

PROTECTION OF CIVILIANS IN RUSSIAN-UKRAINE WAR: BRIDGING THE GAP BETWEEN LAW AND REALITY

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Abstract

The literature of International Humanitarian Law has proved that the aim of IHL above all is to protect civilians and victims of armed conflicts and regulate hostilities grounded on equilibrium among humanity and military necessity.

As such the Russian invasion of Ukraine has shown an absolute breach of International Humanitarian Law (IHL). The recent human watch reports have shown that around 4.800 civilians have lost their lives and approximately

6.000 civilians injured which makes a large-scale violation of basic principles of IHL. The protection of the civilian population is duty obligatory to the parties under IHL as an undisputed cornerstone.

In this paper I offer an overview and elaboration of the question of protection of civilians while adopting a “black letter” methodology by reviewing appropriate literature, this paper examines the protection of the civilian population in the Russia-Ukraine war and the obligation of the parties in effecting this protection; with the view of making recommendations in the direction of strengthening the protection of the civilian population.

This paper identifies the principles of distinction as crucial in guaranteeing human protection. In this paper I offer the account that this principle has been fragrantly violated in the Russia-Ukraine war. The paper argues that the protection of the civilian population is an obligation imposed on the parties to the Russia-Ukraine war under IHL. The paper further argues that degree to which the parties to the armed conflict respect the principles of IHL this then defines the magnitude to which the civilian population will be protected from hostilities.

Keywords: International Humanitarian Law; Russian invasion; Civilian protection; Ukraine;

Introduction

The history of mankind is the history of war, and the history of war is the history of mankind.

~ John Keegan

The International Humanitarian Law has placed some limits has placed limits to the carnage of conflict with a set of laws to protect those found on the battlefield such as the wounded and sick, prisoners of war, and especially civilians in and around the conflict. Failure in those protections puts an armed force in legal jeopardy under the violations of international humanitarian law, specifically the laws of armed conflict.

“Understanding International Humanitarian Law (IHL) and Protection of civilians” International humanitarian law is a set of rules that seek for humanitarian causes to limit the effects of armed conflict²⁷. IHL protects persons who are not participating in warfare and it

restricts the means and methods of warfare. IHL is also known as the law of war and the law of armed conflict.²⁸

In this respect, the core mission of International Humanitarian Law is the protection of individual in an armed conflict as such Halme-Tuomisaari, M. (2020, p. 120) stated: “The main purpose of IHL is to create tools and standards for governing this part of human nature and human conduct, so as to restrict harm and destruction in the inevitable case of violent outbreaks.”

As Melzer (2019, p.12) said: “While war may have been idealized in heroic tales of liberation, revolution and conquest, no one who has actually experienced the reality of armed conflict can escape being deeply shaken, tormented and destabilized- for as much as was is exclusively human, it is also inherently inhumane. It was the appalling agony and desperation of the victims of war that gave birth to International Humanitarian Law (IHL)”

In all armed conflicts the rights of the belligerent parties to choose methods of warfare is not limitless which means that the belligerent parties according to principles of IHL must identify and distinguish between civilians and military.

History has shown obviously that the realization of this premise and core maxim of IHL has not been respected and civilians have always been risked and they have been alike killed and wounded as combatants even-though they enjoy protection unless they directly participate in hostilities.

To this regard the *principle of distinction*²⁹ which is also a cornerstone of IHL seeks to protect civilians from hostilities of armed groups, the protective drive and aim of this principle is achieved if we strongly put emphasis and underlay the importance in distinguishing the categories of persons (civilians and combatants) then the latitude of the protection is clear. Therefore IHL purpose after all is to pursue two main objectives: the ensure protection of civilians and to impose constraints on particular methods of warfare. (Melzer 2019, p.80)

In this regard, according to ICRC Database, Treaties, States Parties and Commentaries, Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949. Article 4: “*Civilian*” means, in an international armed conflict, any person who does not belong to the armed forces and does not take part in a “*levée en masse*”.³⁰ “*Civilian*” means, in a non-

²⁷Armed conflict(s) = International and/or non-international armed conflict(s), as defined in the Geneva Conventions of 12 August 1949 and their two Additional Protocols of 1977.

²⁸Summary of the Geneva Conventions of 1949 and Their Additional Protocols.(2011, April). redcross.org. Retrieved June 16, 2023, from https://www.redcross.org/content/dam/redcross/atg/PDF_s/International_Services/International_Humanitarian_Law/IHL_SummaryGenevaConv.pdf

²⁹ AP I, Art. 48; CIHL, Rules 1 and 7.

“In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.”

³⁰The term applied to the inhabitants of a territory which has not been occupied, who on the approach of the enemy spontaneously take up arms to resist the invading troops without having had time to organize themselves into regular armed forces. They must be regarded as combatants if they carry arms openly and respect the laws and customs of armed conflict.If captured they have a right to be treated as prisoners of war. The *levée en masse* should not be confused with resistance movements.

ICRC Database, **Treaties, States Parties and Commentaries**, Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949., Article 4 - Prisoners of war, <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-4> (Last accessed on 16.06.2023)

international armed conflict, all persons who are neither members of state armed forces nor members of an organized armed group. While the civilian population is made up of civilian persons. In international armed conflicts, the presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.”

This definition also makes clear the main distinction between civilians and combatants, at least in principle, primarily or solely with the intention of distinguishing them in the scope of IHL. Even though an international normative framework which protects civilians exist still they compose the vast majority of the victims of armed conflict in spite of the fact that IHL requires that attacks should only be directed at combatants and military objectives and that civilians and civilian objects should be respected. To this regard the protection for the civilians is a basic component of IHL civilians and all those: not taking part in the fighting must on no account be attacked and must be spared and protected.

The Geneva Conventions 1949 and their Additional Protocols have particular rules to protect civilian population. Known as the Geneva Convention; this agreement became the foundation of modern international humanitarian law, which now encompasses four conventions and three additional protocols which present modern efforts to protect people in times of armed conflict.³¹ On matter, protection for the civilians is a fundamental component of humanitarian law: civilians and all those not taking part in the fighting must on no account be attacked and must be safe and protected. While, at the present time, the lack of protection in crises affecting civilians caught up in armed conflict and other situations of violence is due, not to a poor and lack of international legal framework, but indeed this comes from a poor obedience.

Protection of civilians under International Humanitarian Law

It is generally approved that the codified International Humanitarian Law was born in 1864, when the initial Geneva Convention was adopted, and the rules that were set in this Convention derived to a large extent from customary rules and practices, the laws of war are old as war itself, it is a morally grounded obligation even if we lack a legal framework in most cultures human beings deserve some protection in times of armed conflicts.

The fundamental maxim underlying International Humanitarian Law is the principle of distinction which stands for distinction between who is involved in the armed conflict distinguishing between the persons thus defined (the combatants) who directly participate in the hostilities and civilians.

The Geneva Conventions which were adopted before 1949 were concerned with combatants only, not with civilians. Some provisions concerning the protection of populations against the consequences of war and their protection in occupied territories are contained in the Regulations concerning the laws and customs of war on land, annexed to the Hague Conventions of 1899 and 1907.

During World War I, The Hague provisions proved to be insufficient in view of the dangers originating from air warfare and of the problems relating to the treatment of civilians in enemy

³¹International Committee of the Red Cross.(2012, November). *ENHANCING PROTECTION FOR CIVILIANS IN ARMED CONFLICT AND OTHER SITUATIONS OF VIOLENCE*. Retrieved June 14, 2023, from <https://www.icrc.org/en/doc/assets/files/other/icrc-002-0956.pdf>

territory and in occupied territories. The International Conferences of the Red Cross of the 1920's took the first steps towards laying down supplementary rules for the protection of civilians in time of war.³²

Quite often wars serve as a turning point and watershed moment in reforming and restructuring the international legal framework thus the international community has to address the challenging nature of armed conflicts. To this regard in striving to humanize war, the Geneva Conventions, comprising of:

- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (GC I);
- Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (GC II);
- Geneva Convention relative to the Treatment of Prisoners of War (GC III);
- Geneva Convention relative to the Protection of the Civilian Persons in Time of War (GC IV), were adopted in 1949 at a Diplomatic Conference. (Nwotite, 2022, p.111)

The historical trajectory has shown that even though we have the international conventions signed by states in protecting civilians still during the past years the main victims of war have been civilians or vulnerable civilian groups such as women, children and the displaced.

It seems that each war brings new normative framework in this direction, as such as the World War II resulted with inhumane impact on civilians such as (mass extermination, indiscriminate attacks, deportations, hostage taking, pillage and internment) as a consequence the international community answered with a response and came up with the Fourth Geneva Convention adopted in 1949. The protection of civilians provided by the Geneva Conventions and Additional Protocols is wide and extensive in nature but the core problem stands in the application.³³

Challenges of protecting civilians in Russian-Ukraine armed conflict

The Russian-Ukraine armed conflict has been characterized by indiscriminate attacks affecting both civilians and civilian objects at an alarming rate.³⁴ Russia's invasion of Ukraine had a devastating influence on civilians, their property and infrastructure. Russian forces committed a list of violations of international humanitarian law, including indiscriminate and disproportionate³⁵ bombing and shelling of civilian areas that hit homes and healthcare and educational facilities. The AP I defines indiscriminate attacks as, 'those which are not directed at a specific military objective; those which employ a method or means of combat which cannot be directed at a specific military objective.'³⁶ Russian armed forces have bombed populated areas, killing civilians and wrecking hospitals, schools and other civilian objects.³⁷

³²ICRC Database, **Treaties, States Parties and Commentaries**, Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949., <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949?activeTab=default> (Last accessed on 20.06.2023)

³³*Civilians protected under international humanitarian law.* (n.d.).ICRC. <https://www.icrc.org/en/doc/war-and-law/protected-persons/civilians/overview-civilians-protected.htm>

³⁴ United Nations, 'Russian Attacks on Civilian Targets in Ukraine could be a War Crime: UN Rights Office' <<https://news.un.org/en/story/2022/03/1113782> > accessed 1 June 2023

³⁵ICRC Database, **Customary IHL**, Principle of Precautions against the Effects of Attacks, <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule22> (Last accessed on 23.06.2023)

³⁶API Art 51(4)(5)(a)(b)

³⁷ Ibid.

Many international organizations such as Amnesty International and Human Rights Watches have witnessed a vast breach of principles of IHL in this direction; Amnesty International has also report extensive death of civilians and damage of civilian objects following ruthless bombardment of residential areas in Kharkiv by Russia.³⁸

While according to Human Rights Watch report, Russian armed forces conducted attacked on Ukraine that have caused civilian deaths and injuries, and damage to civilian objects populated area in Kherson, also the attacks were intended to damage against vital facilities such water, energy.³⁹

The timeline of the event continues as on March 2022, 50 civilians were killed when Russian airstrikes hit two schools and some healthcare facilities in Chernihiv⁴⁰. Another devastating story on attack on civilians was the attack in the city of Mariupol on maternity hospital, cultural venues and homes.⁴¹

The Office of the UN High Commissioner for Human Rights has reported around 5.000 civilian deaths and around 6.000 civilian injuries. Reports also prove that most of these fatalities and losses came as a result of the use of explosive weapons which have large impact because of the heavy artillery and multiple launch rocket system, missile and airstrikes.⁴²

This is a clear violation of IHL and breach of its principles, under international law, governments and their security forces hold the primary responsibility to protect civilians in armed conflicts. Even-though IHL requires parties to the armed conflict to take all possible precautions to protect civilians under their control from the effect of attacks still Russian forces have civilians in Ukraine at unnecessary risk by grounding their forces in populated areas without removing residents to safer areas. As Human Rights Watch investigated⁴³, Russian forces established military bases in populated areas thus risking the lives of civilians.

The perpetrators and violators breaching the basic principles of IHL in the Russia-Ukraine armed conflict must be held accountable for their acts directed at civilian population and civilian objects. The international community must act collectively to investigate and bring the perpetrators of grave breaches of the Geneva Conventions in the Russia-Ukraine war, before the International Criminal Court for the purpose of prosecution.⁴⁴

³⁸ Amnesty International, 'Anyone can Die at any time: Indiscriminate Attacks by Russia Forces in Kharkiv, Ukraine'

<https://reliefweb.int/report/ukraine/anyone-can-die-ant-time-indiscriminate-attacks-russian...> Retrieved 13 June 2023

³⁹ Daniel Boffey, 'Ukraine claims Gains near Kherson as Uk sends anti-aircraft Missiles'

<https://amp.theguardian.com/world/2022/oct/12/ukraine-gains-kherson-air-defences-iris-t-ge> Retrieved 14 June 2023

⁴⁰ Human Rights Watch, 'Ukraine: Russian Strikes Killed Scores of Civilians in Chernihiv' (10 June 2022) <https://www.hrw.org/news/2022/06/10/ukraine-russia-strikes-killed-scores-civilians-chernihiv>

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⁴¹ REF/RL 'Ukraine says Russia is Blocking Aid to Mariupol, Civilians still Trapped' <<https://www.rferl.org/amp/ukraine-russia-blocking-mariupol-aid/31781075.html>> Retrieved 15 June 2023

⁴² Statista Research Department Number of Civilian Casualties during the War in Ukraine 2022' <https://www.statista.com/statistics/1293492/ukraine-war-casualties> Retrieved 16 June 2023

⁴³Ukraine. (2023). *Human Rights Watch*. <https://www.hrw.org/world-report/2023/country-chapters/ukraine#:~:text=As%20of%20early%20January%202023,the%20actual%20figures%20were%20higher>. Retrieved 12 June 2023

⁴⁴ View of PROTECTING CIVILIANS IN THE RUSSIA-UKRAINE WAR: THE OBLIGATION TO RESPECT BASIC PRINCIPLES OF INTERNATIONAL HUMANITARIAN LAW. (n.d.). <https://journal.ucc.edu.gh/index.php/ucclj/article/view/1120/550> Retrieved 17 June 2023

VI. Conclusions

This paper elaborates the question of ‘protection of civilians’ under International Humanitarian Law especially in the case of Ukrainian-Russian armed conflict. This contribution in the current conflict gives a different facet even though this topic would call for extra research and consideration in reframing the principle of distinction and also the issue of civilian protection has dominated and continues to dominate the debate in the scope of IHL.

In “*A Bed for the Night: Humanitarianism in Crisis*” David Rieff notes that: “The impulse to protect seems to be one the more pleasant sides of human nature. Rousseau classed it among the “natural” feeling and Adam Smith thought it was inherent to human nature”⁴⁵

He rightly points out that originally ‘protection’ is the fundamental principle and it denotes a duty of parties (States) to protect civilians in case of armed conflicts. This candid statement makes it clear that human rights above all have a moral priority and they should be treated as such. Also the ICRC must also rise up to its duties by encouraging the parties to comply with basic principles of IHL so as to facilitate the protection of the civilian population in the Russia-Ukraine war. These will go a long way to prevent future violators of the laws of war and invariably strengthen civilian protection.

I take a critical position on the issue of ‘protecting civilians’ in armed conflict because the journey in fulfilling this task remains the most difficult duty for international community, so it’s hard to express or consider a triumph of this matter, obviously the implementation of such normative framework (Geneva Conventions & Hague Conventions) on the ground remains a challenging duty notwithstanding the realities. The experience in Ukraine shows that human tragedies produced by Russian forces came at a certain extent as a result of negligence of international community as well as circumstances and nowadays reality on the ground demand from international community to change the basic mindset from the ‘*culture of reaction*’ to the ‘*culture of prevention*’.⁴⁶

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Notes:

- Additional Protocol I (AP I) AP I, Art. 48; CIHL, Rules 1 and 7.
- Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 Article 48 - Basic rule
- “In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives”
- CIHL stands for Customary International Humanitarian Law as identified in the ICRC Study
- ICRC stands for International Committee of the Red Cross
- Geneva Conventions 1949 (GC I, II, III and IV) Convention
- (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949 (First Geneva Convention)
- (II) For the Amelioration of the Condition Forces at Sea, 12 August 1949 (Second Geneva Convention)

- (III) relative to the Treatment of Prisoners of War, 12 August 1949 (Third Geneva Convention)
- (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949 (Fourth Geneva Convention)