



Legal status of the civilian population in the situation of war: The way forward

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Abstract

War was forbidden. The Charter of the United Nations states clearly that the threat or use of force against other States is unlawful. Since 1945, war has no longer been an acceptable way to settle differences between States. However, this fact was no so clear; The Charter did not completely out-lawed the use of force. Indeed, States retain the right to defend themselves, individually or collectively, against attacks on their independence or their territory, in response to a (legal or illegal) use of force. The Charter's prohibition of the use of force did not encompass internal armed conflicts (or civil wars). Chapter VII of the Charter allows member States the use of force in collective action to maintain or restore international peace and security. Wars does in fact occur, as we all know, despite their being outlawed by the Charter of the United Nations. Armed conflicts are a sad reality in our contemporary world. The objective of international humanitarian law was to limit the suffering caused by warfare and to alleviate its effects. Its rules were the result of a delicate balance between the exigencies of warfare ("military necessity") on the one hand and the laws of humanity on the other. Humanitarian law was a sensitive matter and it suffered no Tampering. Civilians fell within the category of protected persons during any of the armed conflict and as such are entitled to the protection available under the relevant laws which provide for such protections.

Keywords: civilian, population, war

Introduction

Increasingly, civilians make up the overwhelming majority of the victims of armed conflict, even though International Humanitarian Law (IHL) stipulates that attacks should only be directed at combatants and military objectives and that civilians and civilian objects should be respected. However, even if IHL is scrupulously respected, civilians can become victims of armed conflicts, as attacks and military operations directed at military objectives are not prohibited merely because they may also affect civilians. The protection of the civilian population is of paramount importance in any armed conflicts.

1. Who is a civilian?

The additional protocol II provides for the definition of a civilian thus;

‘A civilian is any person who does not belong to one of the categories of persons referred to in article 4 A (1) (2) (3) and (6) of the third convention and in article 43 of this protocol ^[1]. This provision does not expressly define who a civilian person is and so recourse must be had to the article 4 A (1) (2) (3) and (6) of GCII and article APIII mentioned above.

Civilians under international humanitarian law are "persons who are not members of the armed forces" and are not "combatants if they [do not] carry arms openly and respect the laws and customs of war ^[2]". It is slightly different from a non-combatant, as some non-combatants are not civilians (for example, military chaplains attached to the belligerent party or military personnel serving with a neutral country). Civilians in the territories of a party to an armed conflict are entitled to certain privileges under the customary laws of war and international treaties such as the Fourth Geneva Convention. The privileges that they enjoy under international law depends on whether the conflict is an internal one (a civil war) or an international one. In some nations, uniformed members of civilian police or fire departments colloquially refer to members of the public as civilians ^[3].

The definition of civilians as persons who are not members of the armed forces is set forth in Article 50 of Additional Protocol I, to which no reservations have been made ^[4]. It is also contained in numerous military manuals. It is reflected in reported practice. This practice includes that of States not, or not at the time, party to Additional Protocol I. In its judgment in the *Blaškić case* in 2000, the International Criminal Tribunal for the Former Yugoslavia defined civilians as "persons who are not, or no longer, members of the armed forces". No official contrary practice was found. Some practice adds the condition that civilians are persons who do not participate in hostilities. This additional requirement merely reinforces the rule that a civilian who participates directly in hostilities loses protection against attack. However, such a civilian does not thereby become a

combatant entitled to prisoner-of-war status and, upon capture, may be tried under national law for the mere participation in the conflict, subject to fair trial guarantees ^[5].

2. Definition of War / Armed Conflicts

War is an intense armed between states, government, society or paramilitary groups such as mercenaries, insecurities and militias. It is generally characterized by extreme violence, aggression, destruction and mortality, using regular or irregular military forces. Warfare refers to the common activities and characteristics of types of war, or of wars in result in civilian or other non-combatant suffering and casualties. While some war studies scholars consider war a universal and ancestral aspect of human nature others argue it is a result of specific socio-cultural-economic or ecological circumstances.

While Merriam-Webster Dictionary describes war as “a state of usually open and declared armed hostile conflict between states or nations.” Stanford Encyclopedia of Philosophy states ^[6], “war should be understood as an *actual, intentional* and *widespread* armed conflict between political communities”. Carl von Clausewitz defines war as “an act of force to compel our enemy to do our will ^[7].”

Most would agree that these are understandable and accurate definitions in the general context of what the average person thinks when they hear the word war. It is generally characterized by extreme violence, aggression, destruction and morality using regular or irregular military forces. There are potential reasons why wars occur which include competition over territory and resources, historical rivals and grievances and in self - defense against an aggressor or a perceived potential aggressor. The widespread trauma caused by these atrocities and suffering of the civilian population is another legacy of these conflicts, the following creates extensive emotional and psychological stress ^[8]. Present-day internal wars generally take a larger toll on civilians than state wars. This is due to the increasing trend where combatants have made targeting civilians a strategic objective. A state conflict is an armed conflict that occurs with the use of armed force between two parties, of which one is the government of a state. "The three problems posed by intra-state conflict are the willingness of UN members, particularly the strongest member, to intervene; the structural ability of the UN to respond; and whether the traditional principles of peacekeeping should be applied to intra-state conflict". Effects of war also include mass destruction of cities and have long lasting effects on a country's economy. Armed conflict has important indirect negative consequences on infrastructure, public health provision, and social order. These indirect consequences are often overlooked and unappreciated. Civilians in war also need to be respected by the belligerent opposing the party in whose hands they are, who could, for example, bomb their towns, attack them on the battlefield, or hinder the delivery of food supplies or family messages. These rules on the protection of the civilian population against the effects of hostilities, which are set out for the most part in Protocol I and customary law are part of the law of the conduct of hostilities and benefit all civilians finding themselves on the territory of parties to an international armed conflict ^[9].

3. Civilian protection under IHL

Civilians in war need to be respected by those into whose hands they have fallen, those who could, for example, arrest, ill-treat or harass them, confiscate their property, or deprive them of food or medical assistance.

Under IHL, some of those protections are prescribed for all civilians ^[10], but most apply only to “protected civilians ^[11]”, i.e. basically those who are in enemy hands. The rules on the treatment of protected civilians are subdivided into three groups: the first applies to civilians who find themselves on enemy territory, the second contains more detailed and protective rules applying to protected civilians whose territory is occupied by the enemy ^[12], while the third encompasses provisions common to the enemy’s own territory and occupied territories ^[13]. This means that no rules cover civilians who are neither (enemy civilians) on the territory of a belligerent nor on an occupied territory. “Occupied territory” is therefore to be understood as a functional concept as far as civilians in enemy hands are concerned, one that applies as soon as civilians fall into enemy hands outside the enemy’s own territory. The most detailed rules concern the treatment of civilians interned in connection with the conflict, in both the enemy’s own and occupied territories, for imperative security reasons and not in view of a trial ^[14]. This detailed regime for civilian internees is justified by the fact that such internment is an exception to the general rule that enemy civilians, unlike combatants, may not be detained. It is broadly similar to the regime provided for by Convention III for prisoners of war.

Civilians in war also need to be respected by the belligerent opposing the party in whose hands they are, who could, for example, bomb their towns, attack them on the battlefield, or hinder the delivery of food supplies or family messages. These rules on the protection of the civilian population against the effects of hostilities, which are set out for the most part in Protocol I and customary law (partly based on the 1907 Hague Regulations), are part of the law of the conduct of hostilities and benefit all civilians finding themselves on the territory of parties to an international armed conflict.

From reaching civilians because they are under the control of armed groups, they

4. Rights of the civilian population under the international humanitarian law

Prior to the evolution of international humanitarian law, once there was fighting between states, the ensuing scenario was often one where the ordinary laws of peace existing between the warring states were promptly superseded by a state of chaos, brutality and inhumane treatment between the parties to the conflict. To regulate such conduct and reduce the dehumanization of individuals (especially the civilian population), it was inevitable

that a body of law aimed at regulating activities during wars would be developed. These body of laws not only regulated the activities carried out during wars, but also sought to protect the lives and rights of the civilian population who happen to be the most affected in diverse ways as has been earlier stated, during warring times. It is with regards to the sufferings of the civilian population during wars that the international humanitarian law imposes certain obligations on parties to any armed conflict. These obligations are aimed at primarily protecting the civilian population and safeguarding their interests. Some of these obligations shall be considered here;

4.1 Relief action

It is a publicly known fact, that commercial activities do not thrive in wartime as they do in peacetime and so when the armed conflict has gotten into full gear, basic necessities like food, medical supplies and clothing become a rare commodity. Taking a look back at the Nigerian civil war, we see that the civilian population was forced to eat all sorts of creatures and plants for the lack of anything better.

When such dire circumstances arise, it is only through relief actions that the civilian population can continue to survive. Such relief actions are often provided by neutral states or international organization such as the ICRC.

The GC IV provides in Article 23 that,

“Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases ^[15]”

The obligation here is imposed on all the parties that are signatories to the Convention. They are to permit free passage to relief supplies through their respective territories. Members of the civilian population are entitled to relief supplies as of right. Article 38 GC IV guarantees this right by providing that protected persons (civilians) shall be enabled to receive individual or collective relief sent to them. One of the reasons behind this right is that it should be unheard that military tactics involve the starvation of the civilian population. Any acts intended to starve the civilian population is highly prohibited by the humanitarian law ^[16].

4.2 Humanitarian organizations

Humanitarian organizations such as the ICRC, the National Red Cross and Red Crescent Societies as well as other private relief organization have significant obligations with respect to the protection of civilians during any armed conflict. Article 9 of the GC I provide that;

“The provisions of the present convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial organization may subject to the consent of the parties to the conflict concerned, undertake for the protection of wounded and sick, medical personnel and chaplains for their relief ^[17].”

The ICRC usually takes a central role in activities for the protection of the civilian population. The ICRC operates on the basis of its seven fundamental principles: Humanity, Impartiality, Neutrality, Independence, Voluntary service, Unity and Universality. Its guiding force in the protection of the civilian population is in its first three principles of humanity, impartiality and neutrality and as such, the ICRC endeavors to prevent and alleviate human suffering wherever it may be found without discrimination on the basis of nationality, race, religious beliefs, class or political opinions. Among its numerous functions, the ICRC assists also in the restoration of family links through its Central Tracing Agency ^[18]. The ICRC also has programs in place aimed at responding to the specific needs of girls and women during any armed conflict, especially during armed conflict, especially those that have been sexually abused.

To the obligations imposed on the ICRC and other humanitarian organizations, protected persons (civilians) have a corresponding right to make application to these bodies for humanitarian assistance ^[19]. These requests must be facilitated by the ICRC in conjunction with the protecting power whether the requests are for reliefs or for some sort of intervention which only the ICRC can provide and must do all in their power to fulfill.

5. The legal status of the civilian population

The rights available to members of the civilian population as protected are guaranteed under the international humanitarian law as seen above (the fact that these rights are not only limited to theses ones mentioned above is worthy of note as the GC's provide for many of such rights). Even during an armed conflict, these rights are not to be derogated from unless circumstances make such derogation unavoidable and even then, strict conditions must be fulfilled. The rights of the civilian population are so highly placed that they themselves may not even renounce these rights. As such, the GC IV provides thus:

“Protected persons may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to the foregoing Article ^[20]. If such there be ^[21]”;

To this effect, any purported renunciation of the rights ordinarily available under the GC IV will be considered null and void. The rights are sacrosanct and even the Occupying Power cannot compel members of the civilian population to renounce their rights for fear of harm.

Members of the civilian population in an occupied territory are not to be deprived of any of the rights ordinarily accruing to them whether by agreements concluded between the Occupying Power and the authorities of the occupied territories nor by any annexation by the Occupying Power of the whole or part of the occupied territory [22]. Article 47 GC IV steps in to ensure that no such agreement is honored even where the local authorities are being pressurized by the Occupying Power. This provision is aimed at protecting the population of the protected persons from losing their rights and also to prevent a situation of annexation of territories like in 1990 where Iraq invaded and annexed Kuwait under the Saddam Hussein regime and the US being authorized by the UN Security Council condemned such actions. The humanitarian law frowns at such acts of annexation thus expressly prohibiting any acts which could lead to the annexation of territories in Article 49 para 1 GC IV that:

“Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not are prohibited, regardless of their motive”.

The civilian population in occupied territory is entitled to the full protection of the humanitarian law. Their rights are not to be easily toyed with by the Occupying Power. It is only where circumstances make it impossible that the civilian population may suffer some restrictions on their rights but even then, it must be in full compliance with the principles of the international law. Acts which are intended to oust members of the population from their place of residence are prohibited under the humanitarian law. They are not to be moved into the territory of the Occupying Power neither are civilians belonging to the Occupying Power to be settled in occupied lands [23]. The legal status of protected persons (particularly civilians) in occupied territory must be certified and guaranteed at all times during armed conflict.

6. A way forward

All parties to armed conflicts are responsible for ensuring that the civilian population is protected. Guaranteeing compliance with and promoting accountability for violations of international humanitarian and human rights law; ensuring protection through UN peacekeeping and other missions; providing humanitarian access; and delivering protection specifically to those who are most vulnerable, such as women and children during armed conflicts are essential elements of effective protection of civilians. For UN peace operations, protection of civilians includes the use of force to protect civilians under imminent threat as well as other activities such as contributing to creating the security conditions conducive to the delivery of humanitarian assistance; taking measures to ensure security in and around IDPs camps; and contributing to the provision of security required for the safe, voluntary and dignified return of internally displaced persons and refugees. Effective dialogue and interaction between humanitarian and military actors (including UN peacekeeping missions, stabilization forces and regional military arrangements) have sometimes been hampered by concerns on the part of humanitarian actors about the impact that closer association may have on their ability to operate in an independent, neutral and impartial manner and be perceived as doing so. In addition, for instance, peacekeeping missions and humanitarian organizations may undertake activities that compliment protection cluster's response in the areas, for example, of mine action, child protection, etc. Protection clusters in countries where there is a peacekeeping mission can contribute to the development of the mission's protection strategy and facilitate coordination with mission's counterparts. Thus, some degree of interaction and dialogue between these different actors is essential for improving and strengthening their respective protection response. The modality and degree of interaction between humanitarian and military actors differ according to the operational contact Field protection clusters have signaled to the Global Protection Cluster (GPC) the need for guidance to address the challenges they face in interacting with peacekeeping and military actors. In response, the GPC is currently developing a guidance note. A separate workstream has also been established for civil-military coordination for protection overcomes. Further guidance on interaction between humanitarian actors and international military actors will also be available in the forthcoming revised ICRC Professional Standards for Protection Work.

Humanitarian and protection actors can seek to influence the nature of the protection mandates that are assigned to peacekeeping missions by the Security Council. The GPC and field protection clusters participate in the inter-agency coordination mechanisms facilitated by OCHA and regularly update the UN Security Council Informal Expert Group on key protection issues in countries considered by the Council.

7. Measures to enhance protection

A. Prosecution of violations of international criminal law.

Internationally recognized standards of protection will be effectively upheld only when they are given the force of law, and when violations are regularly and reliably sanctioned. The establishment of the ad hoc tribunals for the former Yugoslavia and Rwanda, and the adoption of the Rome Statute to establish a permanent International Criminal Court are important steps in this direction. Safe havens for mass murderers and torturers are disappearing. These developments are complemented by significant advances in international criminal law through the jurisprudence of the two ad hoc tribunals and by the rapidly growing number of ratifications of the

Rome Statute. This emerging paradigm of international criminal justice confronts perpetrators of grave violations with the real possibility of prosecution for past, present and future crimes.

B. In a multi-faction conflict, such as that in the Democratic Republic of the Congo, experience has shown that, in order to gain meaningful and regular access to vulnerable populations within different combat zones, where front lines are shifting from day to day, the consent of many parties has to be obtained at the local, regional, national and international levels. [...] In most intra-State conflicts, armed groups exercise de facto control of parts of a country and the civilian population living there. Negotiating and obtaining access to those populations therefore requires the engagement of those groups.

Whereas Governments are sometimes concerned that such engagements might legitimize armed groups, these concerns must be balanced against the urgent need for humanitarian action. It is the obligation to preserve the physical integrity of each and every civilian within their jurisdiction, regardless of gender, ethnicity, religion or political conviction, that should guide Governments in exercising their sovereign responsibility. Where Governments are prevented must allow impartial actors to carry out their humanitarian task. Such a loss of control does not release Governments from their responsibility for all civilians within their jurisdiction.

Engaging armed groups in a constructive dialogue is also of vital importance for guaranteeing the security of humanitarian operations in a conflict area. Often, combatants perceive the provision of humanitarian assistance and protection to vulnerable populations as being not a neutral but rather a politically motivated act. Humanitarian agencies, although pursuing neutral objectives enshrined in international law, are frequently perceived as partisan, and therefore become targets themselves.

8. Impact of criminal justice

The fair prosecution and trial of individual suspects can help significantly to build confidence and facilitate reconciliation in post-conflict societies, by removing collective attributions of guilt. Well-publicized prosecutions can deter crimes in current and future conflicts. Establishing courts without secure and sustained funding, and without follow-up efforts to rebuild national criminal justice systems, can do a disservice to victims of large-scale violence and undermine their confidence in justice.

Conclusion

In conclusion this protection was not readily available in ancient times as not civilians and military personal were liable to be attacked, taken prisoner or killed by the adverse party under the modern international law as seen in this work, safeguards have been put in place to guarantee the protection of the civilian population during an armed conflict. The rules designed to protect the civilian population are embodied primarily in the Geneva Conventions and the law of The Hague.

Finally (and this is not a legal argument!), wars do in fact occur, as we all know, despite their being outlawed by the Charter of the United Nations. Armed conflicts are a sad reality in our contemporary world. The objective of international humanitarian law is to limit the suffering caused by warfare and to alleviate its effects. Its rules are the result of a delicate balance between the exigencies of warfare ("military necessity") on the one hand and the laws of humanity on the other. Humanitarian law is a sensitive matter and it suffers no tampering. The goals of humanitarian law are designed to restrict the power of State authorities, with a view to safeguarding the fundamental rights of the individual. Human rights treaties (supported by customary law) achieve this objective in a comprehensive way insofar as they cover almost all aspects of life. Their rules must be applied to all persons and be respected in all circumstances (although a number of rights may be suspended in time of emergency). The conclusion is inevitable: there is a need for international rules which limit the effects of war on people and property, and which protect certain particularly vulnerable groups of persons. That is the goal of international humanitarian law, with the Geneva Conventions and their Additional Protocols as its main expression and an important body of customary law as a decisive supplementary source of law.

Recommendation

It must be respected in all circumstances, for the sake of the survival of human values and, quite often, for the sheer necessity of protecting life. Each and every one of us can do something to promote greater understanding of its main goals and fundamental principles, thereby paving the way for better respect for them. Better respect for humanitarian law by all States and all parties to armed conflicts will do much to help create a more humane world. It is further recommended that the lives of the civilian population should be protected in war times and the countries of the world should put some legal mechanisms in place to assist the civilian population in war times.

References

1. Article 50 para 1 API.
2. Fleck D. The handbook of international humanitarian law, 283.
3. Wigwe int. law, 144.
4. Wikipedia.org.
5. See Rule 100.
6. Winter 2012 edition.
7. Page 1 of On War.

8. Merriam-Webster Dictionary 2nd edition.
9. Hague regulation, 1907.
10. See GC IV, Part II (Art 13-26).
11. Art. 4 of Convention IV.
12. GC IV, Art 47-78.
13. GC IV, Art 27-34.
14. GC IV, Art 79-135.
15. GC IV, Article 23.
16. Art 54 para 1 API.
17. Article 9 of the GC I.
18. See Art. 140 GC IV.
19. See Art. 30 GC IV.
20. Article 7 GCIV.
21. Article 8 GCIV.
22. Article 47 GCIV.
23. (Art. 49 para 2 and 5 GC IV respectively).