




La revue *Aleph. langues, médias et sociétés* est approuvée par ERIHPLUS. Elle est classée à la catégorie B.

The Identity and Protection of Civilians in International Humanitarian Law

إشكالية هوية المدنيين وحمايتهم في القانون الدولي الإنساني

L'identité et la protection des civils en droit international humanitaire

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	Soumission	Publication numérique	Publication Asjp
	06-10- 2022	30-12-2022	31-01-2023

Éditeur : Edile (Edition et diffusion de l'écrit scientifique)

Dépôt légal : 6109-201

Edition numérique : <https://aleph.edinum.org>

Date de publication : 30 décembre 2022

ISSN : 2437-1076

(Edition ASJP) : <https://www.asjp.cerist.dz/en/PresentationRevue/226>

Date de publication : 31 janvier 2023

Pagination : 683-700

ISSN : 2437-0274

Référence électronique

Maameri Lobna, «The Identity and Protection of Civilians in International Humanitarian Law », *Aleph* [En ligne], 10 (1) | 2023, mis en ligne le 30 décembre 2022, consulté le 30 mars 2023. <https://aleph.edinum.org/7473>

Référence papier

Maameri Lobna, «The Identity and Protection of Civilians in International Humanitarian Law », *Aleph*, 10 (1) | 2023, 683-700.

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Introduction

Perhaps we do not take the risk of saying that war has become - it really seems - the end for which nations are frantically preparing, as was the prophecy of Arnold Toynbee (British historian): "The world today is sick with war", has become a sure reality in the contemporary international organization; it has become the supreme test that qualifies this Nations to enter into a new period of time or exclude them from it, and it is a test because it requires from man everything: wealth, resources, and ages, and it swallows all of that relentlessly and with great humanity. ongoing.

These challenges include the changing nature of armed conflicts and the increasing blurring of lines of distinction between combatants and civilians. Civilians are gradually becoming involved in activities closely related to actual combat. At the same time, combatants do not always clearly distinguish themselves from civilians, they do not wear military uniforms and do not carry arms openly, but rather mix with the civilian population, and civilians are used as human shields as well.

As a result of all this, civilians are more likely to be targeted, whether wrongly or arbitrarily. Members of the military are increasingly at risk, when they cannot adequately identify the opposing party, being attacked by individuals all indications are civilians.

The other main issue related to the challenges here is the increasing asymmetry that characterizes contemporary armed conflicts, and the differences between the warring parties, especially with regard to technological and military capabilities, have become clearer than before. Compliance with the rules of international humanitarian law may be seen as serving one party to the conflict at the expense of the other. At worst, a militarily weak party would violate the basic rules of international humanitarian law, in the face of a more powerful adversary, in an attempt to strike a balance. And if one of the parties repeatedly violates the rules,

the situation is in danger of rapidly deteriorating and everything is permissible. This downward spiral would stand in the way of international humanitarian law and its primary goal towards alleviating suffering in all times of war, so we must explore all ways to prevent this from happening.

Therefore, researchers in international humanitarian law still face a major problem. Namely: To what extent have the provisions of the Geneva Conventions and their Additional Protocols regarding the protection of civilians drowned in effectiveness or modesty?

To contribute, even if only a small amount, to the answer to the foregoing; We will adopt the analytical approach to international legal texts; According to the following division of the study:

- The problems raised by the identification of the parties.
- The principle of minimum humanity as an option to protect civilians.

1. Problems Raised by Identification of Parties

Defining the concept of civilians calls for a distinction between the concept of a prisoner of war and a civilian detainee, especially in light of the similar provisions established for them by international humanitarian law in the field of protection (Redha Jabbari 2020: 426 - 427).

The provisions of international law have been late in providing protection for civilians who fall into the hands of the enemy in comparison to the combatants. Among the categories that international humanitarian law has given care to are prisoners of war who fall into the grip of the enemy, as the international community expressed this interest by organizing a special agreement for prisoners of war in 1929, which was amended and developed in 1949, and became known as the Third Geneva Convention.

Thus, we will discuss the definition of a prisoner of war and a civilian detainee as follows:

1.1. Determining the status of a prisoner of war

The Fourth Hague Regulations (October 18, 1907) defines prisoners of war, in Article 1, as: Persons who fall under the authority of the enemy of the following categories:

1. Members of the armed forces of a party to the conflict, members of militias and teams of volunteers belonging to such forces
2. Members of other militias and members of other volunteer teams, including members of the organized resistance movement belonging to a

party to the conflict and operating inside or outside their territory, even if the territory is occupied, provided that these militias or volunteer teams, including resistance movements, fulfill the following conditions:

- To be under the command of a person responsible for his subordinates.
- It should have a distinctive mark that can be recognized from a distance.
- To carry her weapons in a visible way.
- To carry out its operations in accordance with the laws and traditions of war (Abdullah bin Nasser Al-Subaie 2008: 97 – 98).

The 1929 Geneva Convention developed the Hague Rules, and expanded on the concept of prisoners of war, as: “All persons in the armed forces of the conflicting parties who fall into the power of an adverse Party during naval and air operations of war.”

The convention also adds that a prisoner of war is: “Every enemy person is taken, not for a crime he has committed, but for military reasons.” (Abd al-Rahman Abu al-Nasr and Osama Saeed Saad 2014: 477).

The Third Geneva Convention on the Treatment of Prisoners of War of 1949 did not give a specific definition of a prisoner of war. Rather, it mentioned in Article 4 of it exclusively six categories, and these categories are as follows:

1. Members of the armed forces of one of the parties to the conflict and the militias or volunteer units that are part of such forces.
2. Members of other militias and other volunteer units, including members of organized resistance movements who belong to one of the parties to the conflict, if they meet certain conditions.
3. Members of the regular armed forces who pledge allegiance to a government or authority not recognized by the Detaining Power.
4. Persons accompanying the regular armed forces without being part of them. Such as civilian persons within military aircraft crews, war correspondents, supply contractors, and members of labor units or services concerned with the welfare of the military, provided that they have a permit from the armed forces that accompany them.
5. Members of the crew, including captains, navigators, and their assistants in merchant ships, and crews of civil aircraft of Parties to the conflict who do not benefit from better treatment under any provisions of international law.

6. The inhabitants of the lands exposed to the invasion would rise up in the face of the invading enemy to defend their territories, and that is also subject to certain conditions.

In Additional Protocol II to the Geneva Conventions of 1977, the term “prisoners” was not used, but rather “persons whose freedoms had been restricted”, and the aim was not to give combatants detained in these conflicts the status of prisoner of war so that international law would not prevent national authorities from prosecuting insurgents under The national law in force in the country.

Although Additional Protocol II singles out Article 5 for the protection of those whose liberty has been restricted in non-international armed conflicts, they also enjoy the essential guarantees stated in Article 4 of the Protocol for the protection of persons who do not or who no longer take a direct part in the work. Hostility, which prohibits in particular attacks on the life, health and physical or mental integrity of persons, criminal sanctions and the taking of hostages.

Article (2/2) of Additional Protocol II to the Geneva Conventions made an important provision, stating that:

“All persons whose freedom has been restricted for reasons related to this conflict, as well as all persons whose freedom has been restricted after the conflict for the same reasons, shall enjoy the protection of Articles V and VI, until such This restriction of freedom.”

Thus, it was emphasized that the scope of application of the protection contained in this protocol would be expanded to include everyone whose freedom has been restricted, such as criminal trials, or their freedom has been restricted for security reasons without criminal trial, provided that there is a link between the conflict situation and the deprivation of liberty, and therefore detainees under common law are not covered by them this ruling.

1.2. Determining the status of a civilian detainee

Article 4 of the Fourth Geneva Convention on the Protection of Civilian Internees states:

“Persons protected by the Convention are those who, at any given moment and in any form whatsoever, find themselves in a situation of conflict or occupation, under the authority of a party to the conflict who are not its nationals, or an occupying power who is not of his subjects.”

We note that this article protects every individual who finds himself in a situation of armed confrontations or occupation, or under the control of a regime in a state of war or an occupying power to which they are neither its supporters nor belonging to it., nationals of a neutral or belligerent State having normal diplomatic representation in the belligerent State in whose authority they are.

The protection of persons protected by the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field, dated 1949, is excluded from the framework of the Convention, And the Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked of Armed Forces at Sea of 1949, or the Geneva Convention Relating to the Treatment of Prisoners of War, mentioned above, for the protection of other provisions of the Conventions.

Whereas the Fourth Geneva Convention is the only convention devoted to the protection of civilians. Accordingly, in the opposite sense, the detainees are the civilians who fall into the hands of the enemy. Therefore, we note the link between detainees and civilians.

The term “detainee” refers to the confiscation and restriction of the freedom of the civilian, which is any person who does not belong to the category of fighters who are to be identified with the greatest possible accuracy, so that the precise identification of fighters makes what is below them civilians (Amina Sherif Fawzy Hamdan 2010: 17).

With this, the Fourth Geneva Convention on the Protection of Civilian Persons in Time of War came in Article 4 of it, by mentioning the persons who are protected by this convention, but without giving a clear definition of these civilians, and without giving criteria to distinguish civilians from others (Zakaria Azmy.1978: p260), and the lack of provision for a precise definition of the category of the population Civilians have a great impact on violating their rights and exposing them to the worst forms of suffering in armed conflicts.

Common Article 03 of the four Geneva Conventions of 1949 adopted the criterion of the role, function or work performed by an individual to participate in military operations in order to define the combatant, and to deny that description to the civilian individual when defining the civilian population, as it defined the civilian population as:

“People who do not have an active role in hostilities, including members of armed forces who have laid down their arms or been taken away from combat by illness, wound, capture, or any other reason.”

However, the definition that came in the Geneva Conventions is vague and inaccurate. It did not adopt a criterion that removes interpretation regarding the civilian population (Boubacar Mokhtar. 2012: p27), which made the International Committee of the Red Cross, the author of the Fourth Geneva Convention for the Protection of Civilian Population, make efforts to try to establish a clear definition of the civilian population, and in the light of Article The International Committee of the Red Cross presented the definition of the civilian population to the Conference of Governmental Experts at its first session, and its definition was as follows:

“The civilian population is those who are not part of the armed forces or organizations associated with them, do not take a direct part in operations of a military nature, and do not contribute directly to the activity of the war effort.”

Some of the participating government delegations submitted amendments and suggestions on that definition, and these suggestions ended when the definition of civilian persons and the civilian population was approved in Article 50 of Additional Protocol I to the Geneva Conventions of 1977, by stating that:

“1- A civilian is any person who does not belong to one of the categories of persons referred to in the first, second, third and sixth items of paragraph (a) of Article 4 of the Third Convention and Article 43 of this Protocol. If doubt arises as to whether a person is a civilian or If a person is not a civilian, then that person is considered a civilian.
2. All civilians shall be included in the civilian population.
3- The civilian population shall not be stripped of its civilian character by the presence of individuals among them who do not meet the definition of civilians.”

What is noted in the definition of civilians in the First Additional Protocol to the Geneva Conventions is that it is based on two criteria, namely (Boubacar Mokhtar 2012: 28):

- The first criterion: It is the status or capacity of the person to be defined, and whether he is a member of the armed forces or not.
- The second criterion: It is the objective, functional criterion or the activity that the person performs, and whether the person's activity is considered participation in combat operations or not.

What is also noted on the definition of the population previously referred to is that it tried to expand the scope or category of civilians, and this is evident:

- First: Considering that every person who meets the conditions of Article 04 of the Third Geneva Convention of 1949, and Article 43 of the First Additional Protocol is considered a combatant, otherwise he is considered a civilian, and thus a civilian is every person who does not fight and does not participate in the fighting (Mahmoud Taleb Hader Diab 2009: 91).

Article 43 of Additional Protocol I to the 1977 Geneva Conventions states that:

“1. The armed forces of a party to a conflict consist of all the armed forces, groups and regular units that are under command responsible for the conduct of their subordinates before that party, even if that party is represented by a government or an authority not recognized by the adversary. Such armed forces must be subject to internal regulations. He shall, inter alia, ensure that the rules of international law applicable in armed conflict are followed.
2. Members of the armed forces of a Party to the conflict (other than medical personnel and preachers covered by Article 33 of the Third Convention) are combatants in the sense that they have the right to participate directly in hostilities.
3 If the armed forces of a party to a conflict include a paramilitary body charged with enforcing respect for the law, it shall notify the other parties to the conflict accordingly.”

- Second: The expansion of the category of civilians shows the interpretation of doubt about the human identity between a combatant or a civilian in favor of the description of the civilian, and not the description of the fighter, since the suspicion has its justifications and justifications.
- Then, thirdly: Expanding the scope of the civilian category shows that the civilian population has been stripped of its civilian character because there are non-civilians among them (Abd al-Rahman Abu al-Nasr and Osama Saeed Saad 2014: 484).

The jurisprudence makes a comparison between the rules regulating the treatment of civilian detainees and the rules regulating the treatment of prisoners of war, as it indicates the similarity between them in many matters, whether in the conditions that must be met in the place of detention or captivity, and both in terms of food, clothing, health aspects, medical care, and so on, which it requires. Human dignity under all circumstances. However, the rights of civilian detainees are more extensive than the rights of prisoners of war (Nada Abdel Khaleq Mohamed Barghouti 2013: 31).

2. The principle of minimum humanity as an option to protect civilians

In times of international armed conflict, the parties to a conflict may take measures of arrest against civilians, that is why in Section IV of the Fourth Geneva Convention the provisions and rules for the treatment of detainees by the occupation and the restriction of the cases in which it is permissible to arrest civilians in the occupied territories and the rights that must be It is enjoyed by detained persons.

Thus, the Fourth Geneva Convention of 1949 contributed to the protection of civilian detainees, and dealt with all aspects of detention in terms of life, culture and religion, including - of course - the conditions of their detention and the places where they are held, their rights include: humane treatment, food, clothing, and their contact with the outside world.

Accordingly, the most important guarantees of the rights of civilian detainees in accordance with the provisions of the Fourth Geneva Convention will be addressed, as follows:

2.1. The concept of minimal humanity

The human being must always be seen as the focus of protection in these conflicts, especially since the individual has occupied a distinguished position in many corners of international law, especially the field of human rights, which intersects with international humanitarian law in protecting the minimum human rights during armed conflicts (Saleh El Din Mamash with Samir Shawky 2015: 406). As well as the position it has occupied in the International Criminal Court system, in front of many international organizations and in the provisions of international conventions.

Of the absolute rights that may not be violated, the natural right to life is a right that no one may be deprived of except in implementation of a criminal judgment in a crime punishable by death in the countries that apply this punishment, and in support of the protection of the right to life, international humanitarian law has narrowed the range of punishable crimes The death penalty is imposed during states of emergency declared in the territories under military occupation, as Article (68) of the Fourth Geneva Convention of 1949 stipulates that the death penalty may not be imposed on accused persons, according to the emergency law applied by the occupation authorities, when the same acts attributed to them are punishable by a penalty. lighter, according to the provisions of the criminal law that was in force in those territories before the occupation.

Article (15) of the European Convention on Human Rights in time of war and emergency conditions restricted the individual's right to life in its second paragraph, by stipulating that the only exception to the first paragraph is the death of a person as a result of a legitimate act of war (Mona Mahmoud Mustafa 1989: 181).

There is no doubt that any abuses or violations that were committed during wartime are considered a violation of human rights to dignity, security and physical integrity. The first paragraph of Article (03) of the four Geneva Conventions of 1949 stipulates the rules of international humanitarian law applicable in times of armed conflict. However, persons protected by these agreements must be treated humanely and without any discrimination based on sex, colour, religion, belief, gender, birth, wealth or any other similar criteria.

According to the Fourth Geneva Convention, civilians in the occupied territories have the right to exercise all their personal and private rights, and the need to respect their honor: "Protected persons in all cases have the right to respect for their person and their honour."

The second paragraph of this article dedicates special protection to women, and forbids assault on their honor, especially indecent assault and rape (Amina Sherif Fawzy Hamdan 2010: 18).

The Convention on the Prevention and Punishment of the Crime of Genocide (Extermination of Humankind), dated December 09, 1948, also stipulated in Article 1, that genocide, whether in peacetime or in time of war, is considered a crime according to international law, and states must prevent and punish it.

There is a category of human rights and basic freedoms that may not be violated, even in time of war, by cancellation or restriction, including the human right not to be subjected to torture, and international human rights law has given special protection to this right, and this was expressly provided for in Article (03) of the Geneva Conventions. The four, in addition to Article (4/2-a) of the Second Additional Protocol to the Geneva Conventions, regarding the rules of non-international armed conflicts, where it states that:

"2. The following acts directed against the persons referred to in the first paragraph are prohibited immediately and at all times and places, without prejudice to the comprehensive nature of the previous provisions:

a- Assault on the life, health and physical or mental integrity of persons, in particular murder and cruel treatment such as

torture or mutilation, or any form of corporal punishment.”
 (Mohammed bin Abdul Rahman Al Ali Al Dohan 2010: 31)

As for the prohibition of torture in the case of international armed wars, it was mentioned in Article (12) of the First and Second Geneva Conventions, and in Article (17) of the Third Geneva Convention, and in Article 32 of the Fourth Geneva Convention, which states that:

“The High Contracting Parties expressly prohibit all measures which are likely to cause physical suffering or extermination of protected persons under their authority. This prohibition is not limited to murder, torture, corporal punishment, mutilation and medical scientific experiments not only required by the medical treatment of the protected person, but also includes any acts other brutality, whether carried out by civilian agents or by military agents.”

The second paragraph of Article (75) of Additional Protocol I to the Geneva Conventions on the prohibition of torture in both times of peace and war states: “Persons who are in the power of a party to the conflict shall in all circumstances be treated humanely...”

In conclusion, while the state to which the citizen is affiliated enjoys some rights regarding restricting some of the freedoms recognized for the human being in international documents in certain specific circumstances exclusively, we find that the legal system to which the enemy state or the occupying power is subject imposes obligations that must be respected, if the occupying state violates the rights of the individual in the occupying country, by subjecting the detainee to torture, for example, it has also violated the rights of the state to which the detainee belongs by his nationality, and this state has the right to take whatever measures it wants in accordance with international law to defend the rights of its citizens (Mona Mahmoud Mustafa 1989: 184).

As for procedural safeguards, the civilian detainee must be informed of the reasons for his arrest, and must be able to obtain a review of the decision as soon as possible by a court or administrative body, and if the decision remains unchanged, it must be reviewed periodically, and at least twice in the year.

The Detaining Power may try and detain such persons for war crimes they may have committed, or for other violations of international humanitarian law, but not merely because they have taken a direct part in the hostilities (International Committee of the Red Cross 2014: 44).

According to Articles 136 – 141 of the Fourth Geneva Convention, the detaining authority must provide the Central Tracing Agency with all information related to the arrested persons, and a jurisprudential opinion is that international humanitarian law should include a text that obliges the occupying state to accept the presence of a neutral humanitarian mediator - as a representative of the International Committee of the Red Cross In the prisons of civilians in the occupied territories, and to stipulate the role of the mediator according to the following:

1. Informing the detained civilians of their rights.
2. Remind the military prison administration of the provisions of this law.
3. To inform the occupying country of the violations by the prison administration of the provisions of international humanitarian law, if they occur (Jomaa Shahood Shepat 2003: 405).

2.2. International humanitarian law dealing with unrecognized combatants (illegal)

While discussing the legal status of illegal fighters is not new, following the US-led military campaign in Afghanistan, it has become the subject of intense debate in writings, statements and reports. without going into the specifics of this armed conflict, this point is intended to shed some light on the forms of legal protection granted by international humanitarian law to “unauthorized illegal combatants” and in view of the growing assertion that these persons do not enjoy any kind of protection under international humanitarian law.

2.2.1. Geneva Conventions dealings with unrecognized combatants

It is difficult to assert that undocumented combatants are not entitled to any form of protection under international humanitarian law. If they fulfill the nationality criteria mentioned in Article 4 of the Fourth Geneva Convention, they are clearly protected by this Convention, the unlawful participation of a person in hostilities is not a criterion for excluding the application of the Fourth Convention to him, although this may be grounds for limiting certain rights to him in accordance with Article V of the Convention.

The forms of protection specified in the Fourth Convention depend on the situation in which a person falls into the hands of the enemy, as the protection is maximum if the illegal combatant falls into the hands of the enemy in the occupied territories. As for those who fall into the grip of the enemy-on-enemy territory, the protection provided by international humanitarian law has developed in a good way, while the protection is less developed for those who fall into the grip of

the enemy on the battlefield - where effective control has not yet been established - according to the interpretation of the occupation.

Article 3 common to the four Geneva Conventions has expanded its material scope; to decide that the responsibility for implementing its provisions lies not only with governments, but also with all non-state actors involved in the conflict; common Article 3 of the Geneva Conventions states: However: “In the event of an armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict is bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms, and persons hors de combat by sickness, wound, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction based on race, colour, religion or belief, sex, birth or wealth or any other similar criterion and for this purpose the following acts in relation to the aforementioned persons shall be prohibited, and shall remain prohibited at all times and places:
 - Assault on life and physical integrity, in particular murder in all its forms, mutilation, cruel treatment and torture,
 - hostage-taking;
 - Outrages upon personal dignity, in particular humiliating and degrading treatment;
 - The passing of judgments and the execution of penalties without a previous trial before a legally constituted court, which guarantees all the necessary judicial guarantees in the eyes of civilized peoples.
2. He gathers the wounded, sick and shipwrecked, and takes care of them. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the parties to the conflict. The parties to the conflict shall, in addition, work through special agreements to implement all or some of the other provisions of this Agreement. The application of the foregoing provisions shall not affect the legal status of the parties to the dispute.”

2.2.2. The First Additional Protocol to the Geneva Conventions Dealing with Unrecognized Combatants

Establishing limitations on methods and means of warfare in order to better protect the civilian population is among the main achievements of Additional Protocol I; It unequivocally prohibits terrorist acts, such as attacks against

civilians and civilian property; the Protocol also expressly prohibits acts or threats of violence whose primary purpose is to spread terror among the civilian population.

It goes without saying that persons suspected of such acts are subject to criminal prosecution and Additional Protocol I does not confer prisoner of war status on persons who have unlawfully participated in hostilities. It retains this status for members of the armed forces of a party to an international armed conflict within the meaning of the Protocol.

These armed forces must be organised, operate under command accountable to the circumstance, and be subject to an internal disciplinary system that enforces compliance with humanitarian law. In addition, members of the armed forces must distinguish themselves from the civilian population in order to be entitled to prisoner of war status when captured.

Although the international custom was to wear a uniform or a distinctive sign and to bear arms openly, the states parties to the protocol agreed that this requirement could be less stringent in very exceptional cases such as cases of national liberation wars, where it is sufficient to carry arms openly as a means of discrimination.

The guarantees provided in Article 75 of Protocol I are the minimum protection that applies to all persons in the power of a party to an international armed conflict, including illegal combatants, regardless of whether they are covered by the Fourth Geneva Convention or not.

Thus, the Protocol provides recognition and protection only to organizations and individuals who act for the benefit of a state or entity defined in international law; It excludes “private wars” waged by individuals or groups as excluded by the 1949 Geneva Conventions and the 1907 Hague Regulations. Thus, “terrorist” groups that act on their own behalf and without the required relationship with a state or similar entity are excluded from the protection granted to prisoners of war (Ronald Brand 2001: 297-284).

It is worth noting that before the end of September 2001, specifically on September 28, 2001, the Security Council issued Resolution 1373 in which it reaffirmed its full condemnation of the terrorist attacks that took place in New York, Washington, DC, and Pennsylvania on September 11, 2001; in it, he expressed his determination to prevent such acts from taking place; This resolution imposes binding duties on all states, with the aim of combating terrorism in all its forms and manifestations.

It requires member states to do various things, including:

- Prohibiting all forms of financial support to terrorist groups (operative paragraphs 1a), (b) and (c) and (d);
- Failure to provide safe haven or support or support for terrorists; (paragraphs 2a) and (c) and (d) and (g) and (3) and (and (g));
- Exchanging information with other governments about any groups practicing or planning terrorist operations (operative paragraphs 2 (b) and 3 (a) and (b) and (c));
- cooperating with other governments in the investigation, detection, arrest and prosecution of those who engage in such acts (operative paragraphs 2 (b) and (f) and 3 (a) and (b) and (c));
- Criminalization of explicit and tacit assistance to terrorism in domestic laws and bringing violators of such laws to justice (operative paragraph 2(e);
- Accede as soon as possible to the relevant international conventions and protocols relating to terrorism (operative paragraph 3 (d)) (Haitham Manna.2004/<https://haythammanna.net/human-rights-and-terrorism/>)

Kofi Annan - Secretary-General of the United Nations at the time - expressed his fear that the war on terrorism would be at the expense of human rights when he told the Counter-Terrorism Committee; that:

“It must be clear to everyone that there is no bartering effective efforts to combat terrorism and protect human rights; on the contrary, I believe that in the long run we will realize that human rights, along with democracy and social justice, constitute one of the best ways to ensure protection against terrorism. Human rights are within the main competences of this Council... Rather, they fall on the shoulders of other bodies of the United Nations, which should not leave their work to duplication. Rather, there is a need to take into account the experiences of these bodies and to ensure that the measures they take do not diminish human rights or provide others with an excuse to take such action.”

There is no doubt that what is known as the “war against terrorism” has brought the world into an absurd phase, the unknowns of which are difficult to predict. Contrary to the well-known modern technology wars (Iraq and Kosovo), this crisis strongly reconsiders the concept of security at the expense of freedom; As is well known in the humanities, security is not a state, but rather a relationship

to the self and the other, a relationship with the world and a perception of this world; Such a relationship cannot be built in an emergency situation and with an emergency mentality; And when this is the case, and the declaration of a state of emergency becomes universal and not only within the walls of a small political entity, there is a victory for arrogance over justice and the concept of superiority at the expense of the idea of human equality; There is no doubt that this emergency mentality will govern the last steps in the anti-terror agreement, while making the politician stifle the human rights defender in a very dangerous issue.

For that; It should be mentioned here; that there is an international recognition according to which every state is legally obligated to refrain from any repressive act that deprives people of their right to self-determination, freedom, independence and the basics of living; On this basis, it is legitimate for people to resist this repressive act. There is no doubt that considering settlement a crime against humanity in the Rome Statute of the International Criminal Court makes the people of Palestine a people struggling to stop a crime of this seriousness through their legitimate struggle (Haitham Manna/<https://haythammanna.net/human-rights-and-terrorism/>).

Conclusion

It has been demonstrated to us through this study; International humanitarian law is based on the principle of distinguishing between combatants who lead hostilities during armed conflicts within the framework of their mission, and civilians who are presumed not to take a direct part in the hostilities, and who therefore have the right to enjoy full protection from attack, and lose that protection only if they participate” Direct participation in hostilities”; In this regard, the International Committee of the Red Cross, after years of discussions and studies at the expert level, issued an “interpretive document” aimed at clarifying the concept of direct participation in hostilities and its consequences under international humanitarian law; but as a supplementary measure dictated by necessity; Whereas, the Geneva Conventions and their Additional Protocols; It did not clarify what behavior constitutes direct participation in military operations; But these were not the last obstacles in the way of securing protection for civilians and civilian objects; In modern armed conflicts, new facets of challenges have emerged.

But in any case, the development that the international organization has known in the field of human protection, especially during armed conflicts, has developed significantly, despite the presence of some violations and some abuses committed by the major powers, led by the United States of America, as well

as Israel, that is why the international community has recognized the criminal responsibility of states, because some violations are evaded by individuals on the grounds that their criminal acts are attributed to the state to which they belong in the context of combating terrorism or in the framework of combating aggression and invoking the preservation of international peace and security.

Where we conclude that it appears that there are legal rules that address the issue of protecting civilians and the existence of mechanisms to ensure their protection, but this does not prevent us from referring to some recommendations, the most important of which are:

- -Finding accurate criteria to distinguish between civilians and military personnel, in light of a clear definition of civilians
- -Establishing a special court to look into and extend oversight over all issues of international humanitarian law.

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Abstract

International humanitarian law grants civilians (people and individuals) general protection against the dangers arising from military operations. The civilian population as such, as well as civilian persons, may not be the object of attack. Acts or threats of violence aimed primarily at spreading terror among the civilian population are prohibited; attacks are also prohibited. indiscriminate and deterrent attacks against the civilian population or all civilians. Among the most important recommendations reached by this study; The United Nations must be urged to take practical measures on the ground to ensure the prohibition of deterrence attacks against the civilian population or civilian persons, as well as to work locally to form a specialized legal committee to examine the mechanisms of approaching international justice and the consequences of that before going to the court with jurisdiction (the Court International Criminal).

Keywords

international humanitarian law, armed conflicts, civilians and military, victims, protection

يمنح القانون الدولي الإنساني المدنيين (سكانا وأفرادا) حماية عامة ضد الأخطار الناجمة عن العمليات العسكرية، فلا يجوز أن يكون السكان المدنيون بوصفهم هذا وكذا الأشخاص المدنيون محلا للهجوم. وتحظر أعمال العنف أو التهديد به الرامية أساسا إلى بث الذعر بين السكان المدنيين؛ وكذلك تحظر الهجمات العشوائية، وهجمات الردع ضد السكان المدنيين أو الأشخاص المدنيين كافة.

ومن أهم التوصيات التي توصلت إليها هذه الدراسة؛ أنه يجب حث الأمم المتحدة على اتخاذ إجراءات عملية على الأرض تكفل حظر هجمات الردع ضد السكان المدنيين أو الأشخاص المدنيين، وكذلك العمل محليا على تشكيل لجنة قانونية مختصة تبحث في الآليات التوجه إلى القضاء الدولي والآثار المترتبة على ذلك قبل خطوة التوجه إلى المحكمة ذات الاختصاص) المحكمة الجنائية الدولية (.)

القانون الدولي الإنساني، النزاعات المسلحة، المدنيين والعسكريين، الضحايا، الحماية

Résumé

Le droit international humanitaire accorde aux civils (personnes et individus) une protection générale contre les dangers résultant d'opérations militaires. La population civile en tant que telle, ainsi que les personnes civiles, ne peuvent faire l'objet d'attaques. Actes ou menaces de violence visant principalement à semer la terreur parmi la population civile sont interdites, les attaques sont également interdites, les attaques aveugles et dissuasives contre la population civile ou tous les civils. Parmi les recommandations les plus importantes atteintes par cette étude ; Les Nations Unies doivent être exhortées à prendre des mesures concrètes sur le terrain pour assurer l'interdiction des attaques de dissuasion contre la population civile ou les civils, ainsi qu'à travailler localement pour former une commission juridique spécialisée pour examiner les mécanismes d'approche de la justice internationale et les conséquences de cela avant de saisir la juridiction compétente (la Cour Pénale Internationale).

Mots-clés

Droit international humanitaire, conflits armés, civils et militaires, victimes, protection