

THE PROTECTION OF CIVILIANS IN THE CONDITIONS OF MODERN WARS AND ITS PROBLEMS

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ABSTRACT

International humanitarian law plays a critical role in ensuring the protection of individuals and minimizing human suffering during armed conflicts. However, the increasingly complex nature of modern conflicts creates new challenges in the application and enforcement of international humanitarian law. This article explores some of the current issues in international humanitarian law. International humanitarian law addresses various issues related to armed conflicts and the protection of individuals. One of the current problems is the protection of civilians in armed conflicts. Civilians often bear the brunt of the violence and suffer from indiscriminate attacks, population displacement and lack of access to basic services. Ensuring their safety and well-being remains a major challenge.

Keywords: International law, Humanitarian law, civilians, hostilities, combatants, armed conflict, civilian population, modern war.

In the international humanitarian law, much attention is paid to the study of relations between states, dispute settlements. But there is a whole array of rules established in various normative documents and do not regulated enough by states in armed conflicts – this is protection of civilians in the conditions of war. The protection of civilians in the condition of modern wars is the one of the most important and actual topics for which not only the international community but every state should give attention. The conduct of hostilities may occur profound negative effect on civilian population and extinction of population, nation and people, in all. As the history of human development shows, many peoples and states during their existence started armed conflicts, as a result of what they themselves became victims of them and the civilian population is suffered.

Interestingly, in 3,400 years of history there have been only 250 years of universal peace. Rest time there were wars on the planet (about 15 thousand wars) in which about 5,000,000,000 people died. This corresponds to 2/3 of the current population Earth. In

the 20th century, two world wars claimed lives almost 100,000,000 people¹. Among the victims, in addition to military personnel, civilians are also included. It is known that previously the law of armed conflicts (hereinafter referred to as LOAC) contained rules that protected only representatives of the armed forces of the state, and the unarmed civilian population and unarmed objects remained beyond the scope of humanitarian and other norms international law, although some of its norms provided for the need to ensure the rights of civilians in armed conflicts.

If we look at history, there are some cases of humane treatment of victims of armed conflicts. For example, Chinese scientist Yu Bing Pian notes as follows: “Do not kill ordinary people, but kill those who misrule people”.² In other words, this means killing those who have created a threat to the security of peaceful development and the existence of humanity. In addition to this, India also has rich humanitarian traditions. For example, the laws of Manu say that the monarch must protect his people in during war, soldiers should not attack those who does not participate in hostilities³. The laws of Manu also contained norms obliging soldiers to spare farmers and prohibiting the destruction of fields, crops, and trees and other property. The wounded and sick enjoyed patronage and protection.

After the Second World War that the number of civilian casualties increased and required an appropriate response from the international community to ensure the safety of civilians within the framework of the international law of armed conflict. In order to solve this problem, representatives of the international community adopted **the Geneva Convention on August 12, 1949 relative to the Protection of Civilian Persons in the Time of War**⁴ - (further – Geneva Convention on Civilians, 1949). In 1993, the United Nations Security Council⁵ included this convention in the norms of international rights and it became binding not only for countries that have joined this convention, but also for military (armed) parties’ conflicts.

Due to the growth of armed conflicts in the modern world after the Second World War, the need arose for legal regulation of the rules of warfare. After many discussions at the world level about the catastrophic losses of civilians⁶, other additional documents began to develop. On this basis, the Geneva Convention 1977 was supplemented by two Additional protocols:

¹ The New York Times\URL: <https://www.nytimes.com/2003/07/06/books/chapters/what-every-person-should-know-about-war.html>

² <https://lawbook.online/gumanitarnoe-pravo-mejdunarodnoe/razvitie-zakonov-obyichaev-voynyi-80506.html>

³ The Laws of Manu URL: <https://sourcebooks.fordham.edu/india/manu-full.asp>

⁴ The Geneva Convention relative to the Protection of Civilian Persons in the Time of War, 1949/ URL: <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-0173.pdf>

⁵ <https://www.un.org/securitycouncil/>

⁶ 25 million people on a global scale are killed, 10 million of them are the civilian population of the USSR/ URL:<https://cyberleninka.ru/article/n/lyudskie-poteri-sssr-i-rossii-v-1941-1945-gg>

1. Additional protocol of June 8, 1977, relating to the protection of victims of international armed conflicts (Protocol I, hereinafter referred to as AP-I);

2. Additional protocol of June 8, 1977, relating to the protection of victims of non-international armed conflicts (Protocol II, hereinafter referred to as AP-II).

In accordance with Art. 48 of Additional protocol (I)¹ (further – AP 1) to provide respect and protection of the civilian population and civilian objects, the conflicting parties located in the area of armed confrontation, must continually distinguish between civilians and combatants, as well as between civilian and military targets. Civil objects shall in no case be must be the target of attack or reprisal and by virtue of their appointment, they must have immunity from attack during periods of armed conflicts from the parties to the conflict for ensuring life and existence population as during armed conflicts, and after the end of hostilities. Wherein according to Art. 52 AP-I military facilities include those which, by their nature, location, purposes or uses make an effective contribution to the military effort to achieve the desired results.

In the protection of civilians in the conditions of war, it is important to distinguish between combatants and civilian population. The protective purpose of the principle of distinction can be achieved by parties of an armed conflict only if categories of ‘civilians’ and ‘combatants’ are well defined. So, first all we need is to define the categories ‘civilians’ and ‘combatants’. According to the theory of international humanitarian law² (further – IHL) in an international armed conflict “Civilian” or “Civilian population” is an any person who does not belong to the armed forces and does not take part in a “levée en masse”³. In case of doubt whether a person is a civilian or not, that person must be considered to be a civilian⁴. In non-international armed conflict “Civilian” means all persons who are neither members of state armed forces nor members of an organized armed group. These definitions are also enshrined in the part 1 of Art. 50 AP-I to the Geneva Convention of August 12, 1949 as persons who do not belong to any of the categories of persons referred to in Article 4 A of the Third Convention⁵ and in Article 43 of Protocol 1⁶, adopted at the diplomatic conference in Geneva July 8, 1977.

¹ Additional protocol (I) relating to the protection of victims of international armed conflicts 1977 URL:

https://www.icrc.org/en/doc/assets/files/other/icrc_002_0321.pdf

²International Humanitarian Law/Comprehensive Introduction/Nils Melzer URL:

<https://library.icrc.org/library/docs/DOC/icrc-4231-002-2019.pdf>

³The ‘levée en masse’ as the spontaneous springing to arms of the population in defense of the country URL:

<https://www.cambridge.org/core/journals/netherlands-international-law-review/article/new-definition-of-the-levee-en-masse/7994C008F2AE705F2C8DA3B8812FBEAB>

⁴International Committee of the Red Cross URL: <http://casebook.icrc.org/a-to-z/glossary/civilian-population#:~:text=%E2%80%9CCivilian%E2%80%9D%20means%2C%20in%20an,considered%20to%20be%20a%20civilian>

⁵ The Geneva Convention (III) on Prisoners of War, 1949 URL:

https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.32_GC-III-EN.pdf

⁶ Protocol (I) relating to the protection of victims of international armed conflicts 1977 URL:

When doubt arises in armed conflicts as to whether any person located in the area of armed confrontation is a civilian, according to this Protocol he is recognized as a civilian. Moreover, the presence of individuals among the civilian population who do not fall within the definition of civilians does not deprive that population of their civil nature. All persons in areas of armed conflict and falling under defined as the civilian population, enjoy appropriate protection under the 1949 Geneva Convention and international humanitarian law.

Violence, threats of violence and any acts against the civilian population are prohibited of a terrorist nature with the aim of intimidating them. The civilian population, as well as individual civilians, cannot and should not become targets of attack¹ from someone whatsoever, except when they take direct part in military actions.

The Convention strictly prohibits indiscriminate attacks against the civilian population and objects that are not of a military nature (Part 4 of Article 51). Indiscriminate attacks include:

- a) attacks that are not aimed at specific military targets;
- b) attacks in which methods or means of warfare are used that cannot be directed at specific military targets;
- c) attacks in which methods or means of warfare are used, the consequences of which cannot be limited, as a result of which military targets may be damaged and civilians or civilian objects without differences.

In addition to the above, indiscriminate types of attacks include:

- attack by bombing by any methods or means, in which, as a single military facility is being considered clearly different military and civil objects located in the city, in villages and other populated areas where civilians² and the civilian unarmed population are concentrated;
- an attack with the aim of obtaining a military advantage, which along the way may lead to represent casualties among the civilian population, injuries to civilians and damage to civilians objects³.

Additional Protocol (I) provides protection, precautions regarding civilian population in armed conditions conflicts during the attack and regarding the consequences. The corresponding measures are disclosed in sufficient detail in Art. 57-58 protocol. And in Art. 68-71 The protocol establishes the rights and obligations of

https://www.icrc.org/en/doc/assets/files/other/icrc_002_0321.pdf

¹International Humanitarian Law/Comprehensive Introduction/Nils Melzer URL:

<https://library.icrc.org/library/docs/DOC/icrc-4231-002-2019.pdf>

²https://www.icrc.org/sites/default/files/topic/file_plus_list/4046-

[the_fundamental_principles_of_the_international_red_cross_and_red_crescent_movement.pdf](#)

³ <https://www.redcross.ca/about-us/about-the-red-cross/red-cross-fundamental-principles>

the parties to an armed conflict to provide assistance civilians affected by the armed conflict.

In accordance with the 4th Geneva Convention¹ and by the additional protocol, each party, upon in all circumstances and under all conditions must treat the civilian population without distinction, based on race, color, sex, language, religion or creed, political or other beliefs, national or social origin, property status, birth or other status, must respectfully regard the personality, honor, beliefs and religious practices of all such persons. According to this convention, it is also prohibited and will remain prohibited at any time and in any place in conditions of armed confrontation the following actions, regardless of whether they are performed by civilian or military representative organs. Such prohibited actions, in particular, relate:

- violence against life, health and physical or the mental state of persons;
- murder;
- torture of all types, whether physical or mental;
- corporal punishment and mutilation;
- outrages upon human dignity, in particular humiliating and insulting treatment, forced prostitution or indecent assault in any its form;
- taking hostages;
- collective punishments or threats to commit any of the above actions.

In accordance with Art. 7 AP-II Geneva² convention, all wounded and sick, regardless of their participation in armed conflicts are protected. Under any circumstances with them must be treated respectfully and humanely and without any difference, to the maximum extent possible and They should be provided with medical assistance as soon as possible if necessary. In its turn, according to Part 1 of Art. 12 AP-I of the Geneva³ Convention medical units are protected at any time during an armed conflict and cannot be the target of attack from outside conflicting parties. The specified position to civilian medical units applies provided that they belong to one of the conflicting parties are recognized and authorized them as such within the framework of paragraph 2 of Art. 9 of the specified protocol. In order to prevent an attack for stationary medical units, the conflicting parties are asked to notify each other friend about their location. However, according to Part 1 of Art. 13 of the said Protocol

¹ Geneva Convention (IV) on civilians URL: https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.33_GC-IV-EN.pdf

² Additional Protocol to Geneva Conventions of 12 August 1949 relating to the protection of victims of non-international armed conflicts (Protocol II). Geneva, June 8 1977 URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-additional-geneva-conventions-12-august-1949-and-0>

³ Protocol (I) relating to the protection of victims of international armed conflicts 1977 URL: https://www.icrc.org/en/doc/assets/files/other/icrc_002_0321.pdf

the right to protection of civilian medical units is terminated in case of actions beyond the scope of their humanitarian functions and causing damage to the enemy.

However, as evidenced by modern reality, in armed conflicts the requirements of the Geneva Convention relative to the Protection of Civilian Persons in Time of War and its additional protocols are not always observed. Tens of thousands of civilians were died in the armed conflicts in eastern Ukraine and the Syrian Republic inhabitants, and the number of refugees among the civilian population is estimated in millions, not counting destroyed cities, other settlements and economic damage. Since the start of the armed confrontation officially registered in eastern Ukraine 1,492,851 internally displaced persons¹, and November 2016 1.5 million people fled to other countries². According to the UN, as of mid-December 2016, the victims of the conflict in Ukraine were 32,856 people: 10,056 dead (including civilians) population, Ukrainian security forces, rebels and 298 passengers of flight MH17), 22,800 casualties³.

And since the outbreak of violence in Syria, according to UN estimates, during the conflict only at the end 2015 the number of victims was approximately 300 thousand and 13 million of the 20 million population ended up as refugees - more than in their own country 4 million people fled the country⁴. And according to others information as of July 17, 2017 victims of the conflict in Syria, since it began in 2011, has become more 330 thousand people, among the dead, about 100 thousand were civilians, including more than 18 thousand children and 11.5 thousand women⁵.

Analyzing the statements above, we can conclude that the international community, in order to avoid the growth of conflict situations firstly should to prevent armed confrontation between the conflicting parties. Secondly, if they arise for the purpose of preventing casualties among civilians oblige the participants in the armed confrontation to strictly comply with the requirements of the Geneva Convention of 12 August 1949 on the protection civilian population during the war and additional protocols of June 8, 1977, relating to the protection of victims of international armed conflicts (Protocol I) and the protection victims of non-international armed conflicts (Protocol II).

¹ <https://diana-mihailova.livejournal/>

² https://tvzvezda.ru/news/vstrane_i_mire/

³ <https://news.rambler.ru/cis/37214116-vsuzayavili-o-poyavlenii-v-donbasse-rossiyskogo-spetsnaz/>

⁴ <https://ria.ru/world/20150709/1122803798>

⁵ <https://reliefweb.int/report/syrian-arab-republic/161-civilians-including-34-children-44-women-and-two-individuals-who-died-due-torture-documented-killed-syria-october-2023-approximately-49-percent-octobers-victims-are-children-women>

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