

A Study Relating to the Protection of the Civilian Population during Armed Conflicts

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Abstract

The Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War. The need to have a separate treaty exclusively for civilians was borne out by the tragic experiences of two world wars in which millions of civilians were killed, tortured, interned, deported and subjected to tragic inhuman treatment. There are various provisions in the Hague Conventions of 1899 and 1907 (relating to the Laws and Customs of War on Land), especially Section III, entitled, "Military authority over the territory of the hostile State" (occupied territory) in Article 42-56 but they proved to be incomplete and ineffective during these two world wars which showed the defenselessness of the civilian population in armed conflict, whether international or non-international armed conflict. These wars highlighted that because of the armed conflicts, different categories of civilians get into much more miserable conditions, both actually and legally, than the wounded and sick members of armed forces or the prisoners of war who are protected under different international instruments, but the civilians in territories subjected to hostile military occupation or in the enemy territory, are "victims" of the armed conflict, in every sense of the term. The present paper highlights the problem of civilian during armed conflict and displaced from one place to another. This paper is divided into five broader head and lastly end with conclusion.

Introduction

Armed conflicts and situations of international violence are a sad fact of life in today's world. Although attempts have been made to outlaw the threat or use of armed force by States at various points in the history –notably following the carnage caused by the First and Second World War –this has unfortunately proven not to be possible. Since the end of Second World war a host of armed conflicts –both international and non-international have continued to be fought around the world. This tragic situation has highlighted as never before the extent to which civilian targets and the growing needs for rules to ensure the

protection of the victims of armed conflicts –the wounded, the sick, detainees of all kinds and the civilian population. The Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War. The need to have a separate treaty exclusively for civilians was borne out by the tragic experiences of two world wars in which millions of civilians were killed, tortured, interned, deported and subjected to tragic inhuman treatment. There are various provisions in the Hague Conventions of 1899 and 1907 (relating to the Laws and Customs of War on Land), especially Section III, entitled, “Military authority over the territory of the hostile State” (occupied territory) in Article 42-56¹ but they proved to be incomplete and ineffective during these two world wars which showed the defenselessness of the civilian population in armed conflict, whether international or non-international armed conflict. These wars highlighted that because of the armed conflicts, different categories of civilians get into much more miserable conditions, both actually and legally, than the wounded and sick members of armed forces or the prisoners of war who are protected under different international instruments, but the civilians in territories subjected to hostile military occupation or in the enemy territory, are “victims” of the armed conflict, in every sense of the term ².

The necessity to draft a separate convention for the protection of civilian persons in the power of the adversary was already stated in the Final Act of the Geneva Conference of 1929. The draft for the new Convention was made ready for the XVth International Red Cross Conference held in Tokyo in 1934. The Swiss Federal Council had planned to convene a Diplomatic conference in 1937 after receiving comments from the governments on the Tokyo draft. The date for the Conference was finally set for the beginning of 1940, but due to the outbreak of the war, it could not materialize. However, the experience of the Second World War and the treatment meted out to the civilian population¹, once again pointed out the need and urgency of such a convention.

The Fourth Geneva Convention is supplementary to Sections II and III of the Hague Regulations on hostilities and belligerent occupation². It lays down the fundamental and detailed rights for civilians in time of war and armed conflicts. It attempts to extend to civilians those rights and protections that have been established for prisoners of war and the sick and wounded of the Armed Forces. These rights and minimum welfare standards for civilians have been further discussed in Protocol I Additional to the Geneva Conventions of 12 August 1949 adopted in 1977³. The present paper divided into five parts viz.

A Persons protected under the fourth Geneva Convention-

The Convention protects the rights of civilian inhabitants of occupied territories as well as persons who are in the power of a belligerent State of which they are not citizens.

Article 4 defines “Protected persons” as all those persons who “find themselves, in case of a conflict or occupation, in the hands of party to the conflict or occupying power of which they are not nationals”. Certain categories of persons who are specifically excluded are: nationals of States not parties to the Convention, nationals of a neutral State, and nationals of a co-belligerent State which maintains normal diplomatic relations with the country in conflict in whose territory they live. Their exclusion is most probably premised on the fact that, if the need arises, the diplomatic missions or the consuls of their own States can ensure effective protection for them. However, their cases are otherwise covered under other provisions of the Convention, which cover the whole populations of the States in conflict irrespective of any unfavorable difference. Article 13 of Part II brings within the purview of the Convention “the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion”. Thus, the whole civilian population is covered, provided the civilians

are physically in the territory of a party to the conflict that is bound by the Convention. Article 73 of Protocol I brings refugees and stateless persons within the ambit of the “protected persons”⁶.

Persons specifically excluded from the purview of this convention are those who are protected under the other three Geneva Conventions of 1949. The Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, the Convention for the Amelioration of the Condition of wounded, Sick and Shipwrecked Members of Armed Forces at sea, and the convention relative to the Treatment of Prisoners of War.

Generally, under the Convention, protected persons fall in two categories: enemy nationals in the territory of the parties in conflict, and the entire civilian population in occupied territory, except the nationals of the occupying power (but those nationals of the occupying power who had taken refuge in the occupied territory before the hostilities will not be excluded). Further distinctions and exceptions restrict or widen their scope without modifying them essentially⁷.

Range of the protection of Protected Persons-

Section I of Part III of the Convention deals with the treatment of civilians in the power of the enemy (the territories of the parties to the conflict and in occupied territories). It ensures basic human rights of the protected persons in the hands of a party to the conflict, which will even be responsible for the treatment given to them by its agents (Art. 29). According to Article 27, protected persons are to be treated humanely at all times without any adverse distinction based, in particular, on race, religion, nationality or political. Towards this end, the party to the conflict is obliged in all circumstances:

- a. Not to use brutality against the life and physical integrity of the protected persons;

- b. To protect them against all acts of cruelty or threats thereof and against insults and public curiosity;
- c. To respect their persons and honours;
- d. To respect their family rights;
- e. To respect their religious convictions and practices; and
- f. To respect their usages and customs (Art. 27 para I).

Women are to be protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault and cruel behavior. But the parties to the conflict are permitted to take necessary measures of control and security for the protected persons. A protected person may not be used to render certain areas immune from military operations (Art. 28)

Prohibited forms of abuse are physical or moral coercion, in particular, to obtain information from protected persons (Art. 31), as well as “any measure of such a character as to cause the physical suffering or extermination of protected persons”. These measures comprise “murder, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person”, and also “any other measures of cruelty whether applied by civilian or military agents”. (Art. 32)

No protected person is to be “punishment for an offence he or she has not personally committed”. Collective penalties and reprisals against protected persons and their property are prohibited as well as “all measures of threats or of terrorism” and plunder are prohibited (Art. 33). And finally, to put an end to the most notorious practice adopted by Germany in the two world wars, the “taking of hostages is prohibited” (Art. 34)⁸.

B Protection of Aliens in the Territory of the Belligerent-

Articles 35 to 46 of the Fourth Convention, deals with the position of aliens in the territory of the enemy belligerent and ensures certain rights.

I Right to leave the territory of the belligerent

Article 35 provides for the right of those aliens who are protected persons (presumably enemy nationals) “to leave the territory at the outset of, or during a conflict” unless their departure is “contrary to the national interests of the State”. If the permissions refused, they are “entitled to have such refusal reconsidered by an appropriate court or administrative board”, designated by the Detaining Power (the belligerent State) for that purpose.

II Provisions as to Treatment of Aliens in Peacetime-

Protected persons who do not leave the territory shall continue to be governed by the provisions concerning aliens in time of peace, except where war time control and security prevent this. Articles 37 and 38 generally mandate the duty on the belligerent to treat protected persons humanely and promote and protect human rights, who retains a number of fundamental rights and privileges, viz., (i) to receive the individual or collective relief that may be sent to them; (ii) to receive medical attention equivalent to the nationals of the State concerned; (iii) to practice their religion, and (iv) to move from “an area particularly exposed to the dangers of war to the same extent as the nationals to find paid employment”. (Art. 38). They must be provided “the opportunity to find paid employment”, if they have lost their gainful employment due to war. If the methods of control applied to protected persons render them unable to support themselves, the state is obliged to ensure their support and that of their dependents (Art. 39). But the protected persons may be forced to work under the same conditions and extent as nationals of the State concerned. Work should be of a nature “which is very much necessary to ensure the feeding, sheltering, clothing, transport and health of human beings and which is not directly related

to the conduct of military operations and hazardous in nature ” (Art. 40)⁹. Children under fifteen years of age, pregnant women and mothers of children fewer than seven years should be accorded preferential treatment equivalent to the national of the State and they are not compel to do any hazardous work (Art. 38).

III Extent of the belligerent’s restrictive measures applied against aliens-

Where the belligerent State is satisfied that “an-individual, protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled, to claim”, the right and privileges mentioned above because their exercise “in favour of such individual person, be detrimental to the interest of State or of security of such State, (Art. 5. Para 1). However, this restrictive measure is confined to “individual” and may never be applied as a collective measure. Nevertheless, a person subjected to such a special regime, must “be treated with humanity”, and in case of trial, must be given “fair, just and regular trail” in accordance with the rules laid down by the Convention, and his rights and privileges must be restored “at the earliest date consistent with the security of the State” (Art. 5, Para 3).

on the other hand, article 41 provides that if the methods of controls indicated in the Civilian Persons convention are considered to be inadequate, and the security of the State makes it absolutely necessary, the belligerent power cannot apply any measure more severe than that of assigned residence or internment in its territory. A protected person may also willingly demand internment, presumably to protect himself from a hostile environment (Art. 41 and 42). Such internment can be reviewed, on an application by the person concerned by an authority or an administrative board, and must continue to be reviewed at least twice a year. The Detaining Power is under an obligation to

give the list of names to the protecting power of the protected persons who are interned or assigned residence unless those persons object to this (Art. 43).

Protected persons are not to be transferred to a power which is not a party to the Convention and under no circumstances they shall be transferred to a territory where they have reason to fear persecution for their political or religious beliefs and there is a fear of his murder (Art 45)¹⁰. As soon as hostilities come to an end, these restrictive measures must be cancelled (Art. 46),

It is, nevertheless, to be noted that in applying the control measures, the refugees should not be treated as enemy aliens solely on the basis of de jure nationality of the enemy State if they, in fact, do not enjoy the protection of any government (Art. 44). The Convention, however, does not deal with the belligerent State's right to expel the enemy aliens which, under customary international law, is perfectly justifiable¹¹.

C Protection of Civilians in the Occupied Territory-

Article 47 to 78 in Section III of Part III are in some respects the most important of the Civilian Convention as it determines the rights and duties of the Occupying Power and of the protected persons in the occupied territory. Since an occupant has only the military authority over the territory, the inhabitants are under his martial law and have to render obedience to his commands¹², this latitude in favour of the occupational power in the past has led to wide scale misuse of his power and numerous crimes committed against the civilian population.

This Section of the Convention is additional and supplementary to Article 42 to 56 of the Hague Regulations on military occupation. However, before knowing the scope of the protection of civilians in the occupied territory, the

first question is, when and under what circumstances, a territory must be considered occupied.

Article 42 of the Regulation states that the territory “is considered to be occupied when it is placed as a matter of fact under the authority of the hostile army” (Para 1). It further states that the “occupation extends only to the territory where such authority has been established and can be exercised” (Para 2). This, the mere will of the belligerent or a proclamation that occupation has taken place does not suffice, but depends on whether his actual control satisfies the standards of range and stability laid down by international law¹³. If it satisfies these standards (in case it does not, he is a mere invader enjoying a comparatively narrow legal authority), international law attributes him legal powers touching almost all aspects of the government of the territory and lives of its inhabitants.

Occupation of an area begins when there is sufficient force to retain control of the situation, following cessation of extensive local resistance. Often cessation of local resistances preceded by formal surrender of local or national military forces, though the State concerned may be retaining some power of resistance elsewhere, such as was the case of Poland, Belgium and France in the Second World War. Further, even if the nation’s entire force has surrendered and lacks means of resistance elsewhere, the status of the invader remains that of an occupant and not of a conqueror as long as the invaded state has allies, whose help its government continues the struggle¹⁴.

The law of belligerent occupation is unrelated to neither the justness, morality nor the legality of war in general, or a particular belligerent’s act of waging war out of which occupation arose¹⁴. It governs the tripartite relations between the occupant, the inhabitants and the temporarily ousted sovereign, whose residuary authority comes to an end on annexation. From this, it is also

clear that: (a) the occupation is of limited and provisional not permanent in nature, and (b) sovereignty is not vested in the occupant¹⁵.

Out of this situation, double consequences flow: on the one hand, the Occupying Power “shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety”, and on the other hand, in doing so it must respect, “unless absolutely prevented, the laws in force in the country” (Art. 43 of the Regulations). Therefore, the occupant’s powers are: (1) to continue orderly government; and (2) to exercise control over and utilize resources of the country so far as necessary for that purpose and to meet his own military needs. Under the latter he may apply its resources to his own military objects, claim services from the inhabitants, use, requisition, seize or destroy their property within the limits of what is required for the army of occupation and the needs of the local population. But these acts are limited in duration, quantum and quality and come to an end when the territory is liberated or annexed.

The occupant may enjoy certain rights within his own limited period of de facto rule, but he is not entitled to treat the occupying territory as its own or its inhabitants as his subjects and force them to swear allegiance to him. These provisions of the Hague Regulations have been made more precise and specific by the Civilian Persons Convention.

D. Protection of Civilian Persons Not Protected By the Fourth Geneva Convention

The Civilian Persons Convention though more elaborative than the Hague Regulations, still do not cover all categories of civilians who are found in the power of the enemy, such as the citizens of neutral States, or States not bound by the Conventions, refugees and stateless persons, spies and mercenaries. Article 75 of Protocol I, which is a mini-convention within itself, brings within

its ambit all these persons and accord them fundamental guarantees the basic human rights against the power of the enemy.

Persons who qualify for the protection according to the requirement are those who have fallen into the hands of an adverse party and are not covered under Article 4 of the Fourth Convention, viz, nationals or neutral State, or nationals of the non-parties to the Convention, spies and mercenaries who can be its own nationals. Refugees and stateless persons have been brought within the purview of the Convention by Article 73 of Protocol I and are now considered as “protocol persons”. Guerilla, who has failed to meet the minimum requirement of carrying arms openly “during each military engagement”, while he is engaged in a military deployment preceding the launching of an attack in which he is to participate (Art. 44) or the mercenary who, according to Article 47, “shall not have the right to be a combatant or a prisoner of war” are now covered under Protocol I, entitled to protection. However, it is not clear whether article 75 covers those nationals of a Party to the conflict whom that Party, for reasons related to the armed conflict, deprives of their liberty or subjects to criminal procedure¹⁶, for example, charging them with treason.

Article 45 (3) of the Protocol states: “Any person who has taken part in hostilities, how is not entitled to prisoner-of-war status and who does not benefit from more favourable treatment in accordance with the Fourth Convention shall have the right at all times to the protection of Article 75 of this Protocol. In occupied territory, any person, unless he is held as a spy, shall also be entitled, notwithstanding Article 5 of the Fourth Convention, to his rights of communication under that Convention”.

Article 75 provides fundamental guarantees for the protection of persons in the power of the Party to the conflict. The extent of protection is parallel, but

more specific and extensive than that contained in Parts I and III of the Fourth Geneva Convention.

E. The protection of Displaced Persons in Non –international Armed Conflicts:

In recent years a number of institutions, in particular non –governmental organizations have brought their attention to bear on the plight of people displaced within national borders. Prompted by their interest in the protection of human rights and in keeping with the charitable nature of their work they have focused the international spotlight on the situation of those who leave their homes in a context marked by political violence .The international community has thus been made aware of two things simultaneously first that countries affected by internal armed conflicts have a large number if displaced persons and second that armed clashes often result in large –scale population movements. There is no such rule for the protection of displaced as civilian person mentioned in fourth Geneva Convention But Common Article 3 and Protocol II protected them also. The rule in Protocol II and Article 17 prohibits the displacement of the civilians involved or imperative military reasons so demand.

Conclusion

To conclude we have seen that there is the fourth convention, along with the Protocol, has gone a long way in alleviating the sufferings of civilians in armed conflicts. The machinery available within the four corners of its provisions can ensure justice and humanity where previously injustice and human sufferings existed, but the implementation of these mechanisms depends first and foremost on the political will of the parties to the conflicts .It is totally depends upon the will of the States parties to abide and implement the norms set in the convention

.A huge violation of this rule and regulation found in year 2012 when Pakistani soldiers killed Indian soldiers.

References

1. Civilian population is also dealt with in Articles 22-23 and 25-28 of Section it of the Hague Regulations.
2. Geze Herzeh, Development of International Humanitarian Law p. 48
3. It is generally stated that in the Second World War about 6 million Jews were exterminated, but looking into Germany's special efforts in Poland and USSAR, the figure might be much higher than this. See D. Binduchedlet Robert. "The Regulation of Armed Conflicts", in M. Chief Bassoon and Ved P. Nanda ed., A treatise on International Criminal Law, Vol. I (Charles C. Thomas, 1973), p. 392.
4. Art. 154 of the Fourth Geneva Convention. The Convention was a departure from other Geneva Conventions and other instruments so far adopted because they dealt with military, a well-defined category under the authority of a responsible commander and subject strict discipline, but the Civilian persons Convention was to embrace the whole unorganized mass of civilians throughout every land.
5. See Art. 72 of the Protocol which styles. "The provisions of this section (Sec. III-Treatment of Persons in the power of a party to the conflict) are additional to the rules concerning humanitarian protection of civilians and civilian objects in the power of a party to the conflict contained in the Fourth Convention, particularly Part I and III thereof, as well as to other applicable rules of international law relating to the protection of fundamental human rights during armed conflict". However, the protocol ensure the protection of civilians against the effects of hostilities, whereas the convention is limited to protection against the abuse of authority.
6. Art. 73 of Protocol 1 states, "Persons who, before the beginning of hostilities, were considered as stateless persons or refugees under the relevant international instruments accepted by the Parties concerned or under the national legislation of the State of refuge or state of residence shall be protected persons within the meaning of Part I and III of the Fourth Convention, in all circumstances and without any adverse distinction."
7. Henzeh, eg. Cit 2 at p. 50 p. 41
8. The practice followed by Germany during World War II of mass shooting of hostages on such an unprecedented scale that after the war it was prominently brought within the category of war crimes. See L Oppenheim, International Law, Vol. II (H. Lauterpacht ed. 7th edn., 1952, Longman), p. 591.
9. The Article, however, does not rule out their employment in establishments engaged in preparations" activities,
10. This provision is identical to Art. 12 of the Prisoners of War Convention (Third Geneva Convention).
11. Oppenheim op. cit. 8 & p. 693.
12. Id at p. 438-439.
13. Julius Stone, Legal Controls of International Conflict (Stevens and Sons Ltd., 1959). P. 694. n.4
14. Thus, though the whole of Poland was occupied by the Germans and the Soviets and all Polish forces existing in 1939 surrendered, the German position in Poland remained that of a mere belligerent occupant until German forces were driven out in due course. The German-Soviet partition of Poland, as well as the German decree of Sept. 7, 1940 referring to the

“former” Polish State were premature, and could have come into effect if Germany had prevailed the Second World War or the Polish Government had concluded & separate peace agreement, accepting the partition. See, *Stone*, *id.*, at p. 606 n. 13.

15. It is clear from state practice that none of the governments or their courts whose territories were subjected to aggressive occupation by Japan and Germany in Second World War resorted to wholesale invalidation of all occupants’ acts after liberation that they were tainted by the aggressive origin.