2022).

⁶ Haryomataram, *Pengantar Hukum Humaniter* (1st edn, PT RajaGrafindo Persada 2007) 46; Herman Suryokumoro and others, *Hukum Humaniter Internasional : Kajian Norma Dan Kasus* (1st edn, UB Press 2020).

to and complied with these arrangements, causing injustice to civilians who were involved in the war and also foreign nationals who were in a country that is experiencing war conflict. This shows that the existence of existing regulations has not had a very positive impact on all citizens in the world.⁷ International humanitarian law has stipulated that a country that is forced to declare war must first announce to other countries the start time of the war. Apart from that, it is also obligatory to announce the maintenance of not attacking other countries, so that other countries are prepared to maintain their neutral attitude. The purpose of such an announcement is to avoid betrayal and deceitful decision-making. Protection of civil society and foreign civil society involved in the war, international humanitarian law also prohibits killing and extermination of injured people.⁸ People who are involved in armed conflicts certainly get legal protection, as regulated in the Geneva Convention Article 13 Paragraph (1) "*Members of the armed forces of a party to the dispute, as well as members of militias or volunteer ranks, which are part of the army.*"

The war between Russia and Ukraine was not only combatants from Ukraine who intervened in the war conflict, several foreign nationals also helped as volunteers in helping Ukraine face Russia. Foreign nationals who helped as volunteers and were caught in the hands of the enemy, apparently received inappropriate behaviour like volunteers in general.⁹

The description of the current case between Ukraine and Russia illustrates that international humanitarian law has not been fully realized for foreign citizens as volunteers who have fallen into the hands of the enemy. The existence of international humanitarian law should be an example of the application of the obligation to treat volunteers like soldiers and not to be subjected to persecution or even to the point of being sentenced. The Russian side must really be able to distinguish and identify whether the captured foreign national is a mercenary or an ordinary foreign civilian volunteering to help Ukraine.

⁷ Rafika Mayasari Siregar, Abdul Rahman, and Arif, 'Tinjauan Yuridis Konvensi Jenewa IV Tahun 1949 Terhadap Negara-Negara Yang Berperang Menurut Hukum Internasional' (2013) 1 Sumatra Journal of International Law 21 <<https://www.neliti.com/publications/14990/tinjauan-yuridis-konvensi-jenewa-iv-tahun-1949-terhadap-negara-negara-yang-berpe>>; Nikolaos K Tsagourias and Alasdair Morrison, *International Humanitarian Law: Cases, Materials and Commentary* (2nd edn, Cambridge University Press 2023).

⁸ Abd al-Wahhab Khallaf and Zainudin Adnan, *Politik hukum Islam* (1st edn, PT Tiara Wacana 1994) 108; Cornelis Dj Massie and Fernando JMM Karisoh, 'Perlindungan Obyek Sipil dan Bentuk Kewajiban Negara Dalam Konflik Bersenjata Menurut Hukum Humaniter Internasional' (2021) 9 Lex Administratum.

⁹ Lintang Satria, 'Warga AS Yang Ditahan Di Ukraina Mengaku Tak Lepaskan Tembakan.' (*Republika*, 30 June 2022) <<https://internasional.republika.co.id/berita/reaflv335/warga-as-yang-ditahan-di-ukraina-mengaku-tak-lepaskan-tembakan?>> accessed 22 October 2022.

The status and accountability of foreign civilians who fought to defend Ukraine in the war against Russia is still a problem in the rules of international law. From a humanitarian point of view, every prisoner of war who falls into the hands of the enemy has just and proper rights. The importance of this study is that this research will be further conducted in the form of a thesis entitled *State Responsibility for Foreign Civilian Citizens Who Participate in the War to Defend Ukraine based on International Humanitarian Law*.

B. Methodology

With the above-mentioned phenomena, this study will address two legal issues: first, what is the legal status of foreign civilian citizens participating in the war for Ukraine based on International Humanitarian Law? How far is the responsibility of the Ukrainian state to accept foreign civilian citizens who are fighting in Ukraine based on International Humanitarian Law?

This study carried out a qualitative normative legal research method by using a statute approach.¹⁰ The statute approach is taken to analyse the legal protection rules for foreign civilian citizens who participate in the war to defend Ukraine based on International Humanitarian law. Primary legal material is authoritative, meaning that it has authority and is binding, obtained by studying all regulations, including: International conventions, resolutions, jurisprudence, treaties and other regulations.

C. Discussion and Results

1. The Status of a Civil Citizen Civilian Who Participated in The War in Defending Ukraine based on International Humanitarian Law

a. Status of Civil Citizens Based on Geneva Convention III of 1949

International humanitarian law consists of two conventions, namely the Geneva Convention which regulates the protection of victims of war and the Den Haag Convention which regulates means and methods of warfare.¹¹ War has other tendencies and takes a lot of victims with the emergence of the war, in a narrow sense war is considered as armed contact involving two or more countries. The war situation became very different from the development of communication and

¹⁰ Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi* (12th edn, Prenadamedia Group 2016).

¹¹ Febriyanto Dony Rampengan, 'Status Perlindungan Hukum Agen Mata- Mata Ditinjau dari Hukum Humaniter Internasional' (2017) 5 *Lex Privatum* 130, 131 <<https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/18755>>; Emily Crawford and Alison Pert, *International Humanitarian Law* (3rd edn, Cambridge University Press 2020).

transportation technology. When the war situation could be broadcast throughout the world, the opinion of the international community became an important part of the war strategy. Repeated television footage of the human tragedies in the Iraq war, the Balkan wars, and also the civil wars in Rwanda, Darfur, Palestine and Ukraine.

The war caused other human tragedies such as attacks on unarmed civilians and the deaths of medical workers or volunteers who are either international or independent organizations that have generated sympathy and empathy throughout the world. The formation of these kinds of opinions has become part of the strategy of countries in a war situation.¹² International humanitarian law obliges parties to a conflict to distinguish between civilians and combatants. The term civilian population includes all people with civilian status including humanitarian volunteers as stipulated in Article 48 Additional Protocol I of 1977, therefore the term civilian population includes civilians who are domiciled in areas where there is an armed conflict or civilians who are domiciled in occupied areas. By this, what is meant by a civilian is any person who is not involved in or participates in a war, if there is any doubt that the person is a civilian or a combatant, then he must be considered a civilian.¹³ The protection of the civilian population also includes persons working as aids or volunteers, journalists and civil defence personnel.

As happened from the war between Russia and Ukraine which has been going on from 1991 until now. Beginning in February 2022, western fears about Russia attacking Ukraine at any time began to peak. The US then promised to send 3 thousand additional troops for the members of the *North Atlantic Treaty Organization* (hereinafter referred to as NATO), Poland and Romania. Washington and its allies say they will not send reinforcements to Ukraine. Russian troops started missile and artillery attacks to attack major Ukrainian cities including Kyiv. Until February 26, the Western Allies responded to this and imposed new sanctions

¹² Lona Puspita, 'Perlindungan Hukum Terhadap Relawan Kemanusiaan Berdasarkan Hukum Humaniter Internasional' (2017) 5 Jurnal Normative 1, 9-10; Ayub Torry Satriyo Kusumo and Kukuh Tejomurti, 'Alternatif Atas Pemberlakuan Hukum Humaniter Internasional Dalam Konflik Bersenjata Melawan Islamic State of Iraq and Syria' (2015) 4 Yustisia Jurnal Hukum <<https://jurnal.uns.ac.id/yustisia/article/view/8696>>.

¹³ Danial, 'Efektifitas Konsep Prinsip Pembedaan Hukum Humaniter Internasional Sebagai Upaya Perlindungan Korban Dalam Konflik Bersenjata Modern' (2016) 23 Jurnal Media Hukum 200, 202 <<https://media.neliti.com/media/publications/114186-ID-revitalisasi-prinsip-pembedaan-distincti.pdf>>.

on Russia. Including restrictions on the Russian central bank and removing Russia from the global interbank transaction system or the *Society for Worldwide Interbank Financial Telecommunication* (hereinafter referred to as SWIFT).¹⁴

Russia's actions not only involved armed members of Ukraine who intervened in the war conflict, but several foreign civilians also helped as volunteers in helping Ukraine face Russia. Foreign nationals who helped as volunteers and prisoner of war were apparently treated improperly, like volunteers in general. Two British nationals, Shaun Pinner and Aiden Aslin, and a Moroccan national, Brahim Saadoun, were sentenced to death by a separatist court in the People's Republic of Donetsk after being caught while fighting for Ukraine. Their status as volunteers makes them outside the authority of the Geneva Convention on prisoners of war, they are not a combatants. The Geneva Convention itself gives combatants immunity from prosecution for military actions deemed lawful.¹⁵

Relatives of Pinner and Aslin argue the two are long-time members of the Ukrainian military and not mercenaries. The two were captured by pro-Russian forces in Mariupol in mid-April, during a fierce fight for control of the port city in southeastern Ukraine. Moroccan-origin, Saadoun, was arrested in March in Volnovakha, a small town located between Mariupol and Donetsk, and will be sentenced to death, as are two Britons, namely Pinner and Aslin.¹⁶

Provisions regarding prisoners of war were first regulated in the 1949 Geneva Convention III which established general regulations regarding the status, protection and treatment of prisoners of war, both healthy and injured. Basically, those who are entitled to prisoner of war status are combatants who are captured or are in the hands of the enemy power.¹⁷ People who can obtain status as prisoners of war other than combatants, namely; (1) persons accompanying the armed forces without being members of them (such as military aircraft civilian crew, supply

¹⁴ Satria (n 9).

¹⁵ *Geneva Conventions III of 1949*

¹⁶ 'Separatis Pro-Rusia Hukum Mati "Tentara Bayaran" Ukraina' (*CNBC Indonesia*, 10 June 2022) <<https://www.cnbcindonesia.com/news/20220610104536-4-345952/separatis-pro-rusia-hukum-mati-tentara-bayaran-ukraina>> accessed 6 January 2023.

¹⁷ Umar Suryadi Bakry, *Hukum Humaniter Internasional: Sebuah Pengantar* (Kencana Prenada Media Group 2019) 56-57; Saul Ben and Akande Dapo (eds), *The Oxford Guide to International Humanitarian Law* (Oxford University Press 2020) <<http://opil.ouplaw.com/view/10.1093/law/9780198855309.001.0001/law-9780198855309>>; Joko Setiyono, 'Peran ICRC Dalam Perkembangan Hukum Humaniter Internasional Di Era Global' (2017) 13 *LAW REFORM* 217 <<http://ejournal.undip.ac.id/index.php/lawreform/article/view/16157>>.

contractors, members of labour units or services responsible for the welfare of the armed forces) provided they receive authorization from the armed forces they follow; (2) members of the crew of merchant ships or civil aircraft of the parties to the dispute; (3) war reporters; and (4) armed forces personnel temporarily assigned to medical duties for a limited period of time.

Members of the military medical services may be taken as prisoners of war to care for prisoners of war on their side or returned to their own side. People other than those mentioned if caught may not be treated as prisoners of war but they must be treated well.¹⁸

Regarding the treatment to be given to prisoners of war, the opening sentence of Article 13 of Geneva Convention III stipulates that “Prisoners of war must always be treated humanely. They must not be killed arbitrarily.” Article 13 also prohibits “acts or omissions which are unlawful, causing death or endangering the health of prisoners of war. Prisoners of war must be protected in particular from acts of violence or intimidation, humiliation and public curiosity.” Reprisals directed against prisoners of war are also prohibited. Article 14 Geneva Convention of 1949 adds that in all circumstances they have the right to be respected for themselves and their honour.

The application of international humanitarian law in armed conflicts is prioritized on two points that existed long before the first international humanitarian law instruments appeared, namely: (1) Mutual agreement on the importance of having rules or regulations in times of war; (2) The emergence of intuition that under any circumstances, humans, friends or foes must receive protection. International humanitarian law in modern times is based on the two points above, with the main instruments being the Hague Convention and the Geneva Convention. The Hague Law contains the code of conduct and means and method of war, while The Law of Geneva in the codification of the Geneva Convention of 1949 along with the two Additional Protocols of 1977 regulates the protection of victims of war.¹⁹

Geneva Convention III explains that torture and other ill-treatment can be seen as war crimes or (war crimes). Prisoners of war caught in the combat zone are

¹⁸ Bakry (n 17) 57.

¹⁹ Muhammad Machstaat Prayuda Laturua, ‘Perlindungan Tawanan Perang Di Iraq Dan Suriah Berdasarkan Konvensi Jenewa III’ (Universitas Pattimura 2020) 62.

to be evacuated as soon as possible after their capture to tents outside the danger area. Under conditions that allow prisoners of war, they can be exiled with the responsibility of detaining power (Articles 15, 19, 21 Geneva Convention of 1949). Each such prisoner of war camp "shall be placed under the direct authority of a responsible commissioned officer belonging to the regular armed forces of the detaining power." This officer under the direction of his government is responsible for the application of the provisions of the Convention in the tent. An officer must not only have a copy of the Convention, but also "ensure that its provisions are made known to the tent and guard staff".²⁰

b. Linkage between International Human Rights Law and International Humanitarian Law

The interaction between international human rights and international humanitarian law (hereinafter referred to as IHL) of both of them still has many problems. The main question that often arises is whether the two fields of law develop different legal frameworks to protect individuals; whether their requirements conflict with each other; or whether they are progressing towards establishing a common legal basis for the protection of individuals in the context of armed conflict.

Practically speaking, the most crucial issue is whether the protection afforded to individuals under IHL is less adequate than international human rights law. According to Orakhelashvili,²¹ although there are many examples where IHL norms establish the required position in international human rights law or vice versa, this contribution focuses only on areas where claims are made that the level of protection in one area may be lower than in another. The difference between international human rights and international humanitarian law in their interaction does not mean that there is no connection between international human rights law and international humanitarian law. The Geneva Convention and conventions on human rights do not mean that they have nothing to do with each other.

Many experts believe that there is a relationship between the two, although not directly. International human rights and IHL are complementary to one another,

²⁰ Article 39 of 1949 Geneva Convention III

²¹ Alexander Orakhelashvili, 'The Interaction between Human Rights and Humanitarian Law: Fragmentation, Conflict, Parallelism, or Convergence?' (2008) 19 *European Journal of International Law* 161, 182 <<https://academic.oup.com/ejil/article-lookup/doi/10.1093/ejil/chm055>>; Nils Melzer and Helen Durham, *International Humanitarian Law: A Comprehensive Introduction* (Etienne Kuster ed, International Committee of the Red Cross 2016).

because the substance they contain is much similar and interrelated.²² The tendency from one side to view the provisions of the Geneva Convention of 1949 not only regulate the obligations of participating countries, but also regulate the rights of individuals as protected parties. The Geneva Convention of 1949 confirmed that the denial of the rights conferred by these conventions is unjustifiable.

Article 3 of the Geneva Convention of 1949 which obliges each participating country to respect the basic humanitarian rules in international armed conflicts. Article 3 regulates the relationship between the government and its citizens, which means that it covers traditional fields and human rights. There are also non-derogable rights, both in a state of peace and in a state of armed conflict.

These rights that may not be reduced include the right to life, the principle or treatment of non-discrimination, the prohibition of torture (torture), the prohibition of retroactive application of criminal law as stipulated in civil and political conventions, the right not to be imprisoned for failing to carry out the provisions of an agreement or contract, slavery, servitude, prohibition of irregularities relating to captivity, recognition of a person as a legal subject, freedom of opinion, belief and religion, prohibition of imposing a law without a decision announced in advance by an ordinary court, prohibition of imposing the death penalty and carrying out executions in the circumstances specified in Article 3 (1) letter (d) simultaneously in the four Geneva Conventions.²³

2. The Forms of Responsibility of the State of Ukraine for Foreign Civilians Who Participate in the War in Defence of Ukraine Based on International Humanitarian Law

State responsibility or state responsibility is a fundamental principle in international law that can arise if there is a violation of an international obligation to do something. State responsibility will also emerge as a result of the existence of international law principles, namely equality and sovereignty of the state. Every country that has state sovereignty must continue to use its state sovereignty by respecting the sovereignty of other countries. The responsibility for the sovereignty of the state itself by

²² Bakry (n 17) 141-142.

²³ Bakry (n 17) 141-142.

international law has been regulated, and if a country is given sovereignty, then the country is obliged not to abuse that sovereignty.²⁴

International humanitarian law has regulated that if there is a violation of humanitarian law, there are three law enforcement mechanisms for the protection of civilians that can be taken to punish the perpetrators of these war crimes. Protection of civilians is regulated in the Geneva Convention of 1949, Additional Protocol I 1977 and the Rome Statute of 1968. One of these mechanisms is, according to the Geneva Convention of 1949 and Additional Protocol I of 1977 using a national mechanism. Based on Article 49 paragraph (1) of Geneva Convention I, Article 50 paragraph (1) Geneva Convention II, Article 29 paragraph (1) Geneva Convention III and Article 146 paragraph (1) Geneva Convention IV, which are concurrent provisions. Countries that have ratified the Geneva Convention are required to issue a national law that provides effective criminal sanctions to anyone who commits or orders to commit serious violations of the Convention.

Article 17 of the Rome Statute of 1998 stipulates that a crime must have occurred in the national territory of a country, so there must be a guarantee of effective prosecution by taking national-level legal action, then based on state sovereignty, national-level legal action must be carried out first, but if the judicial process If an effective legal action at the national level cannot work, then the International Criminal Court (hereinafter referred to as the ICC) can exercise its jurisdiction. The mechanism for resolving cases of violations of human rights (hereinafter referred to as HAM) which refers to the national court process is referred to as the principle of exhaustion of local remedies.²⁵

The responsibility of the country of origin of foreign civilians who took part in defending Ukraine in the war at the beginning of February 2022 in international law is that no country can enjoy its rights without respecting other countries. Civilian foreign nationals who were involved in the conflict and harmed the Russian side with the intention of defending Ukraine, a country of origin from which the foreign civilians are obliged to be

²⁴ Aninditta Bintarti Noviyanti, 'Pertanggungjawaban Negara Terhadap Perlindungan Relawan Kemanusiaan Dalam Konflik Bersenjata' (Skripsi, Universitas Sriwijaya 2021) 16; Satria Nugraha, 'Tanggung Jawab Negara dalam Penerapan Hukum Humaniter Internasional Studi Kasus Konflik Bersenjata Non-Internasional di Suriah dan Implikasinya Bagi Indonesia' (2019) 2 Aktualita (Jurnal Hukum) 215 <<https://ejournal.unisba.ac.id/index.php/aktualita/article/view/4683>>.

²⁵ Stefanus Donatumar, 'Mekanisme Penegakan Hukum Terhadap Perlindungan Penduduk Sipil Pada Saat Konflik Israel-Palestina Di Jalur Gaza Ditinjau Dari Konvensi Jenewa Iv/1949, Protokol Tambahan I/1977, Dan Statuta Roma 1998' (Skripsi, Universitas Sebelas Maret 2013); Teguh Sulistia, 'Pengaturan Perang Dan Konflik Bersenjata Dalam Hukum Humaniter Internasional' (2021) 4 Indonesian Journal of International Law <<https://scholarhub.ui.ac.id/ijil/vol4/iss3/5>>.

held responsible for that violation. State responsibility can generally be interpreted as an obligation to make reparations that arise as a result of actions that can be blamed (wrongful acts) for violating international obligations.²⁶ In terms of state accountability, there are two terms that must be considered, namely responsibility and liability. These two terms have different meanings but are closely related. The term responsibility is used to show the obligation (duty). The term liability is used to indicate a consequence of an error or failure to carry out an obligation or to comply with predetermined standards.

Various types of state responsibility according to F. Sugeng Istanto: (1) Responsibility for acts against the law (*delictual* liability). This responsibility arises from any mistake or negligence committed by a country against foreigners in its territory or the territory of another country. This responsibility arises because of space exploration, nuclear-related activities, cross-border activities; (2) Responsibility for breach of agreement (contractual liability). This responsibility is a responsibility that occurs if a country violates an agreement or contract it has made with another country and the violation results in losses to the country concerned; (3) Responsibility for concessions.²⁷ The concession agreement between the state and citizens (foreign corporations) is known as the *Clausula Calvo* which stipulates that the recipient of the concession relinquishes the protection of his government in a dispute arising from the agreement and a dispute that arises must be submitted to the national court of the granting country and subject to the national law of the country. related.

Concession itself is the granting of rights, permits, or land by the government, company or individual to a person or institution; (4) Responsibility for expropriation. This responsibility is the revocation of individual property rights for the public interest accompanied by the provision of compensation. An expropriation is an act of taking other people's assets by paying compensation or losses incurred; (5) Responsibility for state debt. A country that does not pay its foreign debts means that the country does not fulfil its contractual obligations. A country that does not fulfil all of its debts with other countries automatically has an obligation or is responsible for paying debts or losses borne by that country; (6) Responsibility for international crimes of international events.

²⁶ Levina Yustitianiingtyas, 'Pertanggungjawaban Negara Dalam Perspektif Hukum Humaniter Dalam Tindakan Agresi:: Studi Kasus Agresi Israel Ke Lebanon Tahun 2006' (Thesis, Universitas Gadjah Mada 2010).

²⁷ F Sugeng Istanto, *Hukum internasional* (Universitas Atma Jaya 1994) 80.

International crimes are all acts against the law on an international scale originating from violations of an important international obligation to protect fundamental international interests and such violations are recognized as crimes by the state. International crimes are commonly referred to as international crimes, which are the result of the convergence of two legal disciplines that complement international law and international aspects of national criminal law. International crime is an act that violates international law which creates obligations for those who violate it. Any violation of the rights of other countries causes that country to be responsible for all its actions according to international law. This is a legal system in the world, where violation of a legally binding obligation creates responsibility for those who violate it.²⁸

The principle of state responsibility according to Sharon William, there are four criteria that can be used to establish state accountability, namely:²⁹ (a) Subjective fault criteria, determining the significance of the perpetrator's fault; (b) Objective fault criteria, determining whether there is state accountability arising from a violation of an international obligation; (c) Strict liability, namely the state is burdened with responsibility for actions or inactions that occur in its territory resulting in losses suffered by other countries; (d) Absolute liability, there is no excuse that can be used as in strict liability. This connection became one of the grounds for the arrest of two Britons and one Moroccan who were involved in the armed conflict between Russia and Ukraine. Each country of the three foreign nationals must be held responsible if Russia feels disadvantaged by the participation of civilian foreign nationals in war.

Another consequence arising from the actions of foreign nationals is that Russia can treat prisoners of war not in accordance with the Geneva Convention of 1949. Article 12 Geneva Convention III clearly states that the humane treatment of prisoners of war must be considered by the powers that detain them.³⁰ Most cases of state accountability before international courts arise from the mistakes shown to have been committed by the state concerned.

²⁸ Billy Diego Arli Papilaya, Johanis Steny Franco Peilouw and Richard Marsilio Waas, 'Tanggung Jawab Negara Terhadap Pelanggaran Hak Asasi Manusia Di Belarusia Ditinjau Dari Hukum Internasional' (2021) 1, 537.

²⁹ Sharon Williams, 'Public International Law Governing Transboundary Pollution' (1984) 13 The University of Queensland Law Journal 112, 177
<https://search.informit.org/doi/10.3316/agis_archive.19861612>.

³⁰ Grace Karwur, 'Status Hukum Serta Tanggung Jawab Negara Dalam Perekrutan Private Military and Security Companies Ditinjau Dari Hukum Humaniter Internasional' (2014) 3 Lex Crimen 136.

The mistake in this case is a violation of some obligations imposed on a country based on international law and not a violation of contractual obligations. The term international offenses (International Delinquency) are often applied to the errors in question. State liability can also arise due to international wrongdoing, and international crimes are violations of state international obligations that are not breaches of contractual obligations.³¹

The protection of foreign nationals is the largest part of the law regarding the issue of responsibility for international crimes.³² Losses such as violations of the rights of foreign citizens are of various types, for example, violations of property or personal rights of foreign citizens, improper handling, rejection of justice and so on. State responsibility regarding the protection of foreign nationals.³³

For someone who decides to live in the territory of a foreign country must comply with the laws of that country, but that does not mean that certain obligations according to international law relating to the treatment of that person are not binding on the country concerned. The basic obligation of the state to provide legal compensation that is appropriate for the losses suffered, and the obligation to protect foreign nationals from arbitrary treatment that harms themselves personally by officials or from citizens concerned. Article 1 of the Draft Articles on Responsibility of the State for Internationally Wrongful Act 2001, states: "Every act of a state that is wrong internationally requires state responsibility internationally.

According to international law, foreign nationals residing in a country have at least certain rights to enjoy life, liberty and property, but these rights are difficult to define.³⁴ State accountability depends on several basic factors, namely: (1) The existence of an international legal obligation that applies between the two countries; (2) The existence of an act or omission that violates international legal obligations resulting in state responsibility; (3) There is damage or loss as a result of an unlawful act or negligence. The imposition of a given obligation for an internationally unlawful act will depend on the specific circumstances. The aggrieved country will try to sue in order to obtain a remedy for the violation, the efforts made to recover the violation committed.

³¹ Istanto (n 27) 80.

³² JG Starke and Bambang Iriana Djajaatmadja, *Pengantar Hukum Internasional*, vol 1 (10th edn, Sinar Grafika 2008) 404.

³³ Istanto (n 27) 81.

³⁴ Starke and Djajaatmadja (n 32).

Efforts that can be made to remedy the violations experienced can be carried out through diplomatic negotiations and in general, it will be sufficient to materialize a statement or an official apology from the country responsible for the violation or with a guarantee that the violation will not be repeated. Recovery for violations can be in the form of material compensation due to material losses and the form of material responsibility and the amount of compensation that must be brought by the international arbitration court to obtain the fairest decision.³⁵

International legal doctrine explains two theories about state guilt: (1) Subjective theory (Error Theory), this theory emphasizes that, a state's responsibility is determined by the presence of an element of desire or intention to commit an act of intent (*dolus*) and or negligence (*culpa*). to the officials or agents of the state concerned; (2) Objective Theory (Risk Theory), this theory emphasizes that state accountability is always absolute (strict). If a state official has committed an act that harms another foreigner, then the state is liable according to international law without proving whether the act has an element of error or negligence.³⁶

The legal and diplomatic expert from Argentina, Carlos Calvo made a statement which became known as the Calvo Doctrine which is also known as the principle of national treatment. Foreign citizens in a country are not entitled to the rights or privileges that the country does not give to its own citizens. Foreign nationals who carry out their business or business in a country can only seek compensation for their complaints before local authorities who are competent under the laws of the country concerned.

The result of the Calvo Doctrine is that the state does not have a greater responsibility to foreign nationals in the country than the responsibility the state has to its own citizens. Calvo argues that a foreign creditor within a country is not entitled to greater protection than that received by a domestic creditor from that country.³⁷

According to Garcia Amador, Calvo's rationale for formulating the principle of national treatment is motivated by two things, namely: (1) That foreigners have the same protection rights as citizens and cannot demand greater protection; (2) Foreigners who claim greater protection rights than those provided by the country where they live are

³⁵ Porong Rinaldi Junus Branca, 'Pertanggungjawaban Negara Irak Terhadap Penyanderaan Dua Wartawan Indonesia Oleh Faksi Tentara Mujahidin di Irak Menurut Hukum Internasional' (2019) 7 *Lex Et Societatis* 87, 89.

³⁶ Fandi Ahmad Abdullah, 'Pertanggungjawaban Negara Terhadap Penyanderaan Wartawan Asing Menurut Hukum Humaniter Internasional' (Skripsi, Universitas Sebelas Maret 2009).

³⁷ Calvo Carlos, *Le Droit International Theorique* (5th edn, Arthur Rousseau 1896) 231-232.

contrary to the rights of equality between countries (the right of equality nations). If a country is willing to recognize the presence of foreign nationals in its territory, then the principle developed in customary international law is that the host country is responsible for treating these foreign nationals as its own citizens. The application of this principle does not mean absolute equal treatment between nationals and foreigners as the national treatment developed by Carlos Calvo.³⁸

Foreign nationals in a country are still treated differently from local citizens and this is not prohibited by international law. Foreign citizens also do not have rights as native citizens residing in the country. For example, foreign nationals in a country do not have political rights because they are the exclusive rights of citizens. State behaviour towards individuals under applicable international law is called the minimum standard of treatment. This is a test of the feasibility of a state's behaviour towards everyone in its territory. This is related to the principle of national treatment, foreign citizens are required the same as citizens, so the minimum standard of treatment is that the country's treatment is not less than the international human rights standard.

This was conveyed by Garcia Amador in a report on international accountability to the International Law Commission in 1956, as a form of progressive effort at that time in order to resolve differences in views between supporters of the national system and supporters of the international system regarding the relevant standard of treatment for foreign nationals in within a country. Garcia Amador stated that foreign citizens in a country have the same rights and guarantees as citizens, which means no less than human rights or fundamental rights that have been recognized and determined under international law. According to international law, every country is obliged to protect its citizens and can submit claims of its citizens against other countries.

Implementation of diplomatic protection is the full right of the state, not citizens. It is a rule that no country may hold international legal proceedings on behalf of its citizens, unless the said citizen has taken all the effective legal remedies available in the local country. The rules aim to provide an opportunity for the country where the international violation occurred to correct mistakes that have occurred in its own legal order and also to reduce the number of international claims filed by foreign countries.³⁹ Keep in mind, all responsibilities are borne by the country where the foreign citizen takes

³⁸ Yudha Bhakti Ardhiwisastra, *Hukum Internasional: Bunga Rampai*, vol 1 (1st edn, Alumni 2003).

³⁹ Huala Adolf, *Hukum perdagangan internasional* (1st edn, PT RajaGrafindo Persada 2006).

action and vice versa, from each country the foreign citizen also has an obligation to compensate the country occupied by the foreign citizen.

Every country's policy in this part of the world is different, depending on the level and extent of an action that is detrimental to it. Based on the case between Ukraine and Russia which involved several foreign volunteers and several foreign countries, created an accountability between Ukraine and the countries of several foreign volunteers, namely the United Kingdom and Morocco. The Ukrainian state, as already explained, in this case, Ukrainian state also has an obligation to protect foreign nationals, even though the basis is the wishes of the foreign nationals themselves. Morocco and the United Kingdom are also entitled to accountability from the Ukrainian side, if their citizens are caught in the hands of the enemy.

D. Conclusion

The status of foreign civilians who were involved in the wars in Russia and Ukraine based on International Humanitarian Law, has the right to be treated properly, without reducing the rights of these foreign civilians. The status of foreign civilian citizen is not a prisoner of war who is treated under the authority of the Geneva Convention III of 1949, but the status of a foreign civilian citizen is an ordinary prisoner who is not an official armed force from the country of origin of the detainee. State responsibility or state responsibility is a fundamental principle in international law that can arise if there is a violation of an international obligation to do something. According to international law, every country is obliged to protect its citizens and can submit claims of its citizens against other countries. Implementation of diplomatic protection is the full right of the state, not citizens. Based on the case between Ukraine and Russia which involved several foreign volunteers and several foreign countries, creating accountability between Ukraine and the countries of several foreign volunteers, namely the United Kingdom and Morocco, and the Russian state can also hold responsibility for the country of origin of foreign civilian citizens. That is if Russia feels disadvantaged over the participation of these foreign civilians in the armed conflict with Ukraine.

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