

Chapter 5. Displaced People and Right to Evacuation

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Introduction

There are some man-made problems such as civil conflicts, wars and environmental problems such as global warming, water-food scarcity in many parts of the world. According to the United Nations High Commissioner for Refugees Agency (UNHCR) Global Trends Report (2015, 18 June), at least 15 clashes have erupted or re-fueled in the last five years: eight of which in Africa (Ivory Coast, Central African Republic, Libya, Mali, Northeastern Nigeria, Democratic Republic of the Congo, South Sudan and Burundi), three of which in Middle East (Syria, Iraq and Yemen), one of which in Europe (Ukraine) and three of which in Asia (Kyrgyzstan and in many parts of Myanmar and Pakistan). As a result of events that are similar to these situations, many people are forced to leave their homes but some of those people can't do this. In such cases, these people should evacuate to safe locations. In this study, in order to clarify the status of displaced people and explain the importance of the right to evacuation; the problems especially man-made lead to displacement, the effect of these problems to the right to evacuation, displaced people and the fact that people must have right to evacuation as well as the right to life are addressed by reviewing literature and creating a model about who will carry out the evacuation operations. Furthermore, the right to evacuation is handled within the context of international law and domestic laws of Turkey and the United States of America (USA).

Evacuation operation should be a duty of all mankind for everybody without distinction of race, nationality, religion or political conviction. Article 51 of the United Nations (UN) Charter whose theme is "self-defense" and "humanitarian intervention" are based on for the evacuation operations in international law (Grimal ve Melling, 2011, p. 2). Also fourth treaty of the Geneva Conventions whose theme is "the protection of civilians in time of war", adopted on 12 August 1949, examines the evacuation in the time of war and between those who fought².

Displaced People

Displaced person is described in the glossary of International Organization for Migration (IOM), a person who flees his or her state or community due to fear or dangers for reasons other than those which would make him or her refugee. A

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² Because Article 17 of this agreement just includes to evacuation of the wounded, sick, infirm, aged persons, children, maternity cases, passage of ministers of religions, medical personnel and medical equipment between those who fought, provisions of this Agreement are outside the article's subject.

displaced person is often forced to flee because of internal conflict or natural or man-made disasters (IOM Glossary, 2011, p.29).

Displaced people are the victims of forced migration. As indicated Table 1, as of end of 2014, there were 59.5 million displaced people by war in the world. A balance has been observed in the number of people who were displaced between 2007 and 2011. But after 2011, especially with the cases called “Arab Spring” effect, the number of displaced people increased nearly 50 percent in 3 years. According to the UNHCR Inter-agency Information Sharing Portal, as of January 19, 2016, there were totally 4.597.436 Syrian refugees. The table is becoming increasingly worsen and inextricable (UNHCR Report, 2015, 18 June).

Table 1: The Number of Displaced People by War (million)

2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
37.5m	39.5m	42.7m	42m	43.3m	43.7m	42.5m	45.2m	51.2m	59.5m

Source: UNHCR Global Trends Report (2015, 18 June)

When the events that would cause the displacement of people occur, some people can't find enough time and environment to leave. In such cases civilians and innocent people must be evacuated immediately from the places that are experiencing violent incidents to safe locations. This operation is the duty of countries and mankind. Countries or sometimes maybe international organizations should carry out these evacuation operations by using all their resources.

Right to Evacuation and Responsibilities

People, to feel themselves more confident started to live together and they established states to provide their own security. Especially after changing people's ideas from state-centric perspective to person-centered perspective, personnel security has become much more important than before. Whatever the circumstance and situation are, the states must ensure the safety of their citizens. In some instances, lives of people which could not be evacuated can be serious danger. Due to the fact that evacuation is exactly about right to life, right to evacuation must be one of the basic human rights.

Evacuation is located in the doctrine as Non-Combatant Evacuation Operations (NEO) (Thomson, 2012, p. 3). According to the USA Operational Law Handbook (OLH) 2015, evacuation operations can be examined in three categories. In this article, the conceptual framework is based on these categories. These are:

- ▷ Permissive (host country give permission),
- ▷ Hostile or non-permissive (host country doesn't give permission)
- ▷ Uncertain (it isn't understandable whether host country give permission or not)

Article 51 of the UN Charter and humanitarian intervention are the basis of the evacuation operations in international law (Grimal ve Melling, 2011, p. 2). According to the Article 51 of the UN Charter, if any country attacks a member of the UN, until the UN Security Council ensure peace and security, necessary measures can be taken individually or collectively (self-defense). This Article is

used as the legal basis for evacuation operations but there is no any consensus about this issue (OLH, 2015, p. 160). Self-defense is located in the traditional law as well (Thomson, 2012, s. 13). Customary principles dictate that a state acting in self-defense must abide by the parameters of “necessity” and “proportionality” (Grimal ve Melling, 2011, p. 8).

The prohibition of any operations and use of force in any country without permission (*jus cogens*) began to be accepted throughout the world in the 20th century and has taken place in international law with the UN Charter 2(4) (Thomson, 2012, p. 8). But the exception of this article is the UN Charter 2(7). According to this Article, if there are threats to the peace, breaches of the peace and acts of aggression, it is possible to intervene in any country. Non-combatant evacuation can be clearly seen in the traditions and practices of the state before the UN. Therefore, if the country where the event occurred unable to provide adequate protection, all countries can carry out evacuation operations for their citizens in the any country (OLH, 2015, p. 160). This point is located in the doctrine as the “protection of nationals abroad” (Thomson, 2012, p. 2). But the legality of this is controversial in international law (Grimal ve Melling, 2011, p. 2).

After the Annan’s call on the discussion of the “sovereignty and humanitarian intervention” issues, International Intervention and State Sovereignty Commission was established under the chairmanship of Canada. The Commission's report was drawn up with the legal framework of humanitarian intervention. Report stated that, if the state which is obligated to protect to the people fails, the responsibility fell on the international community. In 2005, the scope of the commission's report narrowed and in case of acceptance of the responsibility to protect at the UN General Council it has become a part of global politics (Çalkıvık, 2014, p. 298).

According to the Lessie Green, because carrying out an evacuation operation for the non-combatant people in the another country is not an attack on the sovereignty of the country and not for the purpose of acquiring land, it does not constitute a breach of the UN Charter 2(4) (Quoting: Thomson, 2012, p. 10). Perhaps the best example of this is “Entebbe” operation which Israel evacuated its citizens from Uganda by force in 1976. As a result of this operation, despite being slain soldiers from Uganda, UN decided that there is no violation of the UN Charter Article 2 (4) (Thomson, 2012, pp. 10-11). The issue of breach of UN Charter 2(4) is very sensitive and it is an issue opens to abuse³.

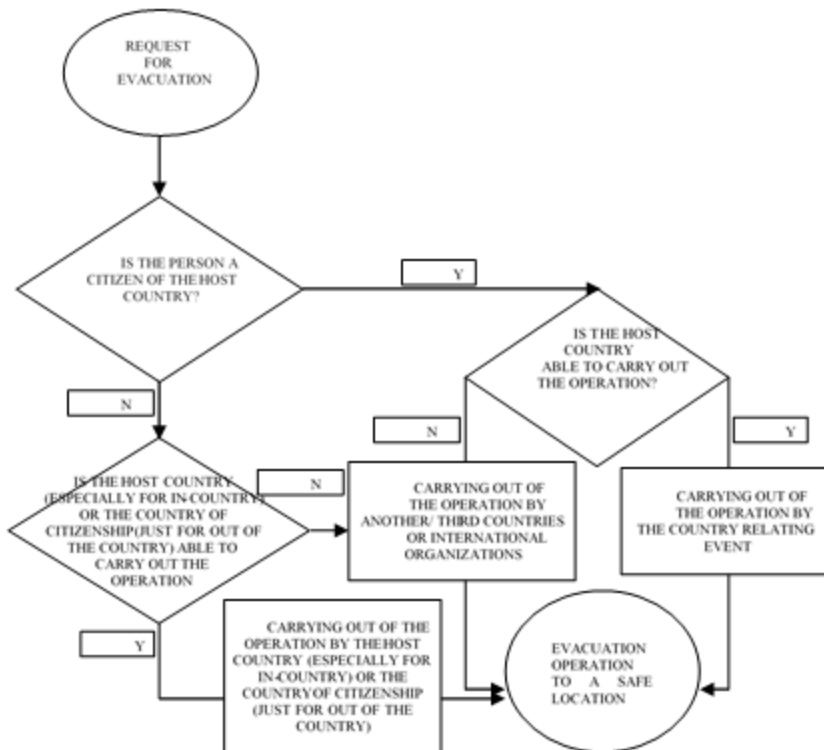
As seen in Table 2 (p.4), it depends on certain conditions that who will carry out the evacuation operation. They are the citizen of the people and the place of evacuation considering the severity of the event. If the people who will be evacuated are the citizen of the country where the event occurred, this country should carry out the evacuation operation. If the incident is in some regions of the country, citizens can be evacuated to safe areas within the country. If the events are countrywide, evacuation operation should be carried out to the other safe countries. If the country where the event occurred is unable to carry out this operation,

³ According to Grimal and Melling, Russia’s forcible action against Georgia in 2008 would seem to be a clear abuse of the claim to “protection of nationals abroad” (Grimal and Melling, 2011, s. 10).

evacuation operation must be carried out by other countries or international organizations.

If the person is not the citizen of the country where the event occurred, operation authority may vary according to whether the operation is in-country or not. If the events are small-scale and the operation carries out in-country, it should be carried out by the host country. But if the events are countrywide and there is a necessity for operation to the out of the country, the country of citizenship should carry out to evacuation operation. If both of these countries are unable to carry out this operation, third countries or international organizations should carry out this evacuation. For instance, USA government requested assistance from Oman government for the evacuation of their citizens from Yemen during the Yemen conflict. And after this request, Oman government evacuated three USA citizens from Sana to capital Muskat by establishing contact with Yemeni authorities (NTV, 2015, November 19). Because this operation was coordinated with Yemeni authorities, it can be named “permissive” operation.

Table 2: Model Related to the Authority Carrying Out the Evacuation Operation



Operations as described in Table 2 should carry out as “permissive” in accordance with the UN Charter 2(4) containing the principles of non-intervention in the internal affairs of the countries and not to use forces. If the host country doesn’t carry out this operation and doesn’t give permission the country of

citizenship for operation, in this situation, all countries have right to evacuate their people to the safe location. Therefore, it is possible to carry out evacuation operation as “hostile/non-permissive” or “uncertain”. In addition to this, international organizations also can carry out the evacuation operation according to the necessity of the situation. Because, it is considered that the right to evacuation should be seen as a basic human right.

As in the case of Syria, sometimes as a result of internal conflicts, the government may lose control in some part of the country. Most of the people who are in the place where government lost control and where the conflict are continuing are Syrians and they need to be evacuated to safe location. But because the Syrian government is one of the parties to the conflict and unable to carry out the evacuation operation, third countries or international organizations should carry out this operation. For example, due to the unrest in Libya in 2011, a ship chartered by the International Organization for Migration and approximately 1000 people was evacuated from Misurata city to Benghazi (Euro news, 2011, April 19). Libyan authority said that, All the initiatives under the cover of humanitarian aid on the territory of Libya would encounter "stiff resistance" and Libyan army was ready to defend Misurata. Despite these threats, the evacuation operation was carried out as “hostile or unauthorized” (Milliyet, 2011, April 12). At the same time, the European Commission has contributed to this operation through its partnership with the International Organization for Migration (<http://www.avrupa.info.tr/>, 24 Nisan 2011).

Evacuation operations must be carried out on legal basis because the sovereign rights of countries. When Turkey is observed, it is said that there is no adequate legislation to create a legal basis⁴. Turkey carried out some the evacuation operations with state ships and plane or with Turkish Armed Forces by being passed resolutions from the Grand Nation Assembly of Turkey for each operation abroad. For example, Turkey carried out evacuation operation in Algeria in 1997, Lebanon in 2006, Libya in 2011 and Yemen in 2015. During the Iran-Iraq war Turkey evacuated its own citizens from Iran in 1985. At the same time, Turkey evacuated 215 Japanese citizens from Iran as the third country (Sabah, 2004, February 5). Such operations should be carried out by legislation that regulates which institutions should do.

In the USA, evacuation operations are conducted with “Executive Order 12656-Assignment of Emergency Preparedness Responsibilities” and “Department of Defense Directive Number 3025.14: Evacuation of U.S. Citizens and Designated Aliens from Threatened Areas Abroad”. In the Executive Order 12656, task of evacuation operation is given to “Department of Defense, Department of State and Department of Health and Human Services”. Department of State is responsible for protecting life of their citizens who is abroad and conducting evacuation operations. According to the “The Commander’s Handbook on The Law of Naval Operations”,

⁴ Disaster and Emergency Management Presidency (AFAD) which is connected to the prime minister.” is conducting rescue operations with “The Law of Organization and Duties of Disaster and Emergency Management Presidency (Law No: 5902) in the country and there is no any regulation about evacuation in this law.

Department of State is responsible for execution of the evacuation operation. Department of Defense is responsible for using force and supporting to the Department of State when the evacuation operations are conducting. Department of Health and Human Services is responsible for helping citizens who is evacuated to the country. With the Department of Defense Directive Number 3025.14, procedures and responsibilities for the evacuation of USA, citizens and third-country nationals who are abroad, are organized. With these legal basis USA evacuated 7,800 U.S. citizens from Japan in 2001, 14,000 U.S. citizens from Lebanon in 2006, 2610 civilians from Sierra Leone in 1997, 900 civilians from Albania in 1997 and 2200 civilians from Liberia in 1996 (OLH, 2015, p. 157).

If evacuation operation is “uncertain” or “hostile-non-permissive”, countries should conduct their operations with permission of the UN Security Council when it is necessary to use of force. According to the UN Charter 51 (self-defense), it is also possible to carry out this operation because of humanitarian reasons. In addition, if it is no need to use of force, the operation can be carried out directly. According to the Charter of the UN article 2(4), it is prohibited to use force or conduct any operations in other country without permission of the host country. Entering to the borders of a country without the permission of Council can lead undesired consequences. In order to avoid undesired consequences, conducting evacuation operations as “permissive” seems to be the best way.

Conclusion

Size of the event and citizenship of people are the factors that affect the determination of the authority carrying out the evacuation operation. The country that event occurred is the main authority carrying out the operation according to the UN Charter 2 (4). In the case of the event takes place in only a small section of the country, people can be firstly evacuated to a safe place within the country. After that, considering the course of events, the citizens of other countries can be evacuated to their own countries. If the events are countrywide, people should be evacuated to the country of citizenship or safe third country. There should be coordination between the host country and third country/country of citizenship if evacuation is being carried out towards outside of the country. But sometimes the government's control can weaken or its operation ability may be lost in the country. In such cases, each country has the right to evacuation of its own citizens from problematic areas. Additionally, third countries or international organizations can carry out this evacuation operation. But this is the last option in the operation hierarchy. Primarily, host country is the authority for in country operation and as for operation which is outside of country, host country or with its coordination country of citizenship is the authority for evacuation operation.

There are three ways for other countries operations: permissive, hostile or non-permissive and uncertain. Permissive operations should always be first choice and all evacuation operation must be carried out with legal basis. According to the Charter of the UN article 2(4), it is prohibited to use force or conduct any operations in other country without permission of the host country. Article 51 says that, there is inherent right of individual or collective self-defense if an armed attack occurs against a member of the UN. Some countries tend to use this article as a legal basis

of evacuation operation. At the same time, evacuation operations carry out within the scope of “humanitarian intervention.” (Grimal ve Melling, 2011, p. 2).

There isn't enough arrangement about evacuation operations in Turkey. Turkey has carried out many evacuation operations with resolutions for each event abroad. These operations should be carried out with legal basis which should define authorized institutions, procedure for running process and evacuation of third country citizens similar to the legal regulations in the USA. Because of this, related legal arrangements should be passed from Grand National Assembly of Turkey immediately.

Right to evacuation is as important as right to life. Because of this reason, right to evacuation should be one of the basic human rights. Existence of “humanitarian intervention” in the traditional law shows that people have right to evacuation as well. All countries should make their legal arrangements about evacuation operations and all these legal arrangements should include third country nationals as well. Moreover, there isn't any international regulation for evacuation operations. Due to the fact that there is no any legal arrangement in the international law, an understandable international regulation about evacuation operations should be accepted.

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