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**CURRENT PROBLEMS of PROTECTING CIVIL POPULATION IN TIME  
OF NON-INTERNATIONAL ARMED CONFLICTS****CHRISTINA ASMOLOVSKAYA****SVETLANA HOVRATOVA****Mogilev State University named after A.A. Kuleshov**

*Summary: From the beginning of the existence, countries have used wars as a method to achieve goals. That has led to the emergence of the international humanitarian law, the most important principle of which is the protection of civil population, including during a period when an armed conflict is within one State.*

The suffering of civilians during a war is inevitable. Throughout history, civilians have been victims. Famine, enslavement, torture, forced conscription, and displacement are common features of a war. Sometimes the civilian's suffering is an unintended result of a war, but at the same time, it can be a deliberate military strategy.

War affects civilians in different ways: a person's physical or mental injury, a murder, casualties due to increased morbidity, conflict-related hunger, or malnutrition. The impact is not the same for all civilians – it can vary among members of different groups, for example, depending on gender, age, or place of residence. It depends not least on the behavior of the combatants and the degree to which they are committed to protect civilians during hostilities.

The protection of civilians is a fundamental principle of the international humanitarian law, which determines the way any armed conflict goes. That is why the international community is faced with the task to clearly define the category of persons who belong to civilian population as well as their legal status, especially during a non-international armed conflict.

The international humanitarian law – as the source of the main principles and norms of written law – defines a civilian as a person who is not among armed forces. The civilian population consists of all persons who are civilians.

The sources of the international humanitarian law state that countries should apply this definition during international armed conflicts when identifying the civilians. It is also applied in time of non-international armed conflicts. Unfortunately, there is not a clear answer to the question of whether persons from armed opposition groups are considered as members of the armed forces or as civilians. [1]

In the Art. 50 of the Additional Protocol 1 to the Geneva Conventions (further - AP1) is established: "A civilian is any person who does not belong to any of the categories of persons specified in Article 4.a, 1, 2, 3 and 6 of the Third Geneva Convention and the Article 43 of this Protocol. The civilian population consists of all persons who are civilians. Nevertheless, individuals who do not fall under the definition of civilians should not be deprived of their status as those of a civilian character" [1].

In our opinion it seems interesting that the concept of "civilian" is derived mainly by excluding a certain category of persons. This is directly related to the implementation of the international legal principle of distinguishing between civilians and combatants.

Combatants are persons who are part of the armed forces of a conflict party who have the right to take direct part in hostilities. The exception is the medical and religious personnel who perform humanitarian functions.

However, combatant status is not applied by laws of a non-international armed conflict for members of non-governmental armed groups. Moreover, it would question the monopoly of force implementation by the State in both national and international law. Thus, members of such militias have a mixed status. They are considered civil criminals under national law due to the use of force. However, the international humanitarian law says nothing about their status. At the moment, it considers them to be civilians who are participating in hostilities.

The legal regulation of the protection of civilians in time of a non-international armed conflict is carried out by the Additional Protocol 2 to the Geneva Conventions (further - AP2). During the discussion of the project, it was proposed to include in the Art. 25 AP2 the following definition of a civilian: a civilian is "any person who is not a member of the armed forces and who is not a member of an organized armed group". However, the adoption of this article was rejected out of a desire to simplify AP2. However, the final version of its text still reflects the previous version of the definition for the term.

According to AP2, armed forces, anti-government armed forces, and other organized armed groups are capable of and are designed to engage into continuous and concerted military actions, while civilians and

individuals should enjoy general protection from the dangers posed by military operations which are carried out by armed forces, excluding the cases and terms when civilians are directly involved in hostilities [2].

“Direct participation in hostilities” is defined in many documents of the international humanitarian law, in particular, part 3 of the Art. 13 AP2 stipulates that civilians enjoy the protection provided by AP2, except for the cases and terms when they are directly involved in hostilities. However, the concept of “direct participation in hostilities” is provided neither by the Geneva Conventions, nor by their protocols.

To find a solution to this problem, a long process of rethinking the concept of “direct participation in hostilities” is being carried out. It began in 2003 with the help of the ICRC. The aim of the study was to address the question of who is considered a civilian and has the right to be protected and what behavior should be considered as a direct participation in hostilities.

The study resulted in the publication of the “Guide to the Interpretation of the Concept of “Direct Participation in Hostilities ” in “Light of Humanitarian Law” in 2010. Where the recommendations regarding the concept of “direct participation in hostilities” are formulated [4].

An action can be regarded as direct participation in hostilities on the basis of the following criteria combination:

1. The action is taken as a likely result of adversely affecting military operations, or the potential of a party in times of the conflict that causes death, injury to persons or objects;
2. The connection between the action and the harm that may be the result of the action or the result of a military operation of which the specified action is an integral part;
3. The action must be specifically carried in order to cause harm and to be committed in support to one of the parties of the conflict in order to harm the other party [4].

However, the experience of countries and the jurisprudence have not yet come to the conclusion regarding the direct participation in hostilities as a leading factor in determining the concept and the legal status of a civilian during a non-international armed conflict.

Distinguishing between “civilians” and “members of the armed forces”, the ICRC Guidelines do not address non-state armed groups, which are often not recognized by the State as a separate entity. Their “ignorance” in this case leads to misunderstanding of civilian population and non-state armed groups, which makes it difficult to apply IHL norms and to give civilians an appropriate legal status. The notion of direct civilian participation in hostilities cannot serve as an alternative to the refusal of governments to recognize the real status of organized non-state armed groups with which they are in conflict.

The protection measures are directly enshrined in the Geneva Convention and are relative to the Protection of Civilian Population in Time of War, adopted on August 12, 1949 (further - GC4). The protection is carried out on two levels: general and special. The general level regulates the guarantees and norms for the protection of the civilian population, which apply to all its groups, regardless of gender, age, race, nationality, and other factors. The norms of general protection can be reflected in the list of specific prohibitions imposed on the belligerent parties, (which are established by GC4). These include: the prohibition of physical and moral violence, the imposition of punishment without the inspection established by procedural legislation, the conduct of medical experiments, including blood taking, reprisals and terror, and other actions that infringe on health, life, honor, and dignity [5].

The norms of special protection of civilians establish additional guarantees for certain categories of persons in connection with the increased vulnerability and insecurity of these persons, or in connection with the peculiarity of their legal status. For example, special protection extends to children, who in the international humanitarian law are understood as persons under 15. In particular, children are provided with the opportunity of continuous learning during evacuation, severe punishments cannot be applied to them, all kinds of support and assistance in finding a family and establishing identity should be provided. The protection of the female population is based on the principle of gender equality, taking into account the physiological and social characteristics of women. Particular attention is paid to the prohibition of sexual violence [5].

Thus, international humanitarian law is a holistic system, based on the centuries of experience, designed to balance competing considerations of humanity and military necessities. This branch of law is practically the only and the most effective opportunity to restrict States in the use of military force, as well as to protect civilian population who are suffering during an armed conflict. Realizing the consequences of armed conflicts for civilian population, the international community has always sought to create a system to prevent conflicts and, when they arise, to provide comprehensive protection to those who are not directly involved in hostilities.

The rapid development of new technologies, methods of warfare, the creation of new weapons does not allow to timely update the sources of the international humanitarian law. This creates a gap in some areas.

The conclusions indicate that the measures, guarantees, and prohibitions for the protection of civilians, both in times of international and non-international armed conflicts, are enshrined on the international legal level. They are also fully enshrined and they cover a wide range of public relations. Problems arise mainly in their practical application, since it is difficult to classify a person as a civilian population, in particular in time of a non-international armed conflict, since the very concept of a civilian is too vague.

Secondly, during non-international armed conflicts States tend not to recognize organized armed groups as such in order not to "spoil good reputation". That is why organized armed groups, in its turn, have no incentives to comply with IHL norms, which results in the impunity of these norms.

The way out to eliminate any gap in the law is to update the legislation in accordance with the realities of today's life, as well as to concentrate on the basic concepts and measures to protect civilians and to regulate the methods to apply law in practice.

#### REFERENCES

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