



Protection of Civilians in Armed Conflicts

(Nagorno-Karabakh war as a case study)



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Introduction

The international humanitarian law has undergone remarkable and justifiable development since the beginning of the last century. It became more concerned about the distinction between people involved in military operations and the civilian population who must be protected as much as possible from the impacts of conflict, through the principles of proportionality and distinction between armed forces that carry out hostilities and civilians who are not presumed to directly participate in those operations. And since conflicts are a reality that cannot be ignored, it was necessary to intervene to ease the impact of these conflicts on humans in general and on the victims of the conflict in particular. Therefore, the rules of international humanitarian law derived from specific conventions such as the Hague rules relating to the laws and customs of land war and the four Geneva Conventions and the two additional Protocols attached to these agreements, have developed. All these principles and rules have raised humanitarian considerations, and the international community has sought through them to alleviate the scourge of wars on civilians, as well as on combatants who can no longer fight. For example, the international humanitarian law prohibits weapons that cause unnecessary suffering or are indiscriminate by nature and that cannot be directed at a specific target in order to reduce civilian casualties such as cluster munitions and anti-personnel mines. It is also prohibited to target objects indispensable to the survival of civilians. The international humanitarian law also protects children and women, as they are among the most vulnerable groups affected by these hostilities. Although international humanitarian law prohibits targeting civilians in both international armed conflicts and non-international armed ones, parties to the conflict continue to deliberately target civilians, as in the case of Armenia and Azerbaijan, which resulted in the displacement of 90640 individuals. According to the Armenian national statistics, the population in Artsakh, Nagorno-Karabakh, was estimated at about 145,000 individuals, which means that during the 44-day war, up to 110,000 people were forcibly displaced or evacuated from their homes. Furthermore, many civilians were killed and forcibly detained by the Turkish-backed Azerbaijani

forces. In this light, this study discusses the protection of civilians in accordance with the four Geneva Conventions, including the protection of civilians under occupation, and the process of targeting civilians and the use of prohibited weapons in Artsakh region. Moreover, it highlights the effects of that war and the challenges it posed on civilians.

First: Legal principles for the protection of civilians in armed conflicts

The Fourth Geneva Convention of 1949 and its Additional Protocols of 1977 stipulated a number of principles that oblige warring parties to observe and are applied to civilians during the conduct of hostilities in order to protect them during international armed conflicts. These principles are presented as follows:

- **The principle of distinction between civilians and combatants:**

This principle obliges parties to the conflict at all times to distinguish between people who are part of the conflict and civilians and those who do not participate in it, in order to protect civilians and save them from the scourge of wars. Article 50 of the First Protocol stipulates the protection of civilian who are not identified with any of the categories referred to in the first, second, third and sixth clauses of paragraph (a) of Article IV of the Third Convention and Article 43 of this Protocol. And if doubts arise about whether a person is a civilian or a non-civilian, that person is considered to be a civilian¹ and combatants are defined as “those who have a direct, positive and effective role in the conduct of hostilities, and are treated as prisoners of war in the event that they are captured by the enemy.” The rights granted to civilians under the Fourth Geneva Convention include the right to respect their honor, beliefs and religious practices. Torture and other cruel, inhuman or degrading treatment and the taking of hostages, and reprisals against civilians are prohibited.

- **Prohibiting targeting civilians during fighting:**

The prohibition of targeting civilians in fights and wars is one of the established legal rules in customary law and international law, which is legally binding in all conditions under various circumstances. International humanitarian law stipulates a number of principles that seek to protect civilians, including the necessity to distinguish between the civilian population and combatants for the purpose of providing protection and respect for civilians. According to Article 51 of the First Additional Protocol of 1977: “It is not permissible to target civilians during the war or terrorize them or to resort to the use of indiscriminate attacks that cannot be directed at a specific military target or the use of weapons of mass destruction, such as nuclear, chemical or other attacks that are expected to cause severe loss of civilian life, or to cause damage to civilian and cultural property.

It is established in international humanitarian law that the right of the parties to the conflict to select the methods and means of warfare is not an absolute right, as it is not permissible to use and resort to methods of warfare that are expected to cause severe, widespread or long-term damage and in line with this, a treaty has been made to prevent the proliferation of nuclear weapons, another treaty concerning the prohibition of the development, production, stockpiling and use of chemical weapons and destroying them, and a third treaty on the prohibition and production of biological weapons and destroying them.

- **The inadmissibility of using civilians as human shields**

Civilians must not be used as human shields to prevent attacks against any military objectives, and residential areas such as places of worship, hospitals, and schools must not also be used to hide military equipment. However, parties to the conflict must seek to move the civilian population away from areas adjacent to military objectives.

Under the international humanitarian law, these acts amount to war crimes. The Fourth Geneva Convention stipulates in Articles (28 and 49) and the First Additional Protocol in Article 51(7) and the Second Protocol in Article 5(2)(c) state that "The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations".

This is reflected in the Statute of the International Criminal Court which defines the use of civilians or protected persons as human shields in relation to military operations as a war crime when committed during an international armed conflict (article 8(2)(b) (xxiii) of the ICC statute).

Customary international humanitarian law also prohibits the use of human shields in both international and non-international armed conflicts (Rule 97 of the customary international humanitarian law study published by the International Committee of the Red Cross in 2005)².

- **Prohibition of acts of Reprisals:**

International humanitarian law prohibits acts of reprisal or retaliation against civilians that seeks to punish innocent people. Article 23(3) of the Fourth Geneva Convention reaffirms the "prohibition of measures of reprisal against protected persons and their property".

- **Civilians shall not be starved**

Article 1 of the First Additional Protocol and Article (14) of the Second Additional Protocol prohibits the starvation of citizens, it stipulates that "It is prohibited the attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs,

² الملحق (البروتوكول) الأول الإضافي إلى اتفاقيات جنيف، 1977، ICRC ، <https://bit.ly/3v7MoFR>

crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive”. It also falls under the prohibition of starving civilians, obstructing the sending of food supplies and other supplies necessary for the survival of the population, such as clothes, blankets, tents, and other essential supplies.

- **The right of foreigners to leave the territories of states parties to the conflict**

According to articles 35 & 48 of the Fourth Geneva Convention “protected persons who are not nationals are allowed to leave the territory of state party to the conflict unless their departure is contrary to the national interests of the State”.

- **The right to good and humane treatment**

Parties to the conflict, whether international or non-international, must commit themselves to respecting civilians, preserving their honor, religious rituals, customs and traditions, preventing violations of their personal dignity, and protecting them from all acts of violence or threats of it³.

The first additional protocol affirms this principle in Article 10 as it states that “The wounded, sick and shipwrecked must be respected and protected, regardless of the party to which they belong. In all cases, they must be treated humanely and receive as soon as possible the medical care that their condition requires”.

Therefore, acts of killing, torture, mutilation, or subjection to some kind of medical or scientific experiment or degrading treatment, or other acts of indecency, are deemed punishable acts in international humanitarian law, and have been classified in the Statute of the International Criminal Court as war crimes, and the statute stipulates for

Article (75) of the First Additional Protocol to the Geneva Conventions, ICRC, <https://bit.ly/3xkwieb> ³

such cases life imprisonment or imprisonment for a period of up to 30 years. In addition, it's possible to impose a fine and confiscate the proceeds, property and assets that have resulted directly or indirectly from committing the crime⁴.

- **Prohibition of forced labor**

International humanitarian law prohibits compelling civilians of the enemy to work and perform any act related to the conduct of military operations, and classifies the act of forcing any civilian to serve in the ranks of the forces of an enemy state as a war crime by virtue of Article 23 of the Statute of the Rome Court. However, there is an exception of this prohibition when one of the parties to the conflict compels civilians belonging to the enemy to work for their daily livelihood.

- **Prohibition of collective punishment**

According to article 75(2) of the First Additional Protocol, collective punishment is prohibited, in accordance with the established norms in the criminal law and the principles of justice regarding Personalized punishment.

- **Prohibition of methods and means of killing (weapons) that cause unnecessary suffering**

International humanitarian law, especially the rules relating to the protection of civilians, prohibits the use of indiscriminate weapons, because these weapons cause injury to civilian and military persons alike, and their effects cannot be controlled, such as dum-dum bullets, anti-personnel mines, chemical and biological weapons that cause pain and unnecessary suffering. Therefore, according to the aforementioned principles relating to the protection of civilians in armed conflict, states have an obligation to provide basic rights to protect civilians.

Second: the rights of civilians in armed conflicts

Article (77) of the Rome Statute of the International Criminal Court, ICRC, <https://bit.ly/3ngseXL> ⁴

During periods of armed conflict, civilians have a set of rights that clearly indicate the limits and scope of protection that must be provided to them, and they are as follows:

- **prohibit civilian arrests and subjecting them to house arrest**

Article 79 of the Fourth Geneva Convention specifies two types of situations in which any civilian may be arrested or subjected to house arrest, and they are:

- ✓ Detention or house arrest for security reasons.
- ✓ Arresting them for committing an offense or a crime

- **Provide treatment and care for wounded civilians**

Article 16 of the Fourth Geneva Convention stipulates the protection of the civilian population in time of war and the provision of care and protection for all the sick and wounded. Moreover, international humanitarian law requires the parties to the conflict to refrain from attacking medical units so that they can operate in conflict zones, and to use distinctive emblems, such as the Red Crescent and the Red Cross. In addition, the IHL urged the parties to the conflict to inform each other of the locations of these hospitals and medical units to prevent accidental attacks against them, to allow access of medical supplies, and to protect its staff.⁵

- **Protection for the wounded, sick and shipwrecked**

International humanitarian law identified the wounded, sick, and shipwrecked in the laws of the first Additional Protocol. Article 8, para. (a) & (b) of the Additional Protocol state that: "Wounded" and "sick" mean persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility." Whereas the "Shipwrecked" means persons, whether military or civilian, who are in

⁵ Article 16 of the Fourth Geneva Convention and Article 12 of the First Additional Protocol of 1977, ICRC, <https://bit.ly/3tGN196>

peril at sea or in other waters as a result of misfortune affecting them or the vessel or aircraft carrying them and who refrain from any act of hostility. These persons, provided that they continue to refrain from any act of hostility, shall continue to be considered shipwrecked during their rescue until they acquire another status under the Conventions or this Protocol.”

The wounded, sick and shipwrecked, regardless of their status, are entitled to protection, as these persons must be searched for and provided with care by the party to the conflict to whom they fall under his control. Furthermore, Medical personnel and facilities, means of transport and equipment must be respected and protected in all circumstances⁶. Article 10 of the First Additional Protocol stipulates the obligation to respect and protect the wounded, sick and shipwrecked at sea, regardless of the party to which they belong. In all cases, any of them must be treated humanely and receive, to the extent possible and as quickly as possible, the medical care required by his condition and not to discriminate between them on any grounds other than medical one”⁷.

In addition, IHL provide special protections for some groups, who are the subject matter of the following paragraph.

Third: Special protection rules for some groups of the civilian population during armed conflicts

Armed conflicts have a more devastating impact on vulnerable groups, especially women and children, due to their inability to protect themselves and their dependence in most cases on others. The Protected groups who enjoy special protection are women and children, medical personnel and humanitarian aid workers, journalists, and civil defense agencies. Therefore, International humanitarian law has sought to provide

International Committee of the Red Cross, “International Humanitarian Law,” Answers to your questions, December 6 2014 p. 28, file: /// C: /Users/PC/Downloads/0703_004-ebook.pdf

The First Additional Protocol to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of 7 International Armed Conflicts, <http://hrlibrary.umn.edu/arab/b094.html>, Human Rights Office

protection and special care for these groups and intensify efforts to achieve adequate protection for them. This protection includes a set of measures, rights and special benefits for women included in Articles 14, 16, 23 and 27 of the Fourth Geneva Convention during international armed conflicts, provided that they are not directly engaging in hostilities. In addition to the general protection that it guaranteed to all civilians for humane treatment such as respect for their lives, physical integrity and dignity, the prohibition of torture, coercion, corporal punishment, collective punishment and acts of revenge. In order to implement these provisions, a distinction must be made in times of armed conflict between two groups of women:

1. Women who are part of the civilian population.

2. Female soldiers, whether in international armed conflicts and their status as fighters and prisoners of war, or in non-international conflicts and being fighters and the status of detention when it occurs.

Prisoners of war enjoy some rights and the parties to the conflict must abide by them, as the Third Geneva Convention of 1949 relating to Prisoners of War, which came to develop the provisions of the Second Convention of 1929, stipulates a set of rights and guarantees that prisoners of war should enjoy, represented in the following⁸:

- 1- Every prisoner of war, when questioned on the subject, is bound to give only his surname, first names and rank, date of birth, and army, regimental, personal or serial number, or failing this, equivalent information.
- 2- No physical or mental torture, nor any other form of coercion, shall be inflicted upon prisoners of war to obtain from them information of any kind whatever. Prisoners of war who refuse to answer shall not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind. Prisoners of war who, owing to their physical or mental condition, are unable to state their identity, shall

Practical Dictionary of Humanitarian Law, Rules for the Protection of Prisoners of War, <https://ar.guide-humanitarian-law.org/content/article/5/sr-lhrb/>⁸

be handed over to the medical service. The identity of such prisoners shall be identified by all possible means.

- 3- Badges of rank and nationality, decorations and articles having above all a personal or sentimental value shall not be taken from prisoners of war.
- 4- At no time should prisoners of war be without identity documents. The detaining state shall supply such documents to prisoners of war who possess none.
- 5- Prisoners of war shall be evacuated, as soon as possible after their capture, to camps situated in an area far enough from the combat zone for them to be out of danger. Only those prisoners of war who, owing to wounds or sickness, would be at greater risk if evacuated rather than staying where they are, may remain temporarily in a danger zone.
- 6- The Detaining Power shall supply prisoners of war who are being evacuated with sufficient food and potable water, and with the necessary clothing and medical attention and allowing them to practice their religious beliefs and rituals.

Fourth: practices and violations committed in the Nagorno Karabakh region:

Despite the expansion of the protection of civilians, civilians remain at risk, as evidenced by the 44-day war on the Karabakh region, where the war was imposed on civilians in Artsakh, causing the displacement of 90640 individuals. According to Armenian national statistics, the number of inhabitants in Artsakh is estimated at 145,000 individuals, meaning that during the 44-day war, up to 110,000 people were forcibly displaced or evacuated from their homes. Other than the civilians who were killed and civilians who were forcibly detained by the Turkish-backed Azerbaijani forces.

International law explicitly prohibits forced displacement as a strategy of war. Therefore, the forced displacement that took place in Artsakh is a war crime and according to the 1945 Nuremberg International Military Tribunal charter that a war crime is defined as “Violations of the laws and customs of war, including the killing,

ill-treatment, or deportation of civilians in an occupied territory, the killing or ill-treatment of prisoners of war, the killing of hostages, the pillage of private property, and the unnecessary military destruction”.

The Turkish-backed Azerbaijani forces also targeted Armenian cities, and according to the report of the Armenian Ombudsman, between September 27, 2020 and January 28, 2021, 41 civilians were killed as a result of Azerbaijani attacks and 31 civilians died while in the custody of Azerbaijani forces⁹.

The International Humanitarian Law Unit at Maat documented the attacks carried out by Azerbaijan military that did not respect the principle of distinction between civilian and military targets. The Azerbaijani forces bombed Armenian cities far from the battle front in violation of international customary rules and the Geneva Conventions of 1949, and they are as follows: -

- ✓ **Some attacks on residential areas have been carried out with weapons that are inherently indiscriminate**, such as the internationally banned 122-mm Grad rockets and cluster munitions. These strikes by the Azerbaijani forces destroyed and damaged a large number of civilian homes and other civilian objects, including churches and markets. In Stepanakert, in particular, scores of homes and apartments have been destroyed or damaged to varying degrees¹⁰. Turkish drones also attacked villages and cities, killing civilians, and destroying homes, many densely populated areas such as the city of Stepanakert were subjected to targeted attacks by drones, and a drone attack on October 1 in Shatvan killed one civilian, injured two, and burned civilian homes¹¹.

<https://artsakhombuds.am/en/document/785>⁹

IN THE LINE OF FIRE CIVILIAN CASUALTIES FROM UNLAWFUL STRIKES IN THE ARMENIAN-AZERBAIJANI CONFLICT OVER¹⁰
NAGORNO-KARABAKH(2021).

<https://ombuds.am/images/files/de3634c257bb698735db318a33f280bf.pdf>¹¹

- ✓ **Hospitals were targeted.** Although targeting hospitals is prohibited under Article 12 of the First Protocol, a maternity ward has been bombed by one of the missile attacks.
- ✓ **Civilians were targeted.** Many civilians have lost their lives as a result of the hostilities carried out on the city of Stepanakert by the Turkish-backed Azerbaijani forces. The 69 year-old, Arkady Lalayal, was hit by shrapnel of a missile that exploded in the garden of the building and killed while standing on the balcony of his apartment on the third floor on Alek Manukian Street.
- ✓ **Civilian objects were targeted.** The main headquarters and control center in Artsakh, which provides electricity to the city and the rest of the region, was targeted. In addition, other rockets fell near School No. 10 on Starovoytova Street, destroying dozens of classrooms and the school facade and cutting the school's supply of electricity and water as well.
- ✓ **Vital infrastructure and services were targeted** by the deliberate Azerbaijani strikes, especially the emergency services.¹²
- ✓ **Journalists & religious and cultural property were targeted.** Two journalists from the French newspaper "Le Monde" and a journalist of 24news.am and a photographer of "ArmeniaTV" were injured, and his local escort was killed in the city of Martoni by Azerbaijani strike. The Azerbaijani armed forces also targeted a car transporting journalist belonging to Agence France-Presse and on 2 October they targeted Azerbaijan Once again a minibus carrying Armenian and foreign journalists in the city of Martakert, and no casualties were recorded as a result of that strike. In the second attack on the cathedral of Gazanshotsut, 3 Russian journalists were injured, and there were drones at the time of the attack, which indicates Azerbaijan's knowledge of the presence of journalists at the time of the attack.¹³

¹² انظر المرجع السابق

<https://www.artsakhombuds.am/en/document/783> ¹³

- ✓ **Arbitrary detention of “prisoners of wars”**. Innocent civilians continue to be unlawfully and illegally arrested, in clear violation of Geneva Laws that prohibits the arrest of civilians. For example, Eduard Shahkeldyan, who remained in Nagorno-Karabakh after the outbreak of war, was arrested by Azerbaijani forces and severely tortured to death in prison. The cause of death was registered as severe brain injury and brain swelling and acute disorder of vital brain functions. Another case of arresting and executing civilians is the case of Arsen Gharakhanyan, who was arrested by the Azerbaijani authorities during the war and was later found shot in the head¹⁴. The testimony of Yevgenia Papian, who was released from Azerbaijani custody also confirmed that civilians are beaten and tortured in prisons. She reported that, at a police station, she saw two Armenians, one of whom was a young man in civilian clothes, blindfolded, his hands and feet tied, and was thrown into the corner of the room, and Azerbaijani soldiers took turns kicking him in different parts of his body. The next day, when Papian was released, she saw the body of the young man being put in a bag and dragged into a car. She was also told that they beheaded the two Armenians she had seen. These brutal acts are in violation of the Geneva Conventions regarding the protection of civilians, as acts of torture and humiliation against civilians are prohibited in addition to summary killing. Social media sites such as Telegram have also been used to circulate pictures and videos of prisoners of war while they are being tortured in addition to creating Facebook groups to promote hate speech against Armenians and most of these pages are created from before the war by Turkish soldiers participating in the Karabakh war.

Recommendations

Armenian civilians tortured by Azerbaijani soldiers, survey suggests desire for new political party. (2021). ¹⁴
<https://armenianweekly.com/2021/03/17/armenian-civilians-tortured-by-azerbaijani-soldiers-survey-suggests-desire-for-new-political-party/>

Based on the foregoing, **the International Humanitarian Law Unit at Maat** recommends the importance to adhere to the rules and standards of international humanitarian law in protecting civilians and not targeting them. It also recommends that fair investigations be conducted into all violations committed in the 44-day war in the Karabakh region, including the release of all prisoners of war. The Azerbaijani side also has the obligation to fulfill Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights and the article related to the right to housing and the freedom to choose the place of residence and Article 2 of the European Convention on Human Rights as there are obligations on parties to the conflict towards internally displaced persons, which are also stipulated in the United Nations Guiding Principles on Internal Displacement.