



Marcin Marcinko

PhD, Assistant Professor, Chair of Public International Law, Jagiellonian University in Kraków
<https://orcid.org/0000-0001-6495-9606>

The legal status of civil defence organisation during armed conflict and belligerent occupation

Introduction

The National Security Strategy of the Republic of Poland, adopted in May 2020, clearly emphasises that strengthening the state's resilience to current threats, including hybrid ones, requires the development of “a system of common civic defence” through fully realising the potential of the state and local government institutions, education and higher education entities, local communities, economic entities, non-governmental organisations and citizens, all of which will provide comprehensive resilience of the state to non-military and military threats.¹ A similar approach to the issue of a state's resilience and its citizens is taken by the *Resistance Operating Concept* (ROC) of 2020 – a publication whose main purpose is to explore “actions that a sovereign state can take to broaden its national defence strategy and prepare to defend itself against a partial or full loss of national sovereignty.”² It defines “resilience” as “the will and ability to withstand

¹ *National Security Strategy of The Republic of Poland*, Warsaw, 12 May 2020, para. 2.1, https://www.bbn.gov.pl/ftp/dokumenty/National_Security_Strategy_of_the_Republic_of_Poland_2020.pdf [accessed: 5 January 2022].

² O.C. Fiala, *Resistance Operating Concept (ROC)*, MacDill Air Force Base: JSOU Press, 2020, p. xv.

external pressures and influences and/or recover from the effects of those pressures or influences.”³

Both documents also emphasise the role that civil defence plays in achieving the goals set by the broadly understood “resilience”. In the case of the Polish Security Strategy, the need was observed to “redefine the civil defence system and the population protection system by making it universal, both within urban agglomerations, as well as in rural areas, focusing on building the capacity of the system to constantly adapt and respond to the changing challenges and threats.”⁴ In order to achieve this, it is also necessary to prepare legal solutions that will comprehensively regulate the subject matter of civil defence.⁵ In the ROC publication, it was underlined that the objectives of establishing civil defence “are to protect the civilian population, safeguard the continuity functioning of crucial public services, attenuate the accompanying harmful effects of conflict, and contribute to the operational capabilities of the armed forces during conflict.”⁶ The document further explains that “individuals and organisations inside and outside of government may be conscripted for roles in support of wartime organisation. This may involve the establishment of municipal or regional reinforcement pools for rescue services, medical services [...], and home protection organisations, as well as the creation and maintenance of shelters and evacuation capabilities.”⁷

However, the definitions of civil defence adopted in both documents have a broader meaning than the term “civil defence” applicable under international humanitarian law (hereinafter: IHL), specifically in the regulations of Protocol Additional to the Geneva Conventions, on the protection of victims of international armed conflicts of 1977 (hereinafter: Additional Protocol I, AP I)⁸ – in particular, in its part IV concerning civilian population, section I on general protection against the effects of hostilities, Articles 61–67. This should not be surprising, however, since even the basic purpose of civil defence varies greatly from one state to another. Civil defence may be conceived as an essentially civilian task, or it may be considered as part of the general defence effort of the country.⁹ According to the International Committee of the Red Cross, civil defence in the broad sense

³ *Ibidem*, p. 5.

⁴ *National Security Strategy...*, *op. cit.*, para. 2.6.

⁵ *Ibidem*.

⁶ O.C. Fiala, *op. cit.*, p. 3.

⁷ *Ibidem*.

⁸ Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), 1125 UNTS 3, ICRC, 8 June 1977, <https://www.refworld.org/docid/3ae6b36b4.html> [accessed: 5 January 2022].

⁹ M. Bothe, K.J. Partsch, W.A. Solf, *New Rules for Victims of Armed Conflicts: Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949*, 2nd ed., Leiden: Martinus Nijhoff Publishers, 2013, p. 435.

“generally comprises all measures for national defence which are not of a military nature (including, in particular, measures to safeguard the position of public authorities, to maintain public order, public services including the health service, the maintenance of public morale and the protection of the war industry), while civil defence in the narrow sense constitutes only part of this (measures aimed at saving lives and limiting damage).”¹⁰ Considering the above, the organisation and structure of civil defence is not uniform either – there may be a single civil defence administration, civil defence functions may be exercised by a number of administrative agencies in such a way that it is impossible to separate them from other activities, or they may be exercised by private organisations.¹¹

The above-mentioned differences caused considerable difficulties in creating a universal international legal regime ensuring protection to civil defence. However, it was recognised that, from the perspective of IHL governing the conduct of parties to armed conflicts, it is of the utmost importance to guarantee civil defence organisations the status that ensures their protection in the performance of their objectives and to establish a distinctive sign enabling them to be identified.¹² Ultimately, in the Additional Protocol I, it was decided to adopt a narrower understanding of civil defence, focusing primarily on its humanitarian aspect, i.e., on its role to mitigate the losses, damage and suffering inflicted on the civilian population by means and methods of warfare, particularly when modern weaponry is used in violation of the principles and rules of IHL.¹³

Since the civil defence formulated in such a way in specific treaty norms differs slightly from the general, and perhaps more widespread, view of it, the aim of this article is to take a closer look at the aforementioned provisions of AP I and to explain how civil defence is understood from the perspective of international law, what its tasks are and how its protection is shaped. In the context of broader “resilience”, one should also refer to the legal situation of civil defence in the occupied territory, in particular to its rights, and the obligations of the occupying power towards the civil defence organisations. The above considerations are complemented by an analysis of when these organisations may lose such protection and what the legal and factual consequences of this are.

¹⁰ *Status of Personnel of Civil Defence Organisation. Report submitted by the ICRC at the 20th International Conference of the Red Cross (Vienna, 1965)*, Geneva, May 1965, p. 1.

¹¹ M. Bothe, K.J. Partsch, W.A. Solf, *op. cit.*, p. 435.

¹² Y. Sandoz, Ch. Swinarski, B. Zimmermann (eds.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Geneva: International Committee of the Red Cross, 1987, p. 713.

¹³ *Ibidem*.

Civil defence – definition, tasks, and the scope of protection under IHL

In the general sense, the term civil defence refers to an organisation established to assist the civilian population at risk and affected in the event of armed conflicts or natural disasters, as well as a set of interdisciplinary preventative, protective and rescue actions undertaken in such cases, carried out with the collective effort of state bodies and institutions, as well as social organisations, economic entities, and individual citizens. In principle, then, civil defence tasks carried out in the conditions of armed conflict do not differ from protective and rescue activities undertaken during peacetime, in the event of natural disasters, industrial accidents, serious traffic and construction disasters, forest fires or fires in compact development of residential settlements, and other dangerous events. Therefore, the forms and methods of action during the rescue of people and property during a war will be the same, but the scale of protection and rescue needs in the event of war will undoubtedly be greater due to the direct effects of means of warfare are then multiplied as a result of damage or causing fires of residential buildings and industrial, energy, and communication facilities and installations.

Article 61 of AP I gives a definition of civil defence, civil defence organisations, and civil defence personnel and matériel. However, it was easier to first define the tasks of civil defence than its organisation, given the previously mentioned diverse organisational nature in individual countries. In addition, such an approach allows every citizen to perform the function of civil defence at the request of the authorities if such a need arises, while civil defence as such is not monopolised by specialised bodies and formations.¹⁴

According to Art. 61 (a) of AP I, the term “civil defence” means the performance of various humanitarian tasks, such as warning, evacuation, management of shelters, rescue, medical service (including first aid), firefighting, provision of emergency accommodation and supplies, and assistance in the preservation of objects essential for survival. The list of tasks consists of a total of 15 items and additionally, these tasks must have one of the following aims:

- 1) to protect the civilian population against the dangers of hostilities or disasters;
- 2) to help the civilian population to recover from the immediate effects of hostilities or disasters;
- 3) to provide the conditions necessary for the survival of the civilian population.¹⁵

¹⁴ *Ibidem*, p. 719.

¹⁵ *Ibidem*, pp. 720–722. Cf. M. Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, Cheltenham: Edward Elgar Publishing, 2019, p. 379; R. Geiß, Ch. Paulussen, Specifically Protected Persons and Objects, [in:] *The Oxford Guide to International Humanitarian Law*, eds. B. Saul, D. Akande, New York – Oxford: Oxford University Press, 2020, pp. 189–190.

It should be emphasized that all of these tasks enumerated in Art. 61 (a) should be interpreted in conjunction with the above aims, which means that the above tasks are the functions of civil defence insofar as their exercise is “intended to protect the civilian population,” etc. For example, the term “warning” means warning to the civilian population, in particular of forthcoming attacks or natural disasters, and the term “disaster” covers natural disasters as well as any other calamity not caused by hostilities, e.g., explosions of gas or oil tanks, civilian plane accidents, etc.¹⁶ Problems may be caused by the interpretation of tasks consisting in “detection and marking of danger areas” (Art. 61 [a] item viii) and “decontamination and similar protective measures” (Art. 61 [a] item ix), because they are quite similar to operations pursuing military purposes. Therefore, these operations must be intended only for the civilian population. Operations such as detection and marking and removal of minefields during combat operations are not covered.¹⁷

The list of civil defence tasks is exhaustive, however, some flexibility is introduced – activities which are not specifically mentioned may be covered, provided they are activities complementary to those in the list, i.e., they must be necessary to carry out any of the tasks listed, and they may not go beyond that. In other words, such activities should not extend beyond what is necessary for carrying out any of the primary civil defence tasks.¹⁸ Nevertheless, one of the reasons for establishing a closed list of civil defence tasks was a concern that a non-exhaustive list would allow functions to be included which were not specifically of a humanitarian nature and this could compromise all the efforts made to improve the protection of civil defence organisations. This concern was all the more justified because in many countries, the tasks of civil defence organisations include aspects related to the economy, defence, logistics, and the protection of key industry branches, so states cannot be expected to accept the protection of the performance of such functions on the same terms as the protection granted exclusively to the humanitarian functions of civil defence. On the other hand, civil defence organisations may perform only one or some of the tasks listed in Art. 61, while other tasks are carried out differently.¹⁹

From a theoretical perspective, all this seems quite clear, but in practice, there may be difficulties in distinguishing what is and is not the function of civil defence. For example, if a fire brigade belonging to a civil defence organisation extinguishes a fire in a military facility, it is not, in principle, performing a civil defence function. However, if the fire of a military facility may endanger the lives of wounded soldiers or civilians who are near this facility, and the firefighting is aimed at saving these people,

¹⁶ Thus, civil defence tasks related to a natural or man-made disaster which are not linked to military activities, but occur in a state involved in an armed conflict are also covered by the regulations of AP I.

¹⁷ M. Bothe, K.J. Partsch, W.A. Solf, *op. cit.*, pp. 439–440.

¹⁸ Y. Sandoz, Ch. Swinarski, B. Zimmermann, *op. cit.*, p. 731.

¹⁹ *Ibidem*, p. 720.

then this is the task of civil defence. The same is true of a situation when a military fuel storage installation is on fire and its explosion can threaten thousands of civilians – combating the fire is then intended to protect the civilian population, even though the performance of this function is incidentally beneficial for the armed forces. Such an incidental benefit for non-civil-defence purposes does not mean that the activity giving rise to that benefit is not the performance of a civil defence function. For example, if military units hear alarm sirens designed to warn civilians about an air raid, this would be an incidental benefit, but if civilian defence communication lines are used to transmit military reports, this is a non-civil defence activity.²⁰

One should also mention the task of civil defence consisting in “emergency assistance in the restoration and maintenance of order in distressed areas” (Art. 61 [a] item xi), because it can ostensibly blur the line between civil defence functions and police (law enforcement) functions. In principle, members of law enforcement agencies have civilian status, and routine domestic law enforcement is part of general protection of the civilian population. Thus, members of the civilian police force are not deemed to be legitimate objects of attack during international armed conflict unless they are incorporated into the armed forces.²¹ Ordinary police functions are not civil defence functions, and nothing in the definition of civil defence alters the position of the civil police, who are protected as civilians. However, in distressed areas (i.e., areas stricken by hostilities or disasters), where the normal functioning of public administration has broken down, civil defence organisations may, as an exceptional measure, assist also in the restoration and maintenance of public order.²²

According to Art. 61 (b) of AP I, civil defence organisations mean “those establishments and other units which are organised or authorised by the competent authorities of a Party to the conflict to perform any of the tasks mentioned under sub-paragraph (a), and which are assigned and devoted exclusively to such tasks,” whereas persons employed by a party to the conflict to perform these objectives in a civil defence organisation and persons designated by the competent authority to manage these organisations should be treated as civil defence organisation personnel (Art. 61 [c] of AP I). A prerequisite for the effective functioning of civil defence is the possession of appropriate equipment, supplies and means of transport, which the AP I conventionally refers to as “matériel” (Art. 61 [d] of AP I). The way in which civil defence tasks are

²⁰ See: M. Bothe, K.J. Partsch, W.A. Solf, *op. cit.*, pp. 442–443; Y. Sandoz, Ch. Swinarski, B. Zimmermann, *op. cit.*, p. 726.

²¹ T.T. Richard, *Unofficial United States Guide to the First Additional Protocol to the Geneva Conventions of 12 August 1949*, Maxwell: Air University Press, 2019, p. 140. *Cf.* Art. 43, para. 3 of AP I (“Whenever a Party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other Parties to the conflict”).

²² Y. Sandoz, Ch. Swinarski, B. Zimmermann, *op. cit.*, p. 729, footnote 58. Such assistance may include the direction of movements of refugees within or from distressed areas (*ibidem*).

organised, prepared, and carried out is an internal matter for each state and should be governed by the relevant provisions of national law of a state concerned.

Undoubtedly, civil defence forms part of civilian life – therefore, civil defence personnel are protected as civilians under the provisions of AP I.²³ As regards the organisations of civil defence, they may be small or large, and even performing just one of their tasks means that they can be protected. It can as well be a department of civil defence of an organisation that is also engaged in other activities. Importantly, however, affiliation to such an organisation is not a prerequisite for obtaining protection because protection is granted based on function and not on membership in the organisation.²⁴ Thus, the protection shall also apply to civilians who, although not members of civil defence organisations, respond to an appeal from the competent authorities and perform civil defence tasks under their control.²⁵

What is the above-mentioned protection? Civil defence organisations and their personnel are in a general way to be respected and protected as part of the civilian population, and buildings and “matériel” used for civil defence purposes are protected to the same degree as civilian objects (Art. 62 of AP I). “Respected and protected” means that they must not knowingly be attacked or unnecessarily prevented from discharging their proper functions.²⁶ This latter element is the real essence of special civil defence protection; however, this element has one notable exception – the right to perform civil defence functions has to cede in a case of “imperative military necessity.”²⁷ A very important feature for the enhancement of the protection of civil defence is its entitlement to a distinctive sign – an equilateral blue triangle on an orange ground, which may be used for the protection of civil defence organisations, their personnel, buildings and matériel and for civilian shelters.²⁸ This distinctive sign should help to prevent civil defence units which work in areas exposed to hostilities from being mistaken for combatants and therefore attacked.²⁹

Protected civil defence organisations are only those “assigned and devoted exclusively” to civil defence tasks. They are organised or authorised by a party to the

²³ M. Bothe, K.J. Partsch, W.A. Solf, *op. cit.*, p. 446.

²⁴ Y. Sandoz, Ch. Swinarski, B. Zimmermann, *op. cit.*, pp. 732–733.

²⁵ T.T. Richard, *op. cit.*, p. 141.

²⁶ M. Bothe, K.J. Partsch, W.A. Solf, *op. cit.*, p. 470.

²⁷ *Ibidem*, p. 447. Although the meaning of this necessity is not explained in Art. 62, it boils down to the fact that civil defence tasks can only be prohibited or limited if the authorities are faced with the alternative of changing the main operational plans or forfeiting civil defence personnel. An example of this is work that must be carried out in an area where security cannot be guaranteed due to the availability of resources and in the light of absolute operational choices (Y. Sandoz, Ch. Swinarski, B. Zimmermann, *op. cit.*, p. 740).

²⁸ International Committee of the Red Cross, Civil Defence in International Humanitarian Law – Factsheet, Advisory Service on International Humanitarian Law, 21 May 2021, <https://www.icrc.org/en/document/civil-defence-international-humanitarian-law> [accessed: 5 January 2022].

²⁹ M. Bothe, K.J. Partsch, W.A. Solf, *op. cit.*, p. 436.

conflict, but they are protected regardless of their organisational framework. However, exceptions to this rule are military personnel or units of civil defence – the general rule of protection relate only to civilian civil defence, whereas military civil defence personnel or units are subject to special rules. The guiding principle is “once civil defence, always civil defence,” which means that it is forbidden to move from civil defence tasks to combat operations during an armed conflict.³⁰ It was also necessary to exclude the possibility that the protection afforded to civil defence would be used as a safe haven for combatants.

However, a compromise solution was found – according to Art. 67 para. 1 of AP I, military personnel and units assigned to civil defence organisations are respected and protected if they are permanently assigned and exclusively devoted to the performance of civil defence tasks, and so assigned, such personnel do not perform any other military duties during the conflict. Furthermore, military civil defence personnel must be clearly distinguished from combat personnel (primarily by the use of the international civil defence distinctive sign),³¹ where identification is not only a prerequisite for effective protection but also protection in general. It should be added, however, that military civil defence personnel are only protected in the national territory to which they belong. Military civil defence personnel of an occupying state performing civil defence tasks in occupied territory are not protected.³²

The performance of civil defence tasks by military personnel assigned to them must be permanent, which means that if such personnel (who, due to their functions, are entitled to special protection) commit acts harmful to the enemy or take part in hostilities, it loses its protection; moreover, such conduct constitutes an unlawful act and a serious violation of AP I. However, assigning military personnel to a civil defence organisation does not result in granting them a quasi-civilian status – if they fall into the power of an adverse party, they become prisoners of war. They may continue to be used for civil defence tasks, but only in an occupied territory³³ and under certain conditions: they may be employed on civil defence tasks in so far as the need arises, only in the interest of the civilian population of the occupied territory,³⁴ and if such work is dangerous, they volunteer for such tasks (Art. 67,

³⁰ *Ibidem*.

³¹ There is an obligation on military personnel, who generally wear the uniform of the armed forces, to display the international distinctive sign of civil defence and carry identity cards certifying their status. The use of the distinctive sign is also mandatory for the buildings, equipment and transports of military units assigned to civil defence organisations (Y. Sandoz, Ch. Swinarski, B. Zimmermann, *op. cit.*, p. 797, 802).

³² M. Bothe, K.J. Partsch, W.A. Solf, *op. cit.*, pp. 469–470; M. Sassòli, *op. cit.*, p. 379.

³³ This “occupied territory” will be “the occupied home country of the prisoner, where he will have performed his duties before capture” (M. Bothe, K.J. Partsch, W.A. Solf, *op. cit.*, p. 471).

³⁴ Thus, such work should not be carried out for the benefit of armed forces occupying the territory (*cf.* Y. Sandoz, Ch. Swinarski, B. Zimmermann, *op. cit.*, p. 802).

para. 2). As regards buildings and matériel used by military units for civil defence tasks, they remain subject to the laws of war, so if they fall into the hands of an enemy, they are, in principle, treated like any other military equipment – they may be seized and they constitute war booty (Art. 67, para. 4).

Civil defence under belligerent occupation

The first regulations concerning the organisation of civil defence in an occupied territory appeared in the Geneva Convention (IV) of 1949.³⁵ According to Art. 63, para. 2 of that Convention, civil defence organisations and their personnel, established for the purpose of ensuring the living conditions of the civilian population, shall be treated as National Red Cross and Red Crescent Societies and have the right to pursue their activities even under foreign occupation. However, research conducted since then on the general strengthening of the protection of the civilian population has shown that, in the opinion of many experts, the provisions of Art. 63 are inadequate and insufficient. This provision has therefore been supplemented by the solutions adopted in AP I, which develop the protection of civil defence in an occupied territory, especially through restrictions on requisition. Indeed, Art. 63 of AP I limits the powers of the occupying state and imposes duties on it to assist civil defence in an occupied territory.

The obligations imposed on the occupying state by Art. 63 of AP I are threefold:

- 1) an obligation to grant civil defence the necessary facilities;
- 2) an obligation to abstain from various acts of interference with the proper performance of civil defence tasks and with the way in which the local civil defence organisation sees fit to perform them;
- 3) an obligation to abstain from requisitioning or diverting from their proper use civil defence buildings or matériel (unless certain very restrictive conditions are satisfied)³⁶ or (without exceptions) shelters.³⁷

Furthermore, the occupying state shall not change the structure or personnel of such organisations in any way which might jeopardise the efficient performance of their mission. These organisations shall not be required to give priority to the nationals or interests of that state.³⁸ As regards civilian civil defence personnel falling into the power of the adverse party, they are protected and may continue to fulfil their tasks in the occupied territory. However, the occupying state may disarm them for

³⁵ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 75 UNTS 287, ICRC, 12 August 1949, <https://www.refworld.org/docid/3ae6b36d2.html> [accessed: 5 January 2022].

³⁶ See: Art. 63, para. 5 of AP I. For example, requisition of civil defence buildings and matériel is only possible for the benefit of the local population.

³⁷ M. Bothe, K.J. Partsch, W.A. Solf, *op. cit.*, p. 451.

³⁸ T.T. Richard, *op. cit.*, pp. 141–142.

reasons of security (Art. 63, para. 3). If military civil defence personnel fall into the power of the adverse party, they become prisoners of war, but may be used to continue to fulfil their task in the occupied territory.³⁹

Protection of civil defence in the occupied territory shall apply only as long as local civil defence units refrain from activities that are not their proper functions in the light of the AP I. If these units engage in activities harmful to the enemy, they lose their protection.⁴⁰

The cessation of protection

The issue of protection loss by civil defence units concerns not only the situation of military occupation but has a broader scope. Specific regulations have been introduced in Art. 65 of AP I. In principle, the protection to which civilian civil defence organisations, their personnel, buildings, shelters and matériel are entitled shall not cease unless they commit or used to commit – outside their proper tasks – acts harmful to the enemy. However, even if some measures against civil defence are taken, their effect will be suspended until a warning has been given and a time-limit has elapsed, giving the recipient of the warning time to obey.⁴¹

The notion of “acts harmful to the enemy” leaves some room for interpretation. Undoubtedly, transportation of heavy weaponry would be considered harmful to the enemy and would therefore result in the personnel concerned losing their right to protection.⁴² Similarly, if a civilian fire brigade puts out a fire on a military airfield, this is outside the scope of protected civil defence activities and may be considered an act harmful to the enemy. The consequence of committing these acts is the loss of special protection provided to the organisation and its personnel, which means, firstly, that they can be prevented from performing their tasks, and, secondly, that the use of their distinctive sign becomes “improper use,” prohibited by Art. 38, para. 1 of AP I. Special protection of civil defence is based on mutual trust; therefore, an organisation that has committed acts harmful to the enemy does not deserve this trust. However, these acts should not be equated with “direct participation in hostilities,” which is a narrower concept. Therefore, civil defence organisations and their personnel are still protected as civilians, even if they have lost their right to special protection under Art. 65. Thus, it is forbidden to attack civil defence personnel who do not participate directly in hostilities, regardless of whether they have or have not lost the protection arising from Art. 65.⁴³

³⁹ M. Sassòli, *op. cit.*, p. 379.

⁴⁰ M. Bothe, K.J. Partsch, W.A. Solf, *op. cit.*, p. 451.

⁴¹ Y. Sandoz, Ch. Swinarski, B. Zimmermann, *op. cit.*, p. 771. See also T.T. Richard, *op. cit.*, p. 143.

⁴² Y. Sandoz, Ch. Swinarski, B. Zimmermann, *op. cit.*, p. 777.

⁴³ M. Bothe, K.J. Partsch, W.A. Solf, *op. cit.*, pp. 457–458.

Additionally, there are some acts described in Art. 65 which are expressly singled out as not constituting acts harmful to the enemy, thus, they will not lead to protection loss. The fact that some military personnel are attached to civilian civil defence organisations, or that the performance of civil defence tasks may incidentally benefit military victims, particularly those who are *hors de combat* (e.g., wounded soldiers), cannot deprive civil defence units of protection,⁴⁴ nor does the formation of civilian civil defence organisations along military lines, and compulsory service in them. Neither shall it be considered an act harmful to the enemy that civilian civil defence personnel bear light individual weapons for the purpose of maintaining order or for self-defence.⁴⁵ However, in areas where land fighting is taking place or is likely to take place, the warring parties shall undertake the appropriate measures to limit these weapons to handguns, such as pistols or revolvers,⁴⁶ in order to enable distinguishing between civil defence personnel and combatants. The non-observance of this recommendation does not result in outright loss of protection, but it lessens the possibility of effective protection.⁴⁷

In addition to activities as part of the public order maintenance, light individual weapons should be used by civil defence personnel solely for self-defence. It is understood that civil defence personnel may be armed for self-defence against marauders or other criminal individuals or groups. They may not engage in combat against the adverse party and may not use force to resist capture. If, however, they are unlawfully attacked by individual members of the enemy's forces, they may use their weapons in self-defence after having made a reasonable effort to identify themselves as civil defence personnel.⁴⁸

Conclusions

There is no doubt that defence, as value consisting in the creation of a system ensuring safe functioning of the state during peace and enabling repulsion of any armed attacks

⁴⁴ R. Geiß, Ch. Paulussen, *op. cit.*, p. 190; T.T. Richard, *op. cit.*, p. 144. The term “incidental benefit” means that if civil defence personnel encounter military casualties while acting to protect civilians, they may aid them without losing their right to protection. The medical personnel of a civil defence organisation are even obliged to assist accidentally encountered wounded soldiers in the same way as civilians (Y. Sandoz, Ch. Swinarski, B. Zimmermann, *op. cit.*, p. 774).

⁴⁵ As regards the carrying of arms, members of the armed forces assigned to civil defence organisations are subject to the same rules as civilian civil defence personnel.

⁴⁶ In other words, the term “light individual weapons” excludes “fragmentation grenades and similar devices, as well as weapons which cannot fully be handled or fired by a single individual and those basically intended for non-human targets” (M. Bothe, K.J. Partsch, W.A. Solf, *op. cit.*, pp. 460–461).

⁴⁷ *Ibidem*, p. 460.

⁴⁸ Y. Sandoz, Ch. Swinarski, B. Zimmermann, *op. cit.*, p. 776.

in the event of armed aggression, belongs to those values whose implementation is one of the fundamental interests of a state.⁴⁹ Thus, functioning of the state defence system includes both the military and civil aspects. The latter are particularly important for strengthening society's resilience in order to withstand external pressures and influences, and also recover from the effects of those pressures or influences. In turn, the concept of resilience includes a civil defence organisation actively supporting society in fulfilling the above-mentioned objectives. The importance of civil defence was recognised by Sweden, who included it in its concept of total defence;⁵⁰ the value of which is well known to Ukraine, whose civil defence formations and units (e.g., fire brigades) risked and sacrificed their lives in assisting those in need during artillery shelling and air bombardments conducted by the Russian army in 2022.

It is true that in international law civil defence is understood in a narrower sense, covering only humanitarian tasks, intended solely to support a civilian population affected or threatened by hostilities or disasters, but this is a level directly related to the impact on society. An effective, properly equipped, and well-organised civil defence can help the state authorities (or, in the event of occupation, the government in exile) maintain high morale among the population, protect them from threats, save them from the effects of military operations and maintain the will to resist the enemy. The creation of a civil defence organisation is one of the precautionary measures against the effects of attacks that the defending party to the conflict may and even must take,⁵¹ and full implementation and scrupulous compliance with the provisions of AP I concerning civil defence can contribute to providing the necessary, effective, and timely assistance to all victims of war.

References

- Bothe M., Partsch K.J., Solf W.A., *New Rules for Victims of Armed Conflicts: Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949*, 2nd ed., Leiden: Martinus Nijhoff Publishers, 2013.
- Fiala O.C., *Resistance Operating Concept (ROC)*, MacDill Air Force Base: JSOU Press, 2020.
- Geiß R., Paulussen Ch., Specifically Protected Persons and Objects, [in:] *The Oxford Guide to International Humanitarian Law*, eds. B. Saul, D. Akande, New York – Oxford: Oxford University Press, 2020, pp. 175–203.
- Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 75 UNTS 287, ICRC, 12 August 1949, <https://www.refworld.org/docid/3ae6b36d2.html> [accessed: 5 January 2022].

⁴⁹ M. Paździor, B. Szmulik (eds.), *Instytucje bezpieczeństwa narodowego*, Warszawa: Wydawnictwo C.H. Beck, 2012, p. 412.

⁵⁰ See: J. Gotkowska, "Sweden's Security: The Long Way Towards Total Defence", *Point of View*, no. 81, 2021, pp. 24–28.

⁵¹ See: M. Sassòli, *op. cit.*, p. 378.

- Gotkowska J., "Sweden's Security: The Long Way Towards Total Defence", *Point of View*, no. 81, 2021, pp. 1–28.
- International Committee of the Red Cross, Civil Defence in International Humanitarian Law – Factsheet, Advisory Service on International Humanitarian Law, 21 May 2021, <https://www.icrc.org/en/document/civil-defence-international-humanitarian-law> [accessed: 5 January 2022].
- National Security Strategy of The Republic of Poland*, Warsaw, 12 May 2020, https://www.bbn.gov.pl/ftp/dokumenty/National_Security_Strategy_of_the_Republic_of_Poland_2020.pdf [accessed: 5 January 2022].
- Paździor M., Szmulik B. (eds.), *Instytucje bezpieczeństwa narodowego*, Warszawa: Wydawnictwo C.H. Beck, 2012.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), 1125 UNTS 3, ICRC, 8 June 1977, <https://www.refworld.org/docid/3ae6b36b4.html> [accessed: 5 January 2022].
- Richard T.T., *Unofficial United States Guide to the First Additional Protocol to the Geneva Conventions of 12 August 1949*, Maxwell: Air University Press, 2019.
- Sandoz Y., Swinarski Ch., Zimmermann B. (eds.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Geneva: International Committee of the Red Cross, 1987.
- Sassòli M., *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, Cheltenham: Edward Elgar Publishing, 2019.
- Status of Personnel of Civil Defence Organisation. Report submitted by the ICRC at the 20th International Conference of the Red Cross (Vienna, 1965)*, Geneva, May 1965.

The legal status of civil defence organisation during armed conflict and belligerent occupation

Abstract

Civil defence, whose main objective is the protection of the civilian population, is a component of the concept of society's resilience, but in the provisions of international humanitarian law (regulating the conduct of parties fighting in an armed conflict), it is limited to the protection of civil defence organisations (such as a fire brigade) performing strictly defined humanitarian tasks, requiring thorough preparation and securing of appropriate resources. The state-parties to the conflict shall respect and protect civil defence organisations and personnel and military units designated to serve as civil defence on a permanent basis. Also, in the case of belligerent occupation, the occupying state is obliged to enable the implementation of these tasks by civil defence organisations of the occupied territory; in addition, the cases where it is permissible to seize buildings and equipment belonging to these organisations have been seriously limited. Thus, well-organised, efficient, and effective civil defence formations are an important element of the state's defence system, which serves the population in danger, and its efficient and effective functioning can contribute significantly to building and strengthening the resilience of society in the conditions of armed conflict and belligerent occupation.

Key words: civil defence, protection of civilians, resilience, international humanitarian law, belligerent occupation

