



## Humanitarian legal protection of the Ukraine civilians in the Ukraine-Russia conflict

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### Abstract

The Geneva Conventions of 1949 in the IV Convention regulates the protection of civilians in countries of conflict as a guideline for protecting the civilian population during war. Humanitarian Law, also known as the Law of War or the Law of Armed Disputes, contains the main principles, namely the principle of military necessity, the principle of humanity, and the principle of chivalry. These three principles always underlie the rules contained in humanitarian law. The results obtained in this study are that humanitarian law aims to provide protection and assistance to those who suffer or who are victims of war, both those who actively participate in hostilities (combatants) and those who do not participate in hostilities or the civilian population.

**Keywords:** Protection; civilian population; humanitarian law

### Introduction

The protection of civilians in conflict countries is regulated by the Geneva Convention IV of 1949, which is a guideline for protecting civilians during war. As stated in Article 4 of the 1949 Geneva Convention IV:

"Persons protected by the Convention are those who, in an armed conflict or occupation are, at any given time and by any means, in the hands of a Party to the conflict or an occupying power of which they are not nationals."

The conflict of Russia-Ukraine repeated itself in early February 2022 when Russia showed strength on the Ukrainian border, specifically in Belarus. Russia's strength, in this case, the Russian army sent in large numbers, could be used as a force to invade Ukraine, which could lead to an escalation of tensions in relations between Russia and Ukraine.

According to a report by the Office of the High Commissioner for Human Rights (OHCHR), since the start of the war in February 2022 to 26 December 2022, the number of Ukrainians who have become victims has reached 17,831 people. The death toll was 6,884 people, including 2,719 adult men, 1,832 adult women, and 1,904 adults of unknown gender. Apart from that, some children died, consisting of 216 boys, 175 girls, and 38 children whose gender was unknown. Meanwhile, the number of injured victims was 10,947 people.

Theories regarding international disputes include disputes between countries and countries, countries and individuals, countries and foreign companies, and disputes between countries and state entities that are not states. In theory, international disputes can always be resolved in international courts, no matter how difficult the dispute is; even if there is no resolution, international courts seem capable of complying with the principles of compliance and feasibility (*ex aequo et bono*). Armed conflict includes international and non-international armed conflicts (internal conflicts). The result of armed conflict is the emergence of many victims, both combatants and civilians, with the occurrence of armed conflict being regulated by several Conventions, such as the Hague Convention of 1907, the Geneva Convention of 1949, and Additional Protocols I and

II of 1977. The purpose of the provisions is to protect victims of armed conflict and to avoid acts of violence that have bad consequences, especially for people who are already helpless. Parties involved in an armed conflict must protect enemy troops and civilians who fall into their hands from various forms of violence so that they are not persecuted, tortured, raped and killed (Adwani, 2012) <sup>[1]</sup>.

Humanitarian Law, also known as the Law of War or the Law of Armed Disputes, contains basic principles, namely the principle of military necessity, humanity, and chivalry. These three principles always underlie the rules contained in humanitarian law. An expert named Kunz said, "Laws of war, to be accepted and applied in practice, must strike a balance between, on the other hand, military interest." This means that humanitarian law regulates war itself. Still, its regulation cannot only accommodate the military interests of the parties in the conflict but must also consider the other two principles. The rules of the law of war do not only consider the humanitarian aspects of war without paying attention to aspects of military operations. Without a balance of these three principles, it is impossible for rules regarding the laws of war to be formed.

The focus of this research has never been discussed in previous studies; several studies on the protection of civilians in humanitarian law follow the sequence of academic years, namely: Study by Wahyu Adibta in 2023 "Protection of Civilians in Areas of Russian-Ukrainian Armed Conflict in 2022 under the Geneva Convention IV" is essentially about humanitarian law aimed at providing protection and assistance to those who suffer or are victims of war, as well as those who actively participate in hostilities (combatants) or do not participate in hostilities, or the civilian population. Apart from that, still in the same context, the research of Rachel Cherensya Manitik, Natalia Lengkong and Prisilia Pande-Irooth is basically related to "Protection of civilians in international armed conflicts according to international humanitarian law". The protection of civilians in international armed conflict is regulated by the Geneva Convention for the Protection of Military Casualties of 1949, defined in the Fourth Geneva Convention for the Protection of Civilians in Time of War.

The problem contained in this discussion is that the protection of civilian populations resulting from armed conflict is regulated by international humanitarian law. However, as development progresses, protection of the civilian population as a result of domestic armed conflict can also be carried out in other ways, for example, by relocating the population to areas that are not used as conflict areas but are still within the territory of conflict countries for internally displaced persons (internally displaced persons), relocating residents to safe areas of other countries (refugees/international refugees) or resettling residents (Emigrants). The war that took place between Russia and Ukraine, not only members of the armed forces but also civilians. As weak and suffering parties, civilians easily become victims of violence due to false accusations. The protection of civilians regulated by Geneva Convention IV is not the same as the "protected persons" referred to in Geneva Conventions I, II, and III, whose protection is aimed at combatants or people involved in hostilities, while the protection of civilians is aimed at persons who do not take part in hostilities (Geneva Convention IV 1949, Article 27) (Isfarin, *Perlindungan Hukum Tawanan Perang di Penjara Abu Ghraib Ditinjau Dari Konvensi Genewa III Tahun 1949*, 2009) with a more complete structure than the Hague Convention. This study aims to analyze the provisions of the Fourth Geneva Convention for the Protection of Civilians in Areas of Armed Conflict.

### Research Methods

The approach method is a way to approach the research object, related to how to treat the subject matter. This aims to find answers to the research problems. So, the approach method used in this research is a legal research method that seeks to assess analyze documents/empirical data, and all primary data sources and empirical data are compared and then refined with an empirical juridical approach (Syamsudin, 2007) <sup>[14]</sup>. The research specifications used in this research are analytical descriptive, describing the applicable laws and regulations associated with legal theories and implementing positive law regarding the above issues. Descriptive research aims to accurately describe the characteristics of an individual, situation, symptom, or certain group, to determine the spread of a symptom, or to determine whether there is a relationship between a symptom. In other words, to determine whether there is a relationship between a symptom and other symptoms in society (Asikin, 2004).

The type of data used in legal writing is secondary data, namely data obtained from official documents, books related to research objects, research results in the form of reports, theses, dissertations, and statutory regulations (Ali, 2009) <sup>[3]</sup>. The technique for collecting legal materials used in this research is a literature study, namely by reading and conducting searches to find legal materials relevant to the legal problems faced. The steps include collecting primary and secondary legal materials based on the discussed topic, namely by identifying regulations and conventions relevant to the research topic from legal books that support concepts appropriate to the research topic. The technique for processing legal materials is that they are processed systematically, namely by selecting existing legal materials, classifying legal materials according to problems, and compiling them systematically.

Qualitative analysis was used to analyze and process the collected data. Qualitative analysis mainly uses library materials as a source of research data. The data has been analyzed qualitatively; in this case, the relationship between theories obtained from the literature study will be analyzed and studied, then systematized into data analysis and prepared in legal writing. Concluding is carried out using a deductive method, namely by starting with general matters and then drawing specific conclusions according to the problems discussed in this research.

## Results and Discussion

### 1. Humanitarian Legal Protection of the Ukrainian Civilian Population in the Ukrainian and Russian Conflict

Protecting civilians from armed conflict is basically regulated by international humanitarian law. However, in its development, the protection of civilians who are victims of armed conflict in their country can be done in different ways, for example, by moving residents to areas that were not created because of the conflict but remain in that area (internally displaced persons / internal refugees), moving residents to safe areas of other countries (refugees/international refugees), or carrying out population movements (Emigrants).

The existence of this form of protection is, of course, related to one of the principles of international humanitarian law, namely the principle of distinction. This principle emphasizes that a country's population participating in an armed conflict or war is divided into combatants and civilians (civilians). The background to the emergence of this principle is to determine whether you can and cannot actively participate in armed conflict or war, to determine what can be attacked and what cannot. Each of these groups has different rights and obligations and different consequences in relation to the enemy. On the other hand, they have the same right to be treated humanely. Therefore, in an armed conflict or war situation, one must choose which group he joins; one cannot join both groups at once.

The IV Geneva Convention is a further development of the 1864 Geneva Convention. The 1949 Geneva Convention consists of four conventions. As mentioned above, the protection of the civilian population is primarily regulated in Convention IV. Convention IV, which regulates the protection of civilians, is divided into general protection and special protection. General protection means that the protection provided to civilians must not be carried out in a discriminatory manner. Civilians are people who do not actively participate in combat. They have the right to personal respect, family rights, property rights, and their religion in all circumstances. No action will be taken against them under Articles 27 to 34.

Humanitarian Law has regulated the protection of civilians in Geneva Law; civilians need positive and neutral protection in accordance with s 4 of Convention IV of the 1949 Geneva Convention, which reads:

"Persons protected by the Convention are those who, in an armed conflict or occupation are, at any given time and by any means, in the hands of a Party to the conflict or an occupying power of which they are not nationals. Civilians can fall under the power of an occupying country and for this reason protection is needed."

Applying international humanitarian law requires that combatants make appropriate distinctions between firing

targets, which may only be used by enemy combatants. If they no longer participate due to injury or illness, they should be protected in accordance with the principle of separation, and civilians should not be targeted. If the actions of the conflicting parties or combatants are based on the principles of decency and humanitarian principles, which are polite, honest, and correct actions supported by humane attitudes or actions, then the victimization of protected and innocent people can be avoided. (Islami, 2011) <sup>[11]</sup>.

When an armed conflict occurs in the territory of the conflicting country, there are citizens of the enemy party. Countries in whose territory some people are nationals of enemy countries still must provide respect or protection. They even have to be permitted to leave the country. They can be transferred directly or through a third party to their country of origin. Meanwhile, civilians living in occupied territories must have their human rights respected, such as not being forced to work for the occupying power and not being forced to carry out military activities. The occupying power must be responsible for the maintenance of public facilities. The occupying power must also consider children's welfare, food, and health needs. Allowing assistance to come from abroad when the occupying power is unable to provide such guarantees.

Geneva Convention IV is a convention that regulates the status of civilians in conflict parties, both in combat zones and in occupied territories, as well as in neutral countries. Every party to a conflict, either directly through their own country or through a neutral country, is obliged to protect parties not actively involved in the war, including injured or sick people, combatants and non-combatants and civilians who are not involved in war conflicts. Combatants are groups of the population who are armed forces who actively take part in fighting or hostilities (hospitality). At the same time, non-combatants are groups of residents who are armed forces who do not take part in fighting or hostilities. Civilians are those who do not actively participate in hostilities or battles. They must be protected and must not be targeted for attack. (Haryomataram, 1994) <sup>[7]</sup> The civilian population (Civilians) is a group of people who do not take part in hostilities. (Arlina Permanasari, 1999) <sup>[13]</sup>

Based on Geneva Convention IV, general protection granted to civilians must not be carried out in a discriminatory manner. In all circumstances, civilians have the right to personal respect, family rights, property, and the practice of their religious teachings. This is regulated in Articles 27-34 of Geneva Convention IV concerning the general protection of civilians, namely:

1. Carrying out physical or spiritual coercion to obtain information;
2. Committing actions that cause physical suffering;
3. Imposing collective punishment;
4. Carrying out intimidation, terrorism and robbery;
5. Carry out retaliation (reprisal); and
6. Making them hostages.
7. Committing acts that cause bodily harm or hostility to the protected person

Regarding the protection of civilians, the Geneva Conventions require the establishment of safe zones, namely areas far from battlefields, to protect civilians affected by war, such as those who are sick, pregnant women, breastfeeding women, toddlers, and the elderly. Moreover,

children also need special treatment. They are not allowed to participate in the battle. They should receive help and care appropriate to their age. Apart from that, orphans or children separated from their parents must receive protection or a guarantee of safety. Geneva Convention IV, apart from regulating the protection of civilians, also regulates the protection of foreigners living in occupied territories, residents of occupied territories, and civilian prisoners.

Additional Protocol to the 1977 Geneva Conventions of 1949, consisting of Protocol I of 1977 concerning the Protection of Victims of Armed Conflict between the Conflicting Parties. In general, protecting civilians and civilians is the prohibition of attacking them. They enjoy protection against dangers caused by military operations. Based on this principle, it can be said that:

- a. civilians must not be targeted;
- b. acts or threats of violence intended to spread terror among the population are prohibited;
- c. civilians will enjoy protection, unless they take an active part in hostilities of an international nature.

The government or state should fully implement the law to protect victims of human rights violations. To protect human rights in various situations, legal instruments are needed to guarantee legal certainty in implementing this legal protection. As in the conflict between Russia and Ukraine, the number of victims reached 17,831 people, consisting of 6,884 killed and 10,947 injured. Perpetrators of the war between Russia and Ukraine can be classified as perpetrators of violations of humanitarian law and human rights, which can be charged with crimes.

## 2. The Impact of the War Conflict between Ukraine and Russia on the Ukrainian Civilian Population

Russia's military intervention in Ukraine includes a series of armed conflicts that culminated in the occupation of various regions of Ukraine, including Crimea, which was annexed on March 18, 2014 and is said to have been carried out by soldiers without insignia. (Burnbaum, 2018) <sup>[4]</sup>. Russia's strategy is interesting to observe because by using military force for non-military operations, opponents cannot legally use military force under international law (Norberg, 2016). This makes sense because the bias of this covert operation makes it more difficult for NATO's mutual defense network to take action against Ukraine. On the other hand, there is also military mobilization involving certain elements from the Ukrainian side who are pro-Russian, considering that in Crimea, the majority of the population is ethnic Slavs who speak Russian and the fact that Sevastopol, a port city in Crimea is none other than a Russian naval base. The separatist movement in Crimea was ultimately able to occupy the regional parliament and force a referendum on secession from Ukraine, the results of which ended with the decision that the Crimean people wanted to be separated from Ukraine. Whether the referendum is free from political interference and the people of Crimea want this or not, what is certain is that up to now, the region has been administratively controlled by the Russian federation.

Russia's invasion of Ukraine occurred again on Thursday, February 2, 2022. On that day, Russian President Vladimir Putin announced for the first time an attack on Ukraine. The first attacks began in several cities in Ukraine, including Kyiv, Odesa, Kharkiv, and Mariupol. The war between

Russia and Ukraine damaged and destroyed homes, schools, water supplies, and hospitals. Children were separated from their families, and hundreds of thousands of people were left without clean water, food, and electricity. UNICEF (United Nations International Children's Emergency Fund) is at the forefront of implementing humanitarian assistance in Ukraine, providing urgent assistance to Ukrainian children and families.

According to a report by the Office of the High Commissioner for Human Rights (OHCHR), since the start of the war until December 26, 2022, the Ukrainian population who have become victims has reached 17,831 people. The number of victims who died reached 6,884 people, consisting of 2,719 adult men, 1,832 adult women, and 1,904 adults whose gender had not been identified. Apart from that, there were also fatalities among children, consisting of 216 boys, 175 girls, and 38 children whose gender was unknown. Meanwhile, the number of injured reached 10,947.

The war between Russia and Ukraine affects not only members of the armed forces but also civilians/population. The civilian population, as the weak and suffering party, is very easily the target of violence with various trumped-up accusations. The protection of the civilian population regulated in Geneva Convention IV is not identical to the "protected persons" defined in Geneva Conventions I, II, and III, whose protection is aimed at combatants or those involved in hostilities. Civilian population means people who do not take part in hostilities (Article 27 of the 1949 Geneva Convention IV), the provisions of which are more comprehensive than the Hague Convention.

The treatment of people in armed conflict is driven solely by humanitarian values because the use of violence has real consequences in international relations and is dangerous for countries and populations (Permata, 2003). In accordance with the principle of protection that parties involved in combat must protect every victim of war to be treated proportionally between military interests and humanitarian and chivalrous interests, free from acts of violence, as stipulated in the 1948 United Nations Universal Declaration of Human Rights and Law Number 39 of 1999 concerning Human Rights. Many combatants who have been victims, namely injured and detained, have experienced violence or been tortured. Such actions are completely contrary to humanitarian law and human rights law (Adwani, *Perlindungan Kombatan dan Penduduk Sipil Dalam Konflik Bersenjata Non Internasional*, 2008) <sup>[2]</sup>. Human rights are a priori and a gift from the Almighty Creator, Almighty God, since humans existed or were born. Human rights should be protected, including combatants in a conflict.

Humanitarian law arrangements guarantee the rights of people in conflict areas and limit the power of warring parties so as not to carry out actions beyond humanitarian limits. With this arrangement, the parties do not commit cruelty or violence because, in armed conflict, various actions can occur to defeat the opponent. In conflict, the main goal usually shifts to destroying the opponent. Often, in conflicts between individuals, the main cause of the conflict is because they feel insulted by the opposing party. For this reason, these people must lower the dignity or destroy the opposing party to restore the dignity and standing that has been insulted (Gaussyah, 2005) <sup>[9]</sup>. In general, the opposing party tries to destroy the enemy, but

must follow the provisions of humanitarian law regarding who can be destroyed but not against innocent civilians.

The provisions of Article 3 of the common articles, as a minimum provision, have placed an obligation to protect combatants who are no longer fighting. Thus, it can be understood that people involved in the conflict itself are protected by Humanitarian Law, especially civilians who are not involved in the conflict, must be protected optimally, but in reality most victims are civilians.

The Distinction Principle is important in humanitarian law, a principle that differentiates or divides the population of a country at war or involved in an armed conflict into two groups, namely Combatants and Civilians. Combatants are groups of the population who actively take part in hostilities, while civilians are groups of the population who do not take part in hostilities. The need for such a distinction is to identify those who may participate in hostilities so that they may be made targets or objects of violence and those who may not participate in hostilities so that they may not be objects of violence. This is very important to emphasize because war only applies to members of the armed forces of hostile countries. Meanwhile, civilians who do not take part in hostilities must be protected from these actions.

Protection of civilians in armed conflict has long been a concern of countries, whether involved or not in war. Even in the customs of war, the principle of the law of war is found, which prohibits attacks on unarmed civilians as people who are "outside of war". Civilians need more positive protection, namely to prevent them from direct attack. Before the birth of the 1949 Geneva Convention in the IVth Convention, the protection of civilians had indeed been mentioned in the Hague Convention. However, it was still incomplete and only regulated the protection of civilians in occupied territories. So, it can be said that the regulation on the protection of civilians in Geneva Convention IV is a new arrangement (Yustitiantingtyas, 2016) <sup>[16]</sup>.

The civilian population needs more positive protection and neutralization from mere acts of hostility to avoid direct attacks from the conflicting parties, in this case, Russia and Ukraine. Therefore, civilians are strictly differentiated from parties directly involved in the conflict, namely combatants from the conflicting parties, and civilians must be neutral or not participate in armed conflicts. Combatants have the right to actively take part in hostilities, and if they fall into enemy hands, they have the right to be treated as prisoners of war. Civilians must not actively take part in hostilities and, therefore have the right to receive protection (Haryomataram G, 2005) <sup>[10]</sup>.

The legal basis for criminal acts can be based on the Fourth Hague Convention of 1907, which states that civilians and belligerent parties will remain subject to the protection and basic principles of international law as established in the customs of civilized nations. These legal principles, such as the principle of distinction, the principle of humanity, and the principle of chivalry, have become the basis for every country in further legal regulation and for actions or actions carried out by state officials or combatants involved in armed conflict. In reality, the principles and rules that have been established are not heeded by combatants, resulting in acts of violence against people who should be protected. The government must take firm action against combatants who are guilty in this conflict.

International Humanitarian Law also regulates the provision of protection to civilians based on certain size classifications in the event of armed conflict as regulated in the 1949 Geneva Convention concerning the protection of civilians in armed conflict.

As stated in the 1949 Geneva Convention, general protection provided to civilians must not be carried out in a discriminatory manner. As stated in articles 27 to 34 of Convention IV, they (civilians) may not carry out the following actions:

1. Carrying out physical or spiritual coercion to obtain information;
2. Committing actions that cause physical suffering;
3. Imposing collective punishment;
4. Carrying out intimidation, terrorism and robbery;
5. Carry out retaliation (reprisal); and
6. Making them hostages.
7. Committing acts that cause bodily harm or hostility to the protected person

### Conclusion and Suggestion

Based on the discussion described previously, several conclusions can be drawn to answer the problems raised in this article. First conclusion, protection of civilian populations resulting from armed conflict is basically regulated by international humanitarian law. However, in its development, the protection of civilians who are victims of armed conflict in their country can be carried out in different ways, for example by moving the population to areas that were not created because of the conflict, but remain in that area (internally displaced persons / internal refugees), moving residents to safe areas of other countries (refugees/international refugees), or carrying out population movements (Emigrants). Another conclusion is that the implementation of Humanitarian Law requires combatants to strictly distinguish the targets of their fire which may only be against enemy combatants who are fighting, and if they are no longer participating due to wounds and illness, then they must be protected as mandated by the principle of differentiation, as well as civilians who are not involved, may be the target of violence. If the actions of the parties to the conflict or the combatants are based on chivalrous principles and humanitarian principles which require acting chivalrously, honestly and correctly, supported by humane attitudes or actions, then victims of protected and innocent people can be avoided.

The first suggestion that can be made regarding the above conclusion is that the best way to protect civilians in the armed conflict between Russia and Ukraine is for the UN to make peace between the parties immediately make peace because civilians feel uncomfortable living in their own country, especially in country of Ukraine. The second suggestion is that the protection of civilians in international armed conflicts is regulated by the Fourth Geneva Convention for the Protection of Civilians in Time of War. Therefore, it is hoped that countries that have ratified the 1949 Geneva Convention for the Protection of War Victims will pay attention to, comply with and implement the four Geneva Conventions of 12 August 1949.

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