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NON-RENUNCIATION OF THE RIGHTS PROVIDED BY THE CONVENTIONS

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RÉSUMÉ – ABSTRACT

(FR) Cette contribution analyse l'origine et la portée de l'article 7/7/7/8 commun aux Conventions de Genève de 1949, lequel prohibe toute renonciation aux droits stipulés dans les Conventions au bénéfice des personnes qu'elles protègent. L'importance conceptuelle de cette disposition pour le droit international humanitaire est mise en lumière et discutée.

(EN) This contribution analyses the origin and scope of common Article 7/7/7/8 of the 1949 Geneva Conventions, which prohibits any renunciation of the rights enshrined in the Conventions to the benefit of the persons they respectively protect. The conceptual importance of this provision for International Humanitarian Law is discussed.

MOTS-CLÉ – KEYWORDS

Conventions de Genève de 1949 — Droit international humanitaire — Droits individuels — renonciation.

1949 Geneva Conventions — International Humanitarian Law — Individual Rights — Renunciation.

TABLE DES MATIÈRES – TABLE OF CONTENTS

| | |
|--|-----------|
| I. CONTEXTUAL INTRODUCTION | 5 |
| II. MEANING AND APPLICATION | 6 |
| 1. LEGAL MEANING AND SCOPE..... | 6 |
| 2. APPLICATION | 7 |
| 3. CONCEPTUAL IMPORTANCE | 8 |
| III. RELEVANCE IN NON-INTERNATIONAL ARMED CONFLICTS | 11 |
| IV. LEGAL CONSEQUENCES OF VIOLATIONS OF THE NORM | 11 |
| 1. INVALIDITY..... | 12 |
| 2. RESPONSIBILITY | 12 |
| V. CRITICAL ASSESSMENT | 13 |
| BIBLIOGRAPHY | 13 |

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I. CONTEXTUAL INTRODUCTION

According to Article 7/7/7/8 of the Geneva Conventions, the persons respectively protected under each Convention 'may in no circumstances renounce in part or in entirety the rights secured to them', either by the four Conventions or by a more favourable special agreements, which may be concluded by the belligerents.

This common provision, which enshrines what is known as the principle of the 'inalienability'¹ of the rights of protected persons, follows common provision 6/6/6/8 relating to the prohibition of less favourable special agreements. Together, these provisions form the 'intangible'² nature of the rights conferred by the Conventions: neither by agreement between the belligerents, nor by agreement with protected persons or following their unilateral renunciation,³ may the belligerents relieve themselves from their duty to treat such persons in accordance with the Conventions, or at least no less favourably than what the Conventions require.

The Pictet Commentaries mention (but with no specific details⁴) situations where POWs were compelled to accept treatment less favourable than that required by the standard of the time. They also refer to situations include where POWs relinquished their status and joined the armed forces of their captor, or where the POW's home government authorized them to choose a different status⁵. The Commentaries do not refer to the renunciation of rights by other categories of protected persons. For what appears to be reasons of principle relating to a specific understanding of the very nature of the obligations enshrined in the Conventions, a general and common provision to the GCs was nevertheless considered adequate.

To avoid a circumstance where protected persons in the hands of the enemy are placed under duress and forced to accept a treatment less favourable than that provided by the Conventions, the ICRC suggested the following draft provision during the 1949 negotiations: 'protected persons may in no circumstances be induced by coercion or by any other forced means, to renounce in part or in entirety the rights secured to them'⁶ by the Conventions, or by a more favourable special agreement. Rather than providing for a prohibition of renunciation, the draft prohibited duress leading to renunciation. Therefore, it could have been interpreted *a contrario*, meaning that it may be valid if the renunciation of rights by protected persons was the result of a real and free choice. Because of the inherent inequality between protected persons and the Power controlling them, such a free expression of will was considered to be unlikely, if not impossible. Moreover, and especially amidst the inherent confusion of war, it was preferable to

¹ H. Coursier, *Cours de cinq leçons sur les Conventions de Genève* (Genève : CICR, 1963) at 33 ; R. Kolb, *Ius in bello. Le droit international des conflits armés* (2nd edn, Bâle/Bruxelles : Helbing Lichtenhahn/ Bruylant, 2009) 400 ; E. David, *Principes de droit des conflits armés* (4th edn, Bruxelles : Bruylant, 2008) 553, n°2.408.

² *Ibid.* Mostly used in French, this words conveys the idea that those rights are inalterable and must be kept immutable.

³ R. Kolb, *supra* note 1, at 401.

⁴ F. Bugnion is a little bit more explicit in that regard, mentioning the German Word War II practice, but also the immediate post-WWII French practice: F. Bugnion, *Le Comité international de la Croix-Rouge et la protection des victimes de la guerre*, CICR, Genève, 1994, at 503.

⁵ Pictet Commentary GC I, at 78; GC II, at 57; GC III, at 88.

⁶ Pictet Commentary GC IV, at 74.

avoid discussions relating to the forced or free character of the renunciation of rights expressed by protected persons. Hence, and notably upon the suggestion of the Norwegian representative⁷, the Diplomatic Conference agreed on a more categorical wording, which is the one found in the Conventions.

II. MEANING AND APPLICATION

1. LEGAL MEANING AND SCOPE

The purpose of this common provision is to prevent a Contracting Party from claiming to be released from its obligations under the Conventions *vis-à-vis* a protected person who renounces the benefit of its corresponding rights. In other words, protected persons may not, by their own will or by any sort of agreement concluded with a contracting party, validly dispense of the rights conferred by the Conventions, which include ICRC protection⁸. The Conventions do not specify what it means for protected persons to 'renounce [their] rights', nor what 'renunciation' amounts to. Relying on the 'ordinary meaning'⁹ of the verb 'to renounce', one can safely conclude that this common provision refers to any expression of will by which protected persons could refuse, reject or abandon the benefit of their rights¹⁰. This, of course, must not be confused with the possible deprivation of the protection afforded by international humanitarian law if protected persons act in contradiction with their status, notably by engaging in acts harmful to the enemy.

Common Article 7/7/7/8 prohibits any renunciation of rights by protected persons, regardless of its modality. Explicit renunciations, either unilateral or contractual, are prohibited. Moreover, the provision prevents any argument relating to a tacit renunciation, which might be derived, for instance, from the non-exercise of rights by protected persons. The material scope of the renunciation is immaterial, since it may not cover 'in part or in entirety' any of the rights secured to the protected persons. Moreover, 'no circumstance' may ever legally justify such renunciation so as to render it valid; the conditions under which a renunciation may exist are irrelevant. This means, in particular, that freely expressed genuine renunciations are nevertheless devoid of any legal effect. Hence, the integrity of the Conventions is hereby protected.

From a textual point of view, the prohibition to renounce the Conventions' rights also applies when a more favourable treatment is conferred to protected persons by special agreement. In such a case, the prohibition clearly extends to the additional rights so conferred, but nevertheless continues to apply to the Conventions' rights as a minimum standard; the legal vicissitudes that may affect the special agreement have no bearing on the protection afforded by

⁷ *Ibid.*, at note 2.

⁸ F. Bugnion, note 4 at 504, considers that the ICRC cannot impose its protection on persons who clearly reject it, but argues that, in such a situation, the decision not to assist them has to be taken by the ICRC itself after an objective assessment of the situation, and not simply on the basis of the allegation of the detaining Power.

⁹ Vienna Convention on the Law of Treaties (1969), Art. 31, para. 1.

¹⁰ *Oxford English Dictionary*, online. See also J. Salmon (dir.), *Dictionnaire de droit international public*, (Bruxelles : Bruylant – AUF, 2001), at 968.

the Conventions. Further, making more favourable treatment conferred by a special agreement conditional upon a renunciation of the Convention's rights is legally untenable. Similarly, the benefit of a more favourable legal regime, either claimed by protected persons or granted to them – derived for instance from international human rights law – can neither depend on a renunciation of the Conventions' rights nor entail such renunciation, even tacitly. However, protected persons are not required to relinquish a more favourable status because they may not renounce the Conventions' rights. Instead, the Conventions' rights remain in the legal background as fall-back provisions, whatever the will of the protected persons themselves might be.

Despite the fact that common Article 7/7/7/8 is drafted as a prohibition addressed to protected persons, one may derive an obligation addressed to the contracting Parties¹¹: to abstain from any behaviour leading protected persons to renounce their rights. While the extortion of such a renunciation under duress is of course logically prohibited, the mere suggestion of any renunciation, by the detaining Power or even by the national state of the protected persons, should also be viewed as illegal. One may also consider that such a suggestion by any third party intervening in the conflict is illegal. However, the obligation to abstain from inciting or inducing renunciation of rights under the Conventions should not be understood as an obligation to prevent such renunciation.

Whether common Article 7/7/7/8 has gained the status of a customary rule is difficult to assess. When included in the Conventions, it was certainly a purely contractual provision. Due to the lack of practice (see below), it is doubtful that its legal nature has extended to the realm of customary international law. Further, the principle of non-renunciation is not included among the rules identified as customary international law by the ICRC study on *Customary International Humanitarian Law*. That being said, it is not because this common provision lacks customary status that the 'rights' secured by the Conventions to which it applies are not of a customary nature. Moreover, the 'intangibility' principle applicable to those 'rights' and conveyed by this common provision seems to be of an axiological character, rather than of a customary nature.

2. APPLICATION

To date, domestic and international courts and tribunals have yet to apply common Article 7/7/7/8. Textbooks¹² and manuals¹³ that mention the Article, merely restate what it provides for, sometimes recalling what is stated in the Pictet Commentaries. Contemporary practice of

¹¹ See F. Bugnion, note 4 at 504.

¹² In addition to other references mentioned above and below, see e.g. Y. Dinstein, *The International Law of Belligerent Occupation* (CUP, 2009), at 83, n°189; M. Greenspan, *The Modern Law of Land Warfare* (Berkeley and Los Angeles: University of California Press, 1959), at 70 and 160.

¹³ UK Ministry of Defence, *The Manual of the Law of Armed Conflict* (OUP, 2004), at 125 n°7.9 and at 225, n°9.20.

actual, claimed or induced renunciation by protected persons is not reported or documented¹⁴. The absence of reported practice can of course be considered positively and with relief; this is an IHL provision that seems to be duly respected. However, the absence of reported practice specifically relating to common Article 7/7/7/8 does not mean that it is not relied on when breaches of other substantive provisions, including those relating to POWs treatment, are deplored.

In light of past state practice reported in the Commentaries, future application of this provision may be foreseen in the event that POWs decide to join the ranks of their captors to fight against the national army they were forced to serve in. If the forced enrolment of POWs by the detaining Power constitutes a war crime¹⁵, it seems that because of the prohibition of renunciation enshrined in common Article 7/7/7/8, the Conventions do not allow POWs the possibility of joining the enemy forces by their own free will; the detaining Power is indeed under the obligation to treat captured members of the enemy armed forces as POWs, despite the desire to 'liberate' their country by taking up arms against the state or regime they were forced to serve in. The Commentaries make clear that such an 'unfortunate'¹⁶ result is the consequence of the strict rule. An absolute provision allowing for the integral application of the Conventions was preferable to protect the vast majority of victims of war, and due to the dangers inherent in allowing exceptions¹⁷. The non-renunciation clause of the Conventions prohibits radical political choice and thus serves as a guarantee that no belligerent shall suffer from ideological betrayals within its own ranks. This clearly reflects the interests of states and the old conception according to which soldiers obey and do not question the regime they serve in nor the wisdom, morality or legality of the war they are engaged in. Of course, the Conventions limited that conception of obedience through the development of responsibility for war crimes. However, individual responsibility of combatants merely requires judgement on the actual military actions they are carrying out; it does not extend beyond it, so as to encompass political preferences. The crime of aggression, recently defined in the ICC Statute, does not change that basic conception, as it applies only to 'person[s] in a position effectively to exercise control over or direct the political or military action of a State'¹⁸.

3. CONCEPTUAL IMPORTANCE

The meaning – or at least practical relevance – of the non-renunciation provision does not lie so much in what it commands or prohibits, but in what it reveals about the nature of the substantive rules of behaviour enshrined in the Conventions. Admittedly, the utility of this provision, set out in Part I ('General Provisions') of each of the four Conventions, is the doctrinal

¹⁴ F. Bugnion, note 4 at 504, briefly mentions that both Iran and Iraq have claimed that the POWs they detained were refusing ICRC protection in order to prevent it from carrying out its responsibilities during the 1980-1988 war.

¹⁵ See GC III art. 130 and GC IV art. 147; E. David, *supra* note 1 at 553, n°2.408.

¹⁶ As put by one delegate, not identified by the Pictet Commentary GC I, at 80.

¹⁷ Pictet Commentary CG I, at 80. See also M. Greenspan, *supra* note 12 at 101 and 104.

¹⁸ ICC Statute, Art. 8*bis*, para. 1.

arguments that have been developed on its basis. Taking advantage of the wording of the provision, those arguments have pointed to the fact that the Conventions did not only regulate the conduct of states but that, by doing so, they also directly conferred positive rights to individuals. Moreover, those rights are not at the disposal of such individuals, but are bestowed upon them as a matter of public order. In other words, two fundamental legal arguments relating to the nature of the Geneva rules have been derived from common Article 7/7/7/8: first, individuals have rights, and therefore have a legal personality, under international humanitarian law; second, such rights are inalienable, i.e. beyond the control of their beneficiaries. This second element has very often been used to affirm (or reinforce the affirmation of) the peremptory (*jus cogens*) nature of *jus in bello*.

The first argument, relating to the existence of rights under the Conventions for the benefit of individuals, is supposedly reinforced by the use of the verb ‘secure’ rather than ‘confer’, which is found in common Article 6/6/6/7¹⁹. This textual argument is certainly not of paramount importance; yet, what is most significant is that through the Conventions, ‘rights are bestowed directly to individuals belonging to the category indicated, and that they are not merely state rights from which individuals derive benefit’²⁰. In conformity with the Commentaries²¹, the vast majority of commentators hold this view, and when quoting this provision, it is not to explain its technical meaning or practical relevance, but rather to assert that the Conventions secure rights to the benefit of protected persons, since the very text says so²². Such affirmation tends to align international humanitarian law with human rights law, not as far as their application or content are concerned, but as far as their legal nature is concerned. Some have challenged this generally held view, arguing that the norms of international humanitarian law should be considered ‘as standards of treatment or conduct rather than as rights of protected persons’²³. This alternative view has the advantage of ‘shift[ing] the emphasis from the would-be-right-holder to the person in the position of power, on whom an obligation to comply with the standard is imposed directly by public order’²⁴. Arguably, such an ‘international public order’ approach of international humanitarian law is ‘more consistent’ with its general ‘enforcement scheme’ than a ‘rights-based interpretation’²⁵.

This debate is rather abstract, if not esoteric. The conflicting views seem to depend on the choice of a theoretical conception of what one considers a ‘right’ under any legal system, and whether it is tenable to construct an ‘obligation’ *vis-à-vis* certain persons, without considering that those

¹⁹ Pictet Commentary GC I, at 82; GC IV, at 77.

²⁰ Y. Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, 2nd ed., CUP, 2010, p. 20, quoting Commentary I, p. 467.

²¹ Pictet Commentary GC I, at 82; GC II, at 58; GC III, at 91; GC IV, at 77.

²² In addition to the references mentioned above, see R.-J. Wilhelm, ‘Le caractère des droits accordés à l’individu dans les Conventions de Genève’, *IRRC* (1950), at 561; Th. Meron, ‘The Humanization of Humanitarian Law’, 94 *AJIL* (2000), at 251-252; G. Abi-Saab, ‘The Specificities of Humanitarian Law’, in Chr. Swinarski (ed.), *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet* (Geneva/The Hague: ICRC/Martinus Nijhoff, 1984), at 265; P. Gaeta, ‘Are Victims of Serious Violations of International Humanitarian Law Entitled to Compensation?’, in O. Ben-Naftali (ed.), *International Humanitarian Law and International Human Rights Law* (OUP, 2011), at 319.

²³ R. Provost, *International Human Rights and Humanitarian Law* (CUP, 2002), at 30.

²⁴ *Ibid.*, at 32.

²⁵ *Ibid.*, at 32, 34.

persons have a corresponding 'right' to be treated accordingly. In light of the ICJ's reasoning in the *LaGrand* case regarding Article 36, paragraph 1 of the Vienna Convention on Consular Relations as 'creat[ing] individual rights'²⁶, to resist the idea that the four Conventions do indeed establish rights to the benefit of protected persons – whose violation may eventually be invoked by their national state as a matter of diplomatic protection – is a line of argument which, would not likely be upheld by an international court or tribunal. That being said, confusing the purpose and nature of international humanitarian law with that of human rights law, or assimilating the former with the latter must be avoided. Indeed, under human rights law, individuals are bestowed with rights because they are subjected to the authority of a state, i.e. they are 'subject to its jurisdiction' to use the terms of the ICCPR²⁷. Both historically and legally, human rights are rights of individuals aimed at limiting (or regulating) their subjection to the authority of the state concerning the organization of social life. Hence, the importance of vesting self-executing rights to individuals, i.e. rights that do not require any domestic measures of implementation to be applicable in domestic legal orders, as such measures could otherwise constrain or limit the enjoyment of those rights. Compared to the very purpose of international human rights law, international humanitarian law does not aim at limiting the way states 'govern' their 'subjects'; it originally aims at humanizing the misfortunes of war. There is nothing deeply 'political' or 'constitutional' in the balance achieved by international humanitarian law, even if its humanitarian objective fulfils an essential aspiration of human beings, whether they themselves face the scourge of war or see others suffer from it. Moreover, the need for contracting Parties to agree on self-executing norms, to ensure that individuals benefit from them domestically without any national measures of implementation, does not arise under international humanitarian law with the same acuteness as it does under international human rights law²⁸.

The 'rights' of protected persons – if they are considered as such – are nevertheless of a specific kind, since the prohibition to renounce them requires that they be inalienable: they are beyond the control of their beneficiaries. The strict inalienability of the 'rights' under international humanitarian law differs from the issues concerning the renunciation of rights under human rights law,²⁹ and has been used to affirm (or reinforce) the peremptory (*jus cogens*) nature of *jus in bello*³⁰. Despite the inalienable nature of the protection afforded by the Conventions to certain individuals, it is not certain that such inalienability implies the peremptory nature (within the meaning of Article 53 VCLT) of the norms providing for such protection. Besides the fact that it

²⁶ ICJ, *LaGrand (Germany v. United States of America)*, *Judgement*, *ICJ Reports 2001*, at 494 para. 77.

²⁷ ICCPR, Art. 2, para. 1. See also ECHR, Art. 1: 'within their jurisdiction'.

²⁸ I have argued elsewhere that individuals who are victims of IHL breaches may possibly have a right to reparation under international law if the rule breached can be considered as self-executing, but that the law governing the implementation of such reparation right in domestic courts is a domestic legal regime: P. d'Argent, 'Le droit de la responsabilité internationale complété ? Examen des *Principes fondamentaux et directives concernant le droit à un recours et à réparation des victimes de violations flagrantes du droit international des droits de l'homme et de violations graves du droit international humanitaire*', *AFDI* (2005), 27-55.

²⁹ Ph. Frumer, *La renonciation aux droits et libertés. La Convention européenne des droits de l'homme à l'épreuve de la volonté individuelle* (Brussels : Bruylant, 2001) ; O. De Schutter & J. Ringelheim, 'La renonciation aux droits fondamentaux. La libre disposition du soi et le règne de l'échange', in H. Dumont, F. Ost & S. Van Drooghenbroeck, *La responsabilité, face cachée des droits de l'homme* (Bruxelles : Bruylant, 2005) 441-481.

³⁰ See e. g. E. David, *supra* note 1, at 111, n°1.41.

would be surprising that the 1949 Diplomatic conference had a clear and shared understanding of a notion that would only gain recognition 20 years after the Geneva Conventions, the inalienability of a treaty right by its individual beneficiaries does not necessarily mean that it cannot be derogated from by agreement between contracting parties. Rather than common Article 7/7/7/8, common Article 6/6/6/7 on the prohibition of less favourable special agreements points at the peremptory nature of international humanitarian law³¹. Admittedly, if a right conferred by treaty is inalienable by its beneficiaries, it embodies public order values that must be placed beyond the control of individuals. But, technically, this does not necessarily mean that any conflicting treaty would be considered null and void.

III. RELEVANCE IN NON-INTERNATIONAL ARMED CONFLICTS

Additional Protocol II of 1977 does not contain any similar provision. However, it has been affirmed that '[t]he principle [of non-renunciation] applies to the entirety of international humanitarian law'³², which seems to include rules applicable in non-international armed conflicts. To explain such an assertion, one may of course rely on the nature of the 'rights' at stake, as pointed out above. There is however an easier, more technical, explanation possible: to the extent that common Article 3, which applies in non-international armed conflicts, is part of the 1949 Conventions, all the 'rights' it confers to victims of such conflicts are to be considered as 'rights secured (...) by the (...) Convention[s]' within the meaning of common Article 7/7/7/8, and therefore under the ambit of that provision when protected persons under each Conventions fulfil the condition of taking 'no active part in the hostilities' within the meaning of common Article 3. Moreover, as Additional Protocol II 'develops and supplements Article 3 (...) without modifying its existing conditions of application'³³, arguably, the prohibition of renunciation by individuals, being one of the 'conditions of application' of Article 3, extends to the supplementary 'rights' enshrined in Protocol II.

IV. LEGAL CONSEQUENCES OF VIOLATIONS OF THE NORM

As the above comments make clear, common Article 7/7/7/8 is textually made of a prohibition addressed to individuals: protected persons 'may in no circumstances renounce...'. The French version of the Conventions also refers to an imperative by using the future tense (*'ne pourront en aucun cas renoncer...'*). Violations of the prohibition may trigger two types of legal consequences: the first concerns the validity of the renunciation as a legal act; the second concerns the responsibility of the author(s) or "inspirator(s)" of the act, considered as an 'international wrongful act'.

³¹ See Th. Meron, *supra* note 22 at 252.

³² H.-P. Gasser, 'Protection of the Civilian Population', in D. Fleck (ed.), *The Handbook of International Humanitarian Law* (2nd ed., OUP, 2008) at 284, n°539.

³³ AP II, Art. 1, para. 1.

1. INVALIDITY

Any renunciation of the rights of protected persons 'would be null and void'³⁴. This certainly reflects a common understanding. A few comments on such an orthodox view are nevertheless useful. First, the invalidity sanctions unilateral or contractual renunciations indifferently. As recalled above, the very existence of common Article 7/7/7/8 seems to prevent any argument relating to a possible tacit renunciation. However, if need be and despite the fact that any regime of invalidity presumes the existence of an actual legal act, one could eventually treat as invalid any 'implicit renunciation'. Second, the invalidity so proclaimed might rest on two different legal grounds: a renunciation could be invalid because its author is deprived of legal capacity, or because its object, i.e. the rights concerned, are a matter of public order. In light of the above, the latter view is preferred by most doctrine. Third, the invalidity so proclaimed within international law logically relates to an act of will (the renunciation), which is considered to occur within the international legal order and governed by it – and which, through the sanction of invalidity, is 'expelled' from it. If the renunciation is expressed in or by an act governed by a domestic legal order, its validity under domestic law is irrelevant, as its international invalidity would transcend any domestic validity because of the primacy of international law³⁵. Fourth, the invalidity so proclaimed seems to be automatic, in the sense that the very existence of a renunciation requires that it be immediately treated as null and void. This being said, there may be a controversy as to whether such renunciation exists or whether the act of will in question actually amounts to a prohibited renunciation.

Entering the discourse of the (in)validity of legal acts often raises more difficulties than answers. One may therefore consider whether it is not wiser to depart from such discourse by affirming that renunciations of rights by protected persons are simply devoid of any legal effect, rather than proclaiming that they are 'null and void'. Indeed, it is not so much the legal fate of the acts of renunciation that matters, but rather the certainty that the substantive obligations under the Conventions – or under more favourable special agreements – are duly respected and that any violator of those obligations may never successfully claim irresponsibility on the basis of such inoperative renunciation.

2. RESPONSIBILITY

If it is forbidden for protected persons to renounce their rights, they should, from a formal and logical point of view, be held responsible for any such renunciation. However, this is not what the Conventions, international humanitarian law or general international law require. Further, no one has ever suggested that protected persons be held accountable through a formal mechanism of legal responsibility for having breached the prohibition on renunciations. Clearly, it would be shocking to hold protected persons responsible when the renunciation has been

³⁴ H.-P. Gasser, *supra* note 32 at 284.

³⁵ J. Verhoeven, 'Les nullités du droit des gens', in P. Weil (dir.), *Droit international 1, Cours et travaux de l'IHEI, 1979/1980*, (Paris : Pedone, 1981) at 23.

forced upon them. However, even if they have renounced freely, it would be rather awkward to do so. Besides, no existing international legal mechanism allows for invoking such individual responsibility. Moreover, it is difficult to imagine, even in a domestic setting, an instance where such an issue could arise. The only example is some form of action for indemnity against former protected persons by a war criminal claiming to have been misled by their renunciation. One does not have to be a fine lawyer to see that this action would not stand any chance of success.

Since, as argued above, common Article 7/7/7/8 can be construed as implying a duty on the part of the contracting Parties to abstain from any behaviour which might lead protected persons to renounce their rights, any breach of such an obligation entails responsibility for the contracting Party concerned (be it the detaining Power of the protected persons or a third party intervening in the conflict). Such responsibility could be triggered through recourse to a diplomatic protection action by the national state of the protected persons concerned. However, no criminal responsibility is attached to the breach of this duty to abstain.

V. CRITICAL ASSESSMENT

Common Article 7/7/7/8 is a strange but nevertheless important provision; it is a strange provision because instead of being drafted as a prohibition addressed to protected persons themselves, it could have forbidden any incitement or inducement to renounce the Convention's rights, with any renunciation being deprived of legal effect.

However, it is an important provision because it affirms that protected persons have rights under the Conventions and that such rights are inalienable. As a common provision to the four Conventions, and despite its apparent limited practical usefulness, it has been of paramount importance to the doctrinal construction of the legal nature of obligations under international humanitarian law.

But here lays the paradox of this strange, though important, provision: by protecting protected persons even against their own will, it concomitantly affirms their legal subjectivity under international (humanitarian) law and limits it.

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