



International humanitarian law and the protection of civilians: An easy targets in the armed conflicts

Archana Chawla

Research Scholar, Department of Laws, Guru Nanak Dev University, Amritsar, Punjab, India

Abstract

War is a contention between states that is fought out by their armed forces. The civilian population taking no part in hostilities must be spared and protected. This fundamental principle underlies the whole of the law of war, and is the basis of the Geneva and Hague Conventions. It has taken centuries for this principle to be accepted. Always and in all civilizations there has been a chivalrous feeling that man should fight man, and that to attack women, Children and the elderly is an act of abject cowardice. But this feeling no longer applied once the fighting was over. Defeat placed the civilian population at the victor's mercy. He could do what he liked with them, and all too often they were enslaved, deported or put to death. History is unfortunately, an endless recital of towns overrun by rampaging soldiers, of rape, pillage, murder, fields laid waste, cities burned to the ground and their inhabitants slaughtered. This paper concerns with protection of civilian protection in the armed conflicts.

Keywords: war, civilian population, international humanitarian law

Introduction

War is the business of those who wage it, but it also hits the civilian population, which is both its victim and its prize. Attacks on peaceful population are prohibited. But war does not spare a peaceful population, which suffers because weapons are never perfectly accurate and targets are not always properly identified, or because civilians are attacked indiscriminately along with military objectives, or deliberately in terror raids or as a reprisal whether the attacks are accident or deliberate, the civilians population must be protected from the effects of hostilities.

Besides causing physical harm, war severs communications, tears families apart and uproot whole populations in terrified flight, thereby destroying the fabric of family life and inflicting the anguish of separation. Solutions must then be found to enable members of dispersed families to exchange messages with each other and ultimately be resulted.

War also places civilians in enemy hands, either as the population of an invaded territory or as nationals of one part to the conflict who happen to be in enemy territory when war breaks out. In either case they need to be protected against the potential tyranny, abuse and violence of a hostile power. The civilian population will be hard hit by the privations which inexorably accompany armed conflict, and by the attempts of all belligerents to cripple the enemy economy and cut off its source of supply. When famine appears and essential items are no longer available, relief operations are indispensable.

Reasons for protecting civilians

A great deal of pro-civilian argument today evolves around international law particularly the Geneva, conventions and their Additional protocols which clearly outlaw the deliberate killing and suffering of civilian populations in war. However these laws are not moral argument themselves but rules of

behaviour which were agreed on the basis of moral arguments for designating people as civilians and protecting them as such. In a real mind-changing conversation about civilians, it will never be enough to cite international humanitarian law alone. It will also be necessary to look beneath the law at the moral reasoning upon which it is based. Arguing on the basis of the law alone leads to a syllogistic position that allows for no discussion and no real reasoning. Unfortunately, all too often, it is just such syllogistic talk which dominates international discourse around war and civilian suffering. Many humanitarian agencies and politicians today have a very limited conversation with anti-civilian ideologies and their fighters which can be caricatured as "stop what you are doing! Civilian suffering is wrong because it is illegal and it is illegal because it is wrong". Pro-civilian advocates seldom say much more than this today.

Citing humanitarian laws is an absolute fashion, they suggest that there is no argument to be had on the subject and no reasoning to be made. All that is to be done is to obey the law. This absolutist and legalistic attitude to discussion of civilian suffering means that most international discussion of civilian protection is self-censored as non-negotiable. It is a monologue and not a dialogue. But few minds are changed by monologues which tell you simply that you are wrong. Good mind-changing arguments need to draw on real reasons and generate a reflective discussion.

The Preciousness of human life

The main idea behind limited war and its civilian ethics is of course, that of limited killing. This argument reasons that, even in war, one should kill as little as possible. This is because every human being's life is precious to themselves, to those who love them and, it one is religious, to God as well. A human like is always good and potentially good in several

parts of itself. But the preciousness of life is not the only reason why it should be protected. Human beings are also vulnerable.

Mercy

This deep reasoning about the preciousness and vulnerability of every human life is the driving force behind the civilian ethic. In certain wars, it is the easiest and sometimes the most powerful way of arguing the ultimate value behind the civilian idea in war as an urgent and desperately needed boundary to killing. In its purest sense, it is a value that recognizes the rights of us all to live as the imperfect, conditioned and contingent beings that we are, never truly in charge of all aspect of one life and identity, never only just an enemy and always extremely valuable as human beings. As a right, it naturally demands a corresponding duty. This duty is mercy, which it the primary practical virtue required in pro-civilian behaviour.

A far fight

If the civilian idea has a deep moral reasoning about the preciousness of human life, it also argues strongly for a sense of natural justice and honourable conduct. At one level, compassionate war and the civilian ethic are about being fair and reasonable in the exercise of violence and power. The civilian ethic argues that it is simply unfair and unjust to attack and harm people who cannot defend themselves or harm you back. To do so is an abuse of power which wrongs the victims and marks out the abusers as immoral and dishonourable. In many cultures, attacks on unarmed men, women and children are felt to be cowardly and unworthy of a warrior.

Innocence

It is often easy in the impoverishment and devastation of war clearly to identify large groups of “enemy” people who simply cannot harm you, would not harm you and are not harming you. These people are indeed innocent. As Geoffery Best puts it, there is always an unambiguous group of people in war who are “entirely and indelibly innocent those incapable of hostile or resistant activity, unfortunates finding themselves in areas of armed conflict without their knowledge and against their will, unrecognizable as enemies except through the distorting lenses of barbarous and fanaticized mentalities^[1]. Such people share an innocent civilian identity whose harmlessness, vulnerability and disinterest require protection.

Civilian obligations

The moral argument of civilian duties is clearly stated by Francois Bugnion, one of the ICRC’s most respected legal commentators on the Geneva Conventions:

“Is the attacker alone obliged to respect the principle of immunity of the civilian population? Definitely not. It goes without saying that a belligerent cannot continue to claim immunity from attack for its civilian population while using them to shield military objectives^[2]”.

Those who covertly militarize civilian status in this way are responsible for a breach of trust. In the old language of the laws of war, they are guilty of perfidy. As such they must take an appropriate part of the responsibility for any subsequent

civilian suffering that follows from their abuse of civilian status. In the recent war between Israel and Hizbullah in Lebanon Shia Civilians, whose loved ones were killed, whose homes were destroyed by bombardment or fighting and who were forced to flee, may have to hold the Hizbullah strategy of embedding their forces within the civilian population as a major cause of their suffering. The proportionality of Israeli response must be judged objectively against the threat it faced from this mixed setting. However, if Hizbullah deliberately compromised the civilian status of many people in Southern Lebanon, then it co-generated the suffering that befell them.

The protection of civilian wounded and sick and civilian medical personnel

The Principle that the wounded and sick shall be immune from attack is laid down in Article 16, paragraph I, of the Fourth Geneva Convention: ‘The Wounded and Sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect’. This provision, which applies to the entire civilian population of all parties to conflict, is supplemented by Article 10 of protocol I:

All the wounded, sick and shipwrecked, to whichever party they belong, shall be respected and protected. In all circumstances they shall be treated humanely and shall receive, to the fullest extent practicable and with least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones.

Article 7 of protocol II supplements this provision as follows:

All the wounded, sick and shipwrecked, whether or not they have taken part in the armed conflict, shall be respected and protected.

In all circumstances they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their among them founded on any grounds other than medical ones. Article 20 of the Fourth Geneva Convention protects the staff of civilian, hospitals but only regular hospital staff. Under the Geneva conventions, civilian doctors and other medical personnel who are not regularly engaged in the running of a hospital are protected only by the general principle of civilian immunity from the effects of hostilities, and by Article 16, paragraph 2, of the Fourth Convention, which states:

As far as military considerations allow, each party to the conflict shall facilitate the steps taken to search for the killed and wounded, to assist the shipwrecked and other persons exposed to grave danger, to protect them against pillage and ill-treatment.

The principle of neutrality of medical care protects civilian medical personnel in the same way and to the same extent as medical personnel of the armed forces.

Lastly, civilian medical transports by land, sea and air are protected by Articles 21 and 22 of the Fourth Convention and Articles 21 to 31 of Protocol I. In internal conflicts that protection followed indirectly from Article 3 common to all four Geneva Conventions; it is specifically, laid down by Article 11 of protocol II^[3].

The rules protecting civilian wounded and sick and civilian

medical personnel and installations are thus closely aligned with those protecting their military counterparts^[4]. They do not mention the ICRC, for the good reason that the responsibility for protecting and caring for civilian wounded and sick lies with the medical services of the parties to the conflict and to a lesser extent the National Red Cross and Red Crescent Societies, and it is they who are covered by the immunities the Geneva conventions provide for that purpose.

As in the case of wounded and sick members of the armed forces, the International Committee's work for civilian wounded and sick and civilian medical personnel and installations will therefore be based on its right of humanitarian initiative. That work will now be reviewed.

In the civil war of Cambodia (1970-5), medical teams from the Danish, Norwegian, Swedish and Belgian Red Cross Societies posted in the towns of Kompong Thom, Kompong Cham and Svay Rieng gave similar protection to the hospital there.

With the consent of the Khmer authorities, these hospitals were declared to be 'neutral zones'. The medical teams were made responsible for seeing that the rules governing neutral status were strictly observed and that no weapons were taken into the hospital premises, which were duly marked with the red cross emblems; the adverse party was notified that the hospitals had been given neutral status.

In practice however, this initiative turned out to have serious disadvantages for the fact that not all hospitals in Cambodia were declared 'neutral zones' could be taken to imply that those which had not were being used for non-medical purposes, and were therefore legitimate military objectives. So the ICRC decided to give up these arrangements, while in any case went far beyond its responsibilities under the Geneva Conventions^[5].

As a final but unforgettable example, in the civil war that tore Lebanon apart 1975 to 1990 the ICRC delegation often saw to the protection, and in some instances the day-to-day running, Sidon, Tyre and elsewhere. That these hospitals were able to carry on despite the violence and duration of the hostilities was largely due to the selfless dedication of ICRC delegates and of medical teams seconded to the ICRC by several National Red Cross Societies^[6].

The protection of civil defence personnel and installations

The fearsome threat of modern warfare induced governments to set up civil defence services to enable the civilian population to survive natural disasters and armed conflict. Although they proved invaluable in the second world war, especially in Great Britain and Germany, the Diplomatic Conference of 1949 gave them scant recognition. Thus Article 63, paragraph 2 of the Fourth Geneva Convention protects only civil defence services operating in occupied territory, them only against arbitrary action by the occupying power. The Geneva Conventions do not grant them any special protection from the dangers of war.

Yet in fire-fighting, rescuing the injured from the debris of collapsed buildings and giving them first-aid, distributing emergency relief to a civilian population terrified by bombing and evaluating endangered civilians when fighting draws near, civil defence workers run much the same risks as medical

personnel, and therefore more right to the same kind of protection.

Several National Societies whose volunteers would be expected to work alongside the civil defence services in times of war were alarmed by this lack of protection. The International Committee, no less alarmed, consulted several commissions of experts on the subject and submitted two reports to the Twentieth and Twenty-first International Conference of the Red Cross, recommending that civil defence personnel be given a special status^[7]. Both conferences recognized the need to strengthen international legal protection for civil defence services, and requested the ICRC to continue its work in that field^[8].

Truces and evaluations

Because of more advanced weaponry and more street fighting there are now many more civilian casualties than in previous wars. All too often civilian wounded cannot be rescued because they are lying between the firing lines or in combat zones. The plight of women, children and the elderly taking cover wherever they can is just as desperate.

Help must be given to them, provision for it is made by Article 16, paragraph 2, of the Fourth Geneva Convention:

As far as military considerations allow, each party to the conflict shall facilitate the steps taken to search for the killed and wounded, to assist the shipwrecked and other persons exposed to grave danger, and to protect them against pillage and ill-treatment.

As in the case of wounded and sick military personnel, the ICRC will try to facilitate agreement on a suspension of hostilities. Delegates may also assist in making out the cease-fire area, and may be asked to supervise evacuations so that neither adversary can exploit them to its own military advantage^[9].

The ICRC has considerable experience in this field. As a humanitarian institution it cannot make any distinction between civilian and military victims of hostilities, and most ICRC assisted evaluations have therefore been concerned with both civilian and military wounded and sick in the course for instance:

- The numerous operations during the Palestine Conflict (1948);
- The Bizerta affair (1961);
- The ICRC intervention in the Dominican Republic (1965);
- The events in Kisangani (1967);
- The civil war in Jordan (1970);
- The civil war in Nicaragua (1978-9)
- The civil war in Chad (1979-80)

These operations have already been described above, so there is no need to dwell on them again there.

The evaluation of civilians from a besieged position raises legal problems of its own and must therefore be considered separately^[10].

It has always been accepted that a commander besieging a fortified position is under no obligation to allow the wounded and sick, and the women, children and old people to leave it^[11]. There have indeed been cases in which the besieger has taken pity on non-combatants and allowed them to leave and

cross his lines, but in many more cases this measure of elementary was refused all too often, civilians trying to flee a besieged place have been forced back into it^[12].

Safety zones

From time immemorial efforts have been made to circumscribe the horrors of war by barring acts of violence from certain places. The Greek city states recognized the great Pan-Hellenic Sanctuaries as sacred and inviolable. No act of violence might be committed there, they were places of refuge for the civilian population, fugitives and defeated armies^[13].

In medieval Europe the Church had always insisted on the right of asylum in monasteries, Churches and Chapels, where the local population could find temporary refuge and no one could be removed by force^[14]. Similar rules, usually of religious inspiration, are recorded in most civilizations.

The institution of Sanctuary disappeared from the modern law of war as shaped by the conflicts of the seventeenth and eighteenth centuries. There is no trace of it in the draft convention prepared by the Brussels Conference of 1874 or in the Hague Regulations of 1899 and 1907. This is not surprising. Since the general principle of non-combatant immunity from the effects of hostilities prohibited any attack on the civilian populations or civilian objects, there was no longer any need for particular places to have special immunity. All undefended localities had to be spared from attack; places of refuge were therefore considered unnecessary. Interest in such places was revived, however, as a result of the first world war. Not only had one very idea of a non-defended locality been undermined; above all, air warfare had proved to be a grave danger for non-combatants in general, both at the front and well behind the lines.

Between the two world wars, several draft conventions for the establishment of hospital or safety zones were prepared under the auspices of private associations or the International Committee. In general they proposed fairly permanent places of refuge, preferably far from the front, in which certain categories of non-combatants could find shelter. These places were to be strictly supervised and guaranteed special protection by agreements between the belligerents. However, these drafts did not lead to the conclusion of hard and fast conventions^[15].

The ICRC's various approaches to the belligerents during the second world war, calling for the establishment of safety zones, likewise had no effect^[16]. Many observers would have concluded that such proposals were bound to fail and should be abandoned, but for three noteworthy precedents.

Article 14 of the Fourth Geneva Convention is supplemented by a draft agreement on hospital and safety zones and localities^[17], on the lines of Article 23 and Annexure I of the First Convention (described above in relation to the protection of wounded and sick members of armed forces)^[18]. The only major difference relates to marking: whereas provision is made for hospital zones and localities reserved solely for military and civilian wounded or sick to be indicated by the red cross or red, crescent emblem on a white ground^[19], it is recommended that hospital and safety zones be marked by oblique red bands on a white ground, placed on the buildings and outer precincts^[20].

Conclusion and Suggestions

'When horses fight, it's the grass that suffers', says a French proverb, and when armies clash, the civilian population is the first to suffer from the violence unleashed. Industrial development, more powerful armaments and changing methods of warfare are claiming our ever greater proportion of civilian victims. The International Committee deplores this trend; it cannot stop it. It can, however, do its best to see that peaceful civilian populations suffer as little as possible. This it can do in two ways: by reminding the belligerents of their obligation to respect the general principle that the civilian population must not be harmed, and by lending a helping hand in all kinds of limited operations that add up to improved conditions for civilian victims of war.

Both ways are necessary for the ICRC's work to succeed. Yet two pitfalls must be avoided: abstract moralizing for which it would soon be called starry-eyed and impractical, and short sighted activism. The ICRC's declarations of principle work. Conversely, it is those principles that ensure, to a large extent, the effectiveness of ICRC operations.

The very nature of war narrowly and inexorably restricts the International Committee's ability to act, but within the limits thus imposed the opportunities for action are real. Events confirm as much, even though the committee has not entirely overcome the theoretical difficulties of protecting the civilian population against the effects of hostilities. The time has come for the International Committee to realize to the full its responsibilities towards a peaceful population and the many ways in which it can come to their aid.

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