

Problems of Physical and Legal Protection of Citizens in the Territories of Other States during Armed Conflicts

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Abstract

The relevance of this topic is that military conflicts give rise to the problem of protection of citizens, especially such vulnerable categories of society as persons who do not participate in hostilities, the wounded, the disabled people, children, women, pregnant women and mothers of young children, as well as protection of basic human and citizen rights and freedoms. The main purpose of the article is the study and analysis of international legal instruments that ensure the protection procedure of the civilian population in the conditions of armed conflict and the implementation of such protection according to modern realities. The following scientific methods were used during the writing of this work: structural-functional and dialectical methods, logical analysis method, synthesis method, comparative analysis method, scientific literature analysis method and generalisation method. The study work was carried out based on the analysis of international legal treaties, acts and other regulatory documents that regulate the protection of the civilian population during hostilities, as well as the practice of different countries of the world was analysed.

Keywords: Humanitarian Law, Civilian Population, International Legal Instrument, Human Rights, Safety of Civilians

Introduction

Despite all the means for war prevention, which produces death, suffering and destruction, the number of military conflicts is increasing. The issue of legal and physical protection of citizens became relevant in the arena of international law immediately after the Second World War, in which almost 25 million civilians died. The evolution of the nature of armed conflicts and the

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devastating potential of modern weapons necessitate the need to expand the provisions of international humanitarian law. Till date, a large number of international legal instruments have been ratified, which aim to protect people from the negative consequences of armed conflicts. In 1945 United Nations declared the Charter of the United Nations and Statute of the International Court of Justice (1945), but since then more conflicts have started than ended, and each time they involve more and more civilians (Maznychenko, 2021).

The Geneva Convention for the protection of civilian persons in time of war (1949), which has been ratified by almost 190 countries of the world, remains the fundamental international legal act addressing the issue of the protection of the civilian population in times of war. According to which the participants in the military conflict should be loyal to persons who do not take part in hostilities, it is forbidden to kill the civilian population, to use any forms of violence and torture against them, it is forbidden to take people into captivity or slavery, to steal their property, to commit other actions discrediting the honour and dignity of a person. Such actions are considered as crimes not only against a person, but also against the international community, and accordingly involve criminal responsibility (Bilozyorov & Kindzera, 2016, p. 184). After analysing the scientific literature, it can be concluded that civilian protection of the population in the event of a military conflict is a problem of the entire international society. All possible safety measures should be used: evacuation, personal protective means, preparation of protective structures, etc.

The universally recognised system of principles for the protection of citizens, which, according to the decision of the United Nations (UN) International Court of Justice, contains the main elements of humanity, includes the following provisions: the principle of not causing unnecessary suffering to citizens; the principle of respect for human and citizen rights and freedoms; the principle of limiting methods and means of warfare; the principle of responsibility for violations of provisions of international humanitarian law and provisions of national legislation. International law provides for the provision of general or special protection to citizens from the consequences of armed conflicts. Special protection is guaranteed to such categories of persons as the wounded, the disabled people, all women, especially pregnant women and mothers with young children, as well as children, refugees, stateless persons and persons under occupation.

At the moment, there are many international acts, treaties and other documents regulating the protection of human life and rights, however, due to the increase in the number of armed conflicts, the laws do not have time to adapt to such conditions. It should be noted that in some countries of the world there are

systemic problems and deficiencies in coordination between military organisations and public authorities regarding the protection of the civilian population. To solve the existing problems, the functioning of the state system of civil protection during armed conflicts should be immediately improved, the provisions of the Geneva Conventions and additional protocols to it should be observed, an analysis of information from the mass media should also be carried out, because it partially affects the population safety, it should be distinguished as a structural institution with a special status of the central body of executive authority (Berezovska-Chmil & Kobets, 2021, p. 73).

Materials and Methods

The following methods were used for the study: structural-functional and dialectical, logical analysis method, synthesis method, comparative analysis method, scientific literature analysis method and generalisation method. An important point was the analysis and study of the practical application of international legal acts and treaties on this topic, namely, the Geneva Conventions (1949a; 1949b) and Additional Protocols to the Geneva Conventions (1977a; 1977b), Universal Declaration of Human Rights (1948), Charter of the United Nations and Statute of the International Court of Justice (1945), Hague Conventions (1899; 1907).

The first method that was used in the study of this topic is the structural-functional method. This method is fundamental, as the work plan and study stages are based on it. With the help of structural and functional analysis, the main purpose, tasks and purposes of the work, which should be violated during the work, were determined, namely to study and analyse international legal instruments connected with the issue of ensuring the protection of the civilian population in armed conflicts, the observance and protection of fundamental rights and freedoms and study how it is implemented in modern realities. Next is the dialectical method, with the help of which the course of work and the logical structure of the work were formed. First of all, at this stage, the search for the necessary sources that will help to fully reveal the topic of this study took place. After that, these sources were studied and the main information that is needed for the work was distinguished.

During the writing of the article, logical methods were used, namely, the analysis and synthesis method. The first method was used during the sources study. There was an introduction and analysis of the received information, after which the part of the information necessary for writing the article was selected. The general international principles of population protection were analysed, and which methods and means of protection of citizens are used within the framework

of international humanitarian law were studied. Comparatively, what kind of protection and assistance is provided to foreigners, the wounded, the disabled people, children, women, pregnant women and mothers. The second method, synthesis, influenced the formulation of the received information into the logically structured work. Such important methods should also be distinguished: the generalisation method and comparative analysis. The content of the second method (comparative analysis method) is that it was analysed and compared how the mechanism of physical and legal protection occurs in different countries of the world, and with the help of the first method (generalisation method) all information was summarised. It should be noted that the comparative analysis method plays an important role in writing conclusions.

It should be noted that for detailed study, the work was carried out in three substantive stages:

1. The first stage consists in the formation of the plan and structure of the work, the distinguishing of the main tasks and purposes of the work, the issues that should be considered in the work were distinguished, also the search for the necessary information was also carried out.
2. At the second stage, it was studied how the protection of citizens during hostilities is carried out in practice in different countries at the legislative level. The scientific literature and regulatory legal framework were analysed, based on which the main part of the considered information was formed.
3. At the third stage, the study results were analysed and the conclusions were made.

Results

The twenty-first century is quite difficult for humanity, because at this time the number of military conflicts arising in different parts of the world reaches a maximum. Armed conflicts remain a constant phenomenon in international relations and are an inseparable element of the international system development.

At the moment, more than forty armed conflicts have been recorded, but the worst thing is that the civilian population living in the territories where hostilities are taking place is suffering. This gives rise to the need to conclude treaties and adopt laws at the international level that would regulate relations during wars. There is a whole system of international legal acts dedicated to the protection of human and citizen rights both in peacetime and in wartime. However, existing laws, declarations and other documents cannot fully protect humanity from the consequences of such emergency situations, protect their lives, prevent cruelty and preserve the property of citizens (Mikhailov et al., 2020). The Charter of the United Nations and Statute of the International Court of Justice

(1945) and Universal Declaration of Human Rights (1948) are fundamental documents in international law aimed at protecting the rights and freedoms of people and citizens.

The most important means and methods of human protection in the conditions of armed conflicts are enshrined in the provisions of not only national, but also international law and provide for criminal responsibility for crimes against life, health and dignity of a person, as well as against their rights and freedoms, committed during the war period. Currently, international law clearly defines the concept of an international crime, which is understood as an illegal act that occurs as a result of a violation by any party to the conflict of internationally recognised provisions, which are the basis for ensuring the interests of international society. Such crimes include all acts that violate the laws and traditions of war, namely: murder, torture, taking the population of the occupied territory into captivity, murder or torture of prisoners of war, murder of hostages, theft of private or public property, gratuitous destruction of settlements and ruin. These illegal acts are considered as crimes against the international community as a whole.

Protection of citizens is the main task of any country and government in the conditions of military operations. The main and primary stage in the system of improving the protection of the civilian population is the system development of works for the algorithms and methods implementation for the prevention of civilian losses during military operations (Bobko & Redko, 2020, p. 43).

According to Geneva Conventions (1949a; 1949b), each country participating in an armed conflict should observe basic humanitarian principles, namely:

- restrictions of the means and methods of warfare;
- respect for human and citizen rights;
- not causing unnecessary suffering;
- responsibility for violation of provisions and principles of international humanitarian law.

The International Court of Justice emphasised that the Geneva Conventions (1949a; 1949b) demonstrate the fundamental elements of humanity that should be observed by all parties of a military conflict (Charter of the United Nations..., 1945). According to Article 13 of the Geneva Convention on the Protection of the Civilian Population in Time of War (1949a), various types of discrimination against persons who are under the power of the occupying party are categorically prohibited. This international legal treaty is the fourth part of the that Geneva Convention on the Protection of the Civilian Population in Time of War (1949a). According to this treaty, the authorities of the aggressor country in the

event of an armed conflict should treat the population humanely: any acts or expressions of violence based on the terror of the civilian population and its use as human shields are prohibited (Geneva Convention..., 1949b).

The Additional Protocol to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts (Protocol I) (1977a) is of great importance for safety supporting. This Protocol concerns only the protection of victims of international armed conflicts. According to Article 51 of Protocol I (1977a), prohibits attacks on the civilian population in order of reprisals and attacks of a non-selective nature. Due to the fact that the Geneva Convention (1949a) offers protection to the civilian population, it uses the term “person under protection”. This category of persons is prohibited from inflicting any physical suffering or destroying them. Such prohibition applies not only to torture, murder, injuries, corporal punishment or various types of studies, but also to brutal violence by civilian or military representatives.

According to the Geneva Convention (1949a) and Protocol I (1977a), each party of an armed conflict is obliged under all circumstances and conditions to treat the civilian population humanely, to avoid any manifestation of discrimination based on sex, race, nation, language or religion or other signs. The Convention categorically prohibits the following actions, regardless of who commits them:

- violence against a person’s life, health and physical or mental state;
- murder;
- any types of torture causing irreparable consequences to a person’s physical or mental health;
- injuries or other corporal punishment;
- insult to human honour and dignity, humiliating treatment, forced prostitution or other types of indecent encroachment;
- keeping persons hostage;
- resettle citizens, except when it concerns their safety and integrity: in case of forced resettlement for the purpose of protection, the necessary conditions for normal life activities are provided.

According to Protocol I (1977a), special protection is guaranteed to the wounded, the disabled people, all women, special attention is paid to pregnant women and mothers with young children. According to this international legal act, these categories of persons are subject to special protection against crimes against honour and dignity. In Protocol I (1977a), special attention is paid to the protection of children’s rights. Children are considered to be persons who have not reached the age of fifteen. According to the Universal Declaration of Human

Rights (1948), parties of an armed conflict should provide children with full safety and assistance in every way, and avoid situations where they are used for military purposes. Children are respected by each side of the conflict, subject to special protection from any kind of indecent encroachment. Persons who before the start of the armed conflict, were considered stateless (persons without citizenship) or refugees in accordance with Article 73 of Protocol I (1977a) are persons having protection under the Geneva Convention (1949a).

In general, there are still some principles of protection of the civilian population in terms of wartime. The protection of the population should be planned and carried out depending on the economic and natural resettlement character, as well as taking into account the type and degree of danger. All measures for the normal existence of the civilian population should be planned based on the law and prepared in advance. When protecting citizens, all possible means should be used, it is evacuation, personal protective means, preparation of protective structures, etc. To ensure the civilian population and their viability, Protocol I (1977a) prohibits the destruction of food, crops, cattle, water supply facilities, etc. It is forbidden to use starvation among civilians as a means of warfare (Vernigora, 2018, p. 45). All people who did not take part in armed conflicts or stopped doing so for certain reasons, have the right to a respectful and humane treatment of their personality. However, unfortunately, during armed conflict, the parties do not always adhere to the basic principles and permitted methods and means of warfare, which leads to the violation of human rights and citizens, as well as causing negative consequences for the population. Such an example is the armed conflicts in Chechnya, Afghanistan and Ukraine (Karasayev et al., 2023).

Discussion

At any moment, every sovereign state can face the problem of protecting its people in the conditions of hostilities. According to the analytical data of the American institute, whose activities are closely connected with the study of military history, since the end of the Second World War, the world has recorded only 26 days of peace. During this period of time, almost 150 armed conflicts took place, which became more frequent and protracted each time. Military conflicts generate many negative consequences that constitute a threat to humanity (Bilozyorov & Kindzera, 2016, p. 184).

International humanitarian law, which is an element of *ius in bello* provisions, is the basis for the protection and preservation of human and citizen rights during military operations. This right prohibits the use of violence against persons not participating in military conflicts. In accordance with International

Humanitarian Law, the aggressor state has the duty to provide the occupied population with the minimum needs, observe human and citizen rights, especially those connected with life, health and dignity (Gusarov and Popov, O.I. (2020).

In the conditions of armed conflicts, the civilian population increasingly becomes the main target of the enemy. According to M.O. Maznychenko (2021), the reason for this is religious or ethnic hatred, different political views and similar criteria. It is because of this that the United Nations, the International Committee of the Red Cross and other international and domestic institutions pay more attention to civil protection of the population, and the degree of protection of citizens depends on the armed conflict nature. This problem is especially connected with countries such as Afghanistan, Iraq, Somalia and Pakistan, where the number of non-state military groups is growing every year. To solve this problem, the researcher recommends taking measures to increase the degree of compliance with the international humanitarian law provisions, especially this applies to such non-state military groups and to review the issue of responsibility for their actions (Prakhovnik et al., 2022).

During the period of hostilities, the main provisions of humanitarian law should apply, which include the following rules (Stojarová and Felbermayr, 2022):

1. Citizens who do not participate in an armed conflict or those who stopped their participation for certain reasons have the right to respect for their personality and their lives, as well as moral and physical integrity. Such persons are provided special protection without any discrimination.
2. It is prohibited by law to kill and maim an opponent who surrenders voluntarily.
3. Prisoners of war and civilians who are temporarily under the authority of the occupying power have the right to respect for life and honour, they are endowed with protection from any manifestations of violence and reprisals (Geneva Convention on the Protection..., 1949a; Geneva Convention on the Treatment..., 1949b). These persons can and have the right to communicate with their relatives and receive help from them.
4. The sick and wounded are provided with appropriate care and assistance from the state under whose authority they are now.
5. A participant in an armed conflict is prohibited from using weapons, equipment and methods of warfare that are prohibited at the international level.
6. The parties of the armed conflict should try to distinguish between the civilian population and, if possible, treat the population and their property humanely and loyally.

In the works of V.V. Vernigora (2018, p. 46) civil defence is the main function of the state and consists in securing citizens, territories, natural environment and property in emergency situations of a military nature. The scientist distinguishes a number of main tasks of civil security during armed conflicts, including:

- informing citizens about a possible threat and actions in case of danger;
- carrying out evacuation measures for the population, as well as cultural and other values;
- provision of fire, medical-biological, engineering, radiation, chemical safety for the population;
- protection of supplies, water supply systems, food and other resources, as well as agricultural animals and plants;
- carrying out measures of general masking, emergency and rescue operations;
- carrying out life support measures for victims;
- population education;
- emergency burial of corpses;
- ensuring mobilization readiness of civil protection;
- planning and conducting other events.

There are many opinions regarding the basic principles of civil protection in armed conflict. One option was considered above. Other researchers distinguish the following principles of population protection in emergency situations of a military nature (Shcherbina, 2021, p. 48):

1. Civil protection measures are carried out in accordance with international treaties and agreements, current legislation of the country and regulatory legal acts in which the conflict is taking place, the concept of national security and military theory.
2. Civil protection is the main function of all state authorities, local government bodies, institutions, enterprises and organisations (regardless of the ownership form), the people and every individual.
3. Measures to ensure civil protection should be carried out taking into account the possibility of each type of military conflict.
4. Management of civil security is carried out at all levels of state and local government and in accordance with the rule of sole responsibility.

E.V. Bilozorov and R.I. Kindzera (2016, p. 185) considered the issue of whether the government even should comply with international obligations in the field of human rights in its territory. However, according to the International Covenant on Civil and Political Rights (1966), everyone who recognises its validity is obliged to respect and provide everything necessary for those who are

within the territory of the Covenant (1966) (paragraph 1 of article 2). According to the Covenant (1966), states are not responsible for violations of the rights of citizens in territory they do not control, that is, occupied.

Interesting is the opinion of O.B. Berezovska-Chmil and Y.V. Kobets (2021, p. 75), who believe that international treaties in the field of protection of human and civil rights during military operations are very important. The provisions applied in the field of rights protection are applied along with the provisions of international humanitarian law, as this will enable a wider protection of rights in emergency situations of a military nature. The study showed that history is familiar with cases of humane and loyal treatment of the civilian population by the enemy side. For example, in recent times, China paid a lot of attention to the issue of protecting the civilian population. It was emphasised that it is not ordinary people who should be killed, but those who lead them incorrectly. The provisions protected the civilian population and non-military objects. It was forbidden to destroy residential buildings, as well as engage in robberies. There were traditions according to which it was strictly forbidden to kill prisoners of war. Similar customs also existed in India. It was forbidden to destroy human lands. The wounded or sick people had special protection from the state.

Regardless of the generally accepted provisions of protection of citizens in the conditions of hostilities, U.P. Bobko and A. Redko (2020, p. 44) emphasised the existence of a number of problems that the international community is facing. In some countries, refugees fleeing from the consequences of hostilities in the territory of their residence often do not have protection from their homeland, and the authorities threaten persecution. If other countries do not allow them to cross their border and do not provide assistance to such people, then in fact these persons complain of death or living in the shadows, that is, without any means of livelihood and rights.

The majority of foreign researchers emphasise that every state that has signed conventions and other international legal acts is obliged to include in its national legislation provisions that will ensure effective criminal prosecution of persons who during hostilities committed socially dangerous acts stipulated by international legal instruments or ordered to do so (Vysotska et al., 2022). According to Article 49 of the Geneva Convention (1949a) regarding citizens who are under the authority of the occupying power, it is forbidden to deport them for any reason from the territory where they live to the territory of the occupying state. However, the occupying state may carry out such evacuation measures if it concerns the safety of the population or for other reasons directly connected with the conflict. Evacuation can be carried out in general or in part, that is, resettlement from certain territories or some districts. In such situation, the

population should move deep into the occupied territory, and not into the territory of the aggressor country, and at the end of the military operation, citizens have the right to return to their places of residence (Curanovic, 2022). During such evacuation measures, the occupying power is obliged to provide displaced persons with places where they can temporarily live, as well as other conditions necessary for the normal life of a person. Evacuated citizens may be involved in labour activities, but this activity cannot be related to the military conflict. In the occupied territories, the existing before it criminal legislation remains. In the Protocol I (1977a) it is emphasised that citizens cannot refuse the protection of their personality in the legal plan, ensured by the international humanitarian law provisions.

V.I. Sitkar and S.V. Sitkar (2022, p. 449) state that it is children who are special protected. Children are persons under the age of fifteen. They should not take part in armed conflicts and should be urgently evacuated accompanied by adults to a place safe for life and health. In cases where children are captured, they are guaranteed special protection in accordance with the humanitarian law provisions. All parties of an armed conflict are obliged to protect children from any dangerous and indecent encroachments, provide the necessary assistance and create such conditions that are necessary for a comfortable life at their age. Foreigners also have a special status. They have every right to leave the country where hostilities are taking place, if such departure does not violate the state interests of the state they are leaving. For some reasons, a foreigner may be denied the opportunity to leave the country, and such a decision can be considered in court.

Currently, the specifics of armed conflicts places around the world are changing. The number of countries participating in conflicts is increasing, the territory of hostilities is expanding, wars are becoming protracted. As a result, the humanitarian law provisions do not have time to adapt to such current conditions, this has a significant impact on the resolution of military conflicts and ensuring the safety of citizens, the protection of resources and objects of a non-military nature. The provisions providing protection to people are aimed at reducing the suffering inflicted on civilians during wars. Therefore, it can be stated that the protection of persons in emergency situations is the responsibility of the entire international community, but only of an individual state.

Conclusions

From the abovementioned, it can be concluded that armed conflicts are a real cruelty of our time, which involves great losses among the population. That is why there is a need to conclude treaties and adopt laws at the international level

that would regulate relations during hostilities. Unfortunately, the existing international legal acts cannot fully protect people from the consequences of such emergency situations and save their lives. That is why this system should be improved.

In the course of the scientific work, the main international legal instruments addressing the topic of the civilians' safety in armed conflicts, namely the Geneva Convention and Supplemental protocols to the Geneva Conventions, Universal Declaration of Human Rights, Charter of the United Nations and Statute of the International Court of Justice, Hague Convention. The main means and methods of human protection in the conditions of armed conflict are enshrined in the international law provisions and provide for criminal responsibility for crimes against life, health and dignity of a person, as well as against their rights and freedoms, committed during the war period. As a result of the study, it can be said that the main regulator of safety and protection of human and citizen rights is international humanitarian law, the provisions of which are aimed at alleviating the suffering of the civilian population.

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