

Protection of Civilians in International Humanitarian Law

Fangnan Chen*

Case Western Reserve University, Cleveland, OH, 44106, U.S.

*E-mail: fxc197@case.edu

ABSTRACT

This paper will discuss the historical development of the protection of civilians in international humanitarian law and summarize the importance of the protection of civilians in international humanitarian law. The paper then analyzes specific international humanitarian law measures for the protection of civilians, as well as problems in the identification of civilians and dilemmas in armed struggle. The paper suggests that the international community must further clarify the requirements for protecting civilians under international humanitarian law to effectively implement.

KEYWORDS

Civilian; Protection; International Humanitarian Law; The Geneva Conventions.

1. INTRODUCTION

After World War II, the international community adopted several international humanitarian and human rights law conventions, the best known of which are the Geneva Conventions. Protection of civilians under international humanitarian law does not distinguish between international and non-international armed conflicts. In parts of the world, armed conflict and violence have been on the rise for the past two years. The Palestinian-Israeli and Russian-Ukrainian conflicts have resulted in more than 50,000 civilian deaths. The primary purpose of the principles created by international humanitarian law is to protect civilians in armed conflicts. Still, until today, civilians have been the primary victims of war.

In armed conflict, civilian casualties are no longer only a by-product of war and have been converted into a weapon of war, which is the wrong result of deliberately targeting non-combatants. According to incomplete statistics, during World War I, 5% of the victims of the war were civilians, and 95% were civilians. This high proportion shows the significant harm caused by armed conflict to the civilian class. In armed conflict, the enemy often targets civilians to drive out or destroy a portion of the population, intimidate the belligerent, or hasten the belligerent's surrender.

Despite the adoption of numerous conventions on international humanitarian and human rights law over the past 50 years, the world continues to be confronted with grave situations of armed conflict on a local level to this day. Civilians and individuals should enjoy universal protection from the risks of military operations. Since civilians do not participate in operations, in reality, with the development of science and technology, all kinds of long-range weapons are widely used. As a result, the number of civilian casualties has been increasing, which is a severe violation of international humanitarian law. This paper will analyze the current international provisions for protecting civilians in armed conflict. Identify the limitations and dilemmas of the protection of civilians in armed conflict.

2. BACKGROUND

2.1. The Definition of Civilian

The Geneva Conventions is the collective name for a series of international conventions concluded in Geneva, Switzerland, between 1864 and 1949 concerning the protection of civilians and victims of war.

The additional protocol I clearly defines civilians, and a civilian is someone who is not participating in the fighting. In Article 50 of the additional protocol, I point out that a civilian is a person who does not belong to any of the categories of persons referred to in Article 4 (a) (i), (ii), (iii), and (vi) of the Third Convention and Article 43 of this Protocol. Where there is doubt as to whether any person is a civilian, such a person shall be considered a civilian. In the relevant provisions of the Third Convention and Article 43 of Additional Protocol I, to which the articles mentioned above refer, the persons excluded from belonging to the civilian population are those involved in the armed struggle and are between the two parties directly involved in the conflict. A civilian is not participating in the fighting, and a civilian is anyone not belonging to the armed forces.

The Fourth Geneva Conventions, as referred to in Article §3 of the total, not because of their race, color, religion or faith, sex, birth, or financial or other similar not practical to fight strokes, are divided by the standard of people, including to lay down their arms of the armed forces, and due to illness, injury, detention, or other personnel, personnel of the original and the disabled. Article 15 of the convention also states that a party to any conflict shall, directly or through a neutral state or humanitarian organization, establish a non-war neutral zone in the area of armed conflict to provide equal protection from the effects of the war, for example, to the following persons: (1) combatants wounded and wounded in the war and all non-combatants; (2) civilians who have not participated in hostilities and who live in areas of armed conflict but do not engage in any military work. Viewed in this way, the civilian, in the narrow sense of the convention, refers to those who have no or are no longer able to participate in military work.

2.2. History of the Protection of Civilians in Armed Conflict

The Tang poet Du Fu said in his poem "Exodus from the Plug," "If we can control the invasion, it's not about killing and maiming.". The French Enlightenment thinker Rousseau pointed out in The Social Contract [2] that individuals in war are not in their name, that the confrontation of nations makes people accidentally become enemies' ordinary individuals, and that others do not have the right to kill them at will." In the Song Dynasty, there was a benevolent policy regarding captives-encouragement of peaceful persuasion of captives to expand their army's strength. The nobility also established a ransom system to treat captives in medieval Europe. However, these rules mentioned above were only generalized within a country and did not result in a unified international consensus on the laws of war. However, this kind of protection does not involve civilians.

Since the inception of the laws of war, the protection of civilians has been the basis for measuring the legality of war in the laws of war. The St. Petersburg Declaration of 1868 clarifies that the only legitimate purpose of armed conflict is to "weaken the military power of the enemy" and that no one who has not lawfully participated in a military operation can be subjected to military force. There is a clear distinction between civilians and those not legally participating in a military operation. This means that one must distinguish between civilians and armed personnel in military operations. Armed conflict against civilians would be considered illegal. Therefore, in some unavoidable armed conflicts, our world must comply with international humanitarian law to safeguard civilians' rights and interests in disputes.

2.3. The Related Rule of Civilian Protection in Armed Conflict in International Hum

Article 23 of the Fourth Geneva Convention only facilitates the material supply of children under 15 years of age, pregnant women, and working women to ensure sustenance.

Article 51 of Additional Protocol I, which also refers to the "protection of the civilian population," also contains several provisions in favor of protecting civilian objects, particularly the prohibition of "indiscriminate attacks." After prohibiting indiscriminate attacks, the article enumerates such attacks, including attacks by bombardment by any method or means that treats as a single military objective several widely dispersed and separate military objectives located in a town, village, or other area containing a concentration of civilians or civilian objects; and military attacks which may be expected to cause incidental loss of civilian life, injury to civilians or damage to civilian objects.

3. THE QUESTION AND ADVICE OF THE PROTECTION OF CIVILIANS IN ARMED CONFLICT

3.1. The Importance of Protecting Civilians in Armed Conflict.

Protecting the human rights of civilians is an act of full respect for the rights of individuals. By the relevant laws and provisions of personal laws, conventions, and declarations (such as human rights, humanitarian law, refugee law, and declaration on protecting women and children in emergencies and armed conflicts), and shall not discriminate against anyone. Civilians make up the vast majority of the population in the warring territories. Still, their numerical superiority does not make them strong enough to be treated and protected as they should be, leaving them vulnerable to the armed forces. As a result, the proportion of civilian casualties in the conflict is high or even growing. For the country, the regular operation of state institutions and the everyday life of citizens are guaranteed by the stability of civilian life and the safety of civilians. In the complex environment of armed conflict, many subtle factors, such as weather, terrain, strategic objectives, tactics, the performance of weapons, and the mood of soldiers, can cause casualties that should not be there, and it is mainly innocent civilians who suffer the most.

3.2. Effective Measures to Protect Civilians in the Special Context of Armed Conflict

The purpose of international humanitarian law is to protect those who do not participate in or no longer participate in armed conflicts and to restrict the parties involved in armed conflicts for humanitarian purposes. It calls for the application of the principle of distinction in armed conflict. For the combat object, the principle of object differentiation should be followed. Distinguish between combatants and non-combatants to protect the latter during war and armed conflict. This is a seemingly simple but profound principle and an essential principle of international humanitarian law. It reveals this fundamental obligation and responsibility in any war or armed conflict.

The UN Security Council should give full play to its role in urging member states to fulfill their obligations to protect civilians in conflicts, adopt more political measures to promote the protection of civilians and take various actions to prevent the outbreak and escalation of conflicts. In the event of a dispute, the warring parties should observe basic humanitarian principles and the rules of international humanitarian law, in particular, the need to avoid inflicting war on civilians. Therefore, the responsibility for maintaining international peace and security is incumbent upon the United Nations and other entities, and action should be taken, when necessary, by the charter of the United Nations.

Besides, Long-term prevention strategies should address the root causes of armed conflict. To strengthen the protection of civilians in the long term, the root causes of armed conflict need to be addressed comprehensively. It is undoubtedly necessary to observe, understand, and resolve national

contradictions from the perspective of social economy and human development. Above all, only by eliminating the level of economic and social development and inequality, the hotbeds of conflict, can we achieve the ultimate goal.[3].

Particular attention should be paid to improving the treatment of the most vulnerable groups in armed conflict, in particular children, women, and older people, who are suffering because of violence directed against them, and to recognize the implications that such situations will have for lasting peace, reconciliation, and development cate system. And should organize the network security education and training of practitioners.

4. COMPENSATION FOR CIVILIANS

4.1. Compensation for the Damage of Civilian

It is the right of all peoples under the principles of international law for civilians to claim compensation for their injuries. Part 4 of the protocols additional to the Geneva conventions on the protection of victims of international armed conflicts states: "under all circumstances, civilian populations and individuals shall enjoy all the protection afforded by international law...". The United Nations general assembly passed a series of important international special law, its many detailed terms are clearly the rules no matter when and where, under all circumstances, civilian life, property, freedom and personality dignity and equal survival, are protected by international law, this is for governments and international organizations of recognition and acceptance. Compensation for wartime victims and survivors is an internationally recognized principle and a common practice after the war.

The objective test is whether there are insults or defamation. Insult refers to the blatant use of violence, abuse, and other ways to degrade the personalities of others, either by words or by behavior. Slander refers to the fabrication of facts and the spread of rumors. 2. The perpetrator of such insulting or defamatory behavior should be subjectively at fault, intentional or negligent can be regarded as a subjective fault. 3. Damage: One of the two acts mentioned above has caused damage to another person's reputation. This damage is not to the infringer's internal sense of reputation but refers to the external social evaluation, this damage can be regarded as the infringer's social evaluation of the lower. 4. Causation: Damage and the insult or defamation of the behavior of the causal relationship.

4.2. Post-conflict Peace-building

It is the right of all peoples under the principles of international law for civilians to claim compensation for their injuries. Part 4 of the protocols additional to the Geneva conventions on the protection of victims of international armed conflicts states: "under all circumstances, civilian populations and individuals shall enjoy all the protection afforded by international law...". The United Nations general assembly passed a series of important international special law, its many detailed terms are clearly the rules no matter when and where, under all circumstances, civilian life, property, freedom and personality dignity and equal survival, are protected by international law, this is for governments and international organizations of recognition and acceptance. Compensation for wartime victims and survivors is an internationally recognized principle and a common practice after the war.

The objective test is whether there are insults or defamation. Insult refers to the blatant use of violence, abuse, and other ways to degrade the personalities of others, either by words or by behavior. Slander refers to the fabrication of facts and the spread of rumors. 2. The perpetrator of such insulting or defamatory behavior should be subjectively at fault; intentional or negligent can be regarded as a subjective fault. 3. Damage: One of the two acts mentioned above has caused damage to another person's reputation. This damage is not to the infringer's internal sense of reputation but refers to the

external social evaluation, which can be regarded as the infringer's social evaluation of the lower. 4. Causation: Damage and the insult or defamation of the behavior of the causal relationship.

5. THE QUESTION IN CIVILIAN PROTECTION-UNIFY THE STANDARD OF IDENTIFYING FOR CIVILIAN

The definition of civilians in the international treaties mentioned earlier is that civilians must be members of the armed forces of a State that is not a belligerent or of the Government of any of the parties; the other definition uses the "exclusionary" method to identify persons who are not civilians. It is still challenging to locate such "membership" in armed conflict, and nowadays, the determination of civilian status relies more on a kind of will, that is, the subjective consciousness of the warring parties, to identify. There is too much uncertainty and randomness in the identification of civilians. This also leads to the fact that the protection of civilians in the Geneva Conventions and the Additional Protocols remains at the theoretical level.

In practice, civilians can't be utterly detached from military operations. During the Chinese War of Resistance against Japan, civilians transported supplies and provided food for the Chinese army; in fact, the participation of civilians here was in support of the military operations of the Chinese army, so do these belong to the category of "direct participation in military operations"? The Geneva Conventions and the Additional Protocols thereto do not currently contain any direct provisions or interpretations on "direct participation in hostilities," nor are there any relevant provisions in State practice or international jurisprudence. The only provision is the interpretation of the International Committee of the Red Cross, which is not of a legal nature, coupled with the fact that civilians who are not taking a direct part in hostilities are a necessary precondition for being protected from arbitrary attacks and that the absence of a humanitarian law provision in this regard increases the likelihood that civilians will be determined by a belligerent party, according to its criteria, to be combatants or to be taking a direct part in hostilities.[4].

On the one hand, the criteria for identifying civilians must be applied flexibly in the light of the situation in practice, and on the other hand, it is necessary to avoid combatants taking advantage of loopholes in the identification process to disregard the lives and property of civilians, so it is necessary to constantly seek better ways to protect the lives and property of civilians in practice.

6. CONCLUSION

Peace and war are an eternal theme in international relations and international law. In the modern international community, war and armed conflict are far from wholly avoided despite the good wishes for peace. This fact is recognized in international law, and there are legal provisions to be complied with by the warring or conflicting parties in the event of war or armed conflict. The council has stressed the urgency of ensuring compliance with international rules on protecting civilian populations. The international community's shift from focusing on the fate of civilians in armed conflict to how to better protect them is undoubtedly a positive and encouraging development in changing the situation of civilians in armed conflict. With the widespread application of international humanitarian law, the international community will pay more and more attention to protecting civilians in armed conflicts.

An increasing number of casualties in armed conflicts are civilians, who are increasingly targeted by armed fighters. This is an act against humanity and international law. The international community strongly condemns this, enacts regulations, urges states to implement them, and solves the problem in various ways to achieve the protection of civilians in armed conflict.

When protecting civilians in armed conflicts, the international community has developed a set of relatively complete rules of international law. In recent years, the Security Council has attached great

importance to protecting civilians and made active efforts. However, due to the changing characteristics of armed conflicts and the impact of various complex factors such as race, religion, and weather, a large number of civilians are still injured in armed conflicts around the world, and the international community still has a long way to go in protecting civilians.

REFERENCES

- [1] The Geneva Conventions, one of the international conventions with the largest number of States parties in the world. Includes four fundamental conventions and three additional protocols concluded in 1949.
- [2] Jean-Jacques Rousseau & Liberty Fund, *The Social contract : and Discourses* 31 (1923).
- [3] Qi Xiaowei. A study on the protection of civilians in International Humanitarian Law,2019:4-7.
- [4] Mao Guohui, International Humanitarian Law to Protect Civilians: Dilemma and the Way Out2021,31 (4):149-150.