

Protester as Combatant: Who is Afraid of a Peaceful Protester?

Heidi R. Gilchrist*

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For a dance in the alley;
For breaking the taboo of kissing in public;
For our sisters, mine and yours;
For a change in the minds of the fanatics;
For parents shame for empty pockets;
For the longing for a normal life;
. . .
For feeling peace of mind;
For the rise of sun after long-lasting nights;
For the tranquilizers and insomnia;
For man, homeland, prosperity;
For the girl who wished she was a boy;
For woman, life, freedom.

Baraye (“for”) – after the death of Mahsa Amini, a trend began on social media where Iranian protesters explained their reason for protesting beginning their post with the word *baraye* (“for”). Songwriter Shervin Hajipour compiled the posts into a song that has gotten him arrested in Iran and a Grammy in the United States.

* Professor and Co-Director of Legal Writing at Brooklyn Law School. She was formerly an analyst for the Central Intelligence Agency and served on the Joint Terrorism Task Force in New York City. She would like to thank Luke Moffett, Anne Saab, participants of the *Diversification of Civilian Agency in Armed Conflict* conference at the War Studies Research Centre, Netherlands Defence Academy, the Armed Conflict, Justice and Law Stream at the SLSA conference at Liverpool University, ICON-S Conference at University of Brasilia, and the LWI One-Day Workshop at Florida International University for their invaluable feedback.

*Have you not suffocated us (and) f***ed us up enough?*

Toomaj Salehi, Iranian rapper sentenced to death by hanging for “corrupting the earth” with his lyrics

INTRODUCTION

Words matter. Framing matters. The Iranian regime framed the peaceful protesters in the 2022 protests that swept the nation as combatants, “the enemy” at war with the regime. As Suzette Haden Elgin and other scholars in communications and linguistics have pointed out, “very rarely does violent behavior, individually or by nations, occur when it is not preceded by violent language.”¹ Iran then unleashed a war machine against the mostly peaceful protesters who were protesting the violent death of Mahsa Amini, a young Kurdish woman in Iranian custody for not properly wearing her headscarf. Iranian forces killed hundreds and injured or jailed many others. Iran used the language of international law to justify killing peaceful protesters as, unlike civilians, combatants can be targeted and killed under International Humanitarian Law.

The world watched, first in awe of the brave and fearless protesters and their incredible emotion and desire for change. Headlines spoke of protests, many led by young women and girls, “erupting” across the country.² Another called Mahsa Amini “the Spark that Ignited a Women-led Revolution.”³ The protests lasted longer and were the most widespread since the 1979 Iranian Revolution. Then the world watched in horror as Iran used weapons of war against the protesters and their families. Protests and social movements can be more powerful than armed rebellion. Iran feared the peaceful protesters and their power.

This Article explores these ideas of fear of protesters, moral outrage, and ‘innocence’ or the ‘innocent civilian’ in international law. The Iranian regime was so fearful of the peaceful protesters that it framed them as combatants. The regime viewed them as dangerous to the regime, as dangerous as combatants. Much of the fear stemmed from the moral outrage of the protesters that erupted into protests across the country. Many of the women protested spontaneously, without organization, but they felt they had nothing left to lose in the face of injustice and repression. Some were still in elementary school. The protesters were mostly peaceful, and definitely civilians, but the regime viewed them as a threat and responded with a war machine. The fearful regime wanted to rule by fear again. Additionally, the article examines the idea of the ‘innocent’ civilian and its danger. International law does not require

1. Anita Taylor & M.J. Hardman, *War Language and Gender, What New Can Be Said? Framing the Issues*, 27 *WOMEN AND LANGUAGE* 3, 14 (2005).

2. Farnaz Fassihi, *Protests Erupt in Iranian Cities After Woman's Death in Custody*, N.Y. TIMES (Sep. 20, 2022), <https://www.nytimes.com/2022/09/20/world/middleeast/iran-protests-mahsa-amini.html> [<https://perma.cc/YQ57-YHGC>].

3. Maggie McGrath, *Mahsa Amini: The Spark That Ignited A Women-Led Revolution*, FORBES (Dec. 19, 2022), <https://www.forbes.com/sites/maggiemcgrath/2022/12/06/mahsa-amini-the-spark-that-ignited-a-women-led-revolution/> [<https://perma.cc/8FBD-NWW3>].

civilians be ‘innocent’ and this Article questions what they are supposed to be innocent of. It would be very dangerous if civilians lose their status as civilians that should be protected from killing under international law because they disagree with their government and are working for change. They may pose a real danger with their ideas and hopes for change, but they are still peaceful protesters, and civilians.

This Article proceeds in five parts. Part I gives background to the protests. It details the arrest in 2022 of a young Kurdish woman, Mahsa Amini for “unsuitable attire.” Her hijab did not completely cover her hair. She was then brutally killed by the morality police. Fueled by incredible outrage, beginning at her funeral, protests erupted across the country. The Iranian regime then began targeting protesters and killed an estimated 551 by September 2023 with many others injured – many with life-changing injuries. Part II examines international humanitarian law protecting civilians. Civilians are supposed to be protected from attack even during war. Proponents fought hard for this protection, and it has been hailed as a ‘moral revolution’ and a universally recognized principle. Of course, there needs to be an international armed conflict for the law to apply and the principle of proportionality, that civilians can be killed provided the expected loss of civilian life is not “excessive in relation to the concrete and direct military advantage anticipated,” often eviscerates the protection altogether. The part also examines the danger of requiring civilians be ‘innocent.’

Part III details the use by the Iranian regime of the language of war calling the protesters ‘enemies’ and agents of the United States and Israel to justify killing hundreds of mostly peaceful protesters. Part IV examines fear in international law and the fear the Iranian regime had of the power of the protests to spark a ‘revolution’ or change, so the regime clamped down on the protesters with all the might of the country’s war machine. Part V concludes by looking at the incredible moral outrage of the protesters.

I. BACKGROUND TO THE PROTESTS

Mahsa Amini, a twenty-two-year-old Kurdish woman, died on September 16, 2022 after brutal beatings by the Iranian state morality police while in custody.⁴ Her ‘crime’? “Unsuitable attire” or improperly wearing her hijab. In Iran, a 1983 Veiling Law made it a crime not to wear a hijab in public. Under the law, a woman who appears in public without a hijab should be imprisoned for up to two months, or fined.⁵ Previously, it had been a crime to wear a hijab.⁶ Women

4. Meeting Summary, Human Rights Council, *Human Rights Council Hears about Reports of Massacres of Civilians in Myanmar and Possible Crimes against Humanity in Iran Following Mass Protests in Both Countries* (Mar. 20, 2023), <https://www.ohchr.org/en/news/2023/03/human-rights-council-hears-about-reports-massacres-civilians-myanmar-and-possible> [https://perma.cc/Y4GM-XJH6].

5. The Islamic Penal Code of the Islamic Republic of Iran, Book 5, art. 638, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/> [https://perma.cc/C2CT-R5XT].

6. I have written previously about the absurdity of laws mandating dress. See Heidi Gilchrist, ‘Act Normal or Leave:’ *When Law and Culture Collide*, 26 COL. J. EUR. L. 54 (2021).

even live in fear of the ‘morality police’ who enforce these laws when abroad. At a conference in Switzerland where I was presenting a paper on the ‘burqa bans’ in Europe, an Iranian woman came up to me to say Iranian women even have to worry when abroad because if someone takes a picture of them while abroad and posts it on social media, they can be arrested. Amnesty International has received similar reports of women being arrested for pictures on social media.⁷

After Mahsa Amini’s arrest on September 13, 2022 for “improper hijab,” Iranian morality police transported her to a detention facility to undergo a “re-education class.” Twenty-six minutes after her arrival, she collapsed and was transferred to a hospital. Her parents were informed she was “already brain dead” upon arrival. Her father was allowed one visit where he “saw bruises on her feet and blood dripping from her ear.” The picture of her in a coma in a hospital was shared widely on social media.⁸ On September 16, 2022, she died and the official death certificate states that her “death was not caused by blows to the head or any vital organs and parts of the body.”⁹ The United Nations established an independent international fact-finding mission on the Islamic Republic of Iran and “established the existence of evidence of trauma to Ms. Amini’s body, inflicted while in the custody of the morality police.” Their report affirmed, “based on the evidence and patterns of violence by the morality police in the enforcement of the mandatory hijab on women, the mission is satisfied that Ms. Amini was subjected to physical violence that led to her death. On that basis, the State bears responsibility for her unlawful death.”¹⁰

The first protests erupted at her funeral on September 17, 2022. At her funeral, a large protest began with women attending taking off their headscarves, and waving them in the air while chanting *Jun Jian Azadi* in Kurdish, which translates to *Zan, Zendegi, Azadi* in Persian, and Women, Life, Freedom in English.¹¹ A picture of Ms. Amini’s gravestone was published on social media. It reads: “You didn’t die. Your name will be a code [rallying call].”¹²

7. AMNESTY INT’L, IRAN: DRACONIAN CAMPAIGN TO ENFORCE COMPULSORY VEILING LAWS THROUGH SURVEILLANCE AND MASS CAR CONFISCATIONS (Mar. 6, 2024), <https://www.amnesty.org/en/latest/news/2024/03/iran-draconian-campaign-to-enforce-compulsory-veiling-laws-through-surveillance-and-mass-car-confiscations/> [<https://perma.cc/GQ4G-QET9>].

8. Victoria Bisset, *The Story of Iran’s Mahsa Amini Uprising Told Through its Most Iconic Images*, WASH. POST (Sept. 16, 2023), <https://www.washingtonpost.com/world/2023/09/16/iran-protests-mahasa-amini-one-year/> [<https://perma.cc/N8ZF-WQEK>].

9. HIGH COUNCIL FOR HUM. RTS. OF IRAN, REPORT NO. 2 PERTAINING DEATH OF MAHSA AMINI & ENSUING EVENTS 2, <https://en.mfa.ir/files/mfaen/report.pdf> [<https://perma.cc/2X2H-7KNG>].

10. *Id.*

11. Elizabeth Doerr, *How Iran’s Woman. Life. Freedom. Movement Shaped a Movement Across the UC System*, U. CALIF. (Mar. 8, 2023), <https://ucghi.universityofcalifornia.edu/news/how-irans-woman-life-freedom-movement-shaped-movement-across-uc-system/> [<https://perma.cc/9RNF-8ZD9>].

12. *Mahsa Amini: Women Take Headscarves Off in Protest at Funeral*, BBC NEWS (Sept. 17, 2022), <https://www.bbc.com/news/world-middle-east-62940907> [<https://perma.cc/K7UC-6C5Q>].

Protests spread rapidly and spontaneously, fueled by incredible outrage, around the country and the globe. Although Iran saw widespread protests in 2009 and 2019, the protests after the death of Mahsa Amini were the most widespread since the beginning of the Islamic Republic.¹³ In the first few weeks, there were protests in each of the thirty-one provinces and over one hundred cities.¹⁴ Although women and girls led the protests, participation was found to be almost universal, transcending social classes and income groups.¹⁵ There were nationwide strikes, even hitting economic sectors such as the oil industry.¹⁶

The United Nations estimates the authorities killed approximately 551 people as of September 2023, with as many as forty-nine women and sixty-eight children.¹⁷ Women and men were injured in similar numbers. “Deaths were recorded in at least twenty-six of the thirty-one provinces, with the highest number of victims in regions with minority populations, in particular in Sistan and Baluchestan province, the Kurdish regions of the country (Kurdistan and Kermanshah) and parts of Western Azerbaijan.”¹⁸

The United Nations mission also established that the security forces used firearms, including high-power assault rifles and shotguns loaded with ammunition containing multiple pellets that caused the majority of deaths.¹⁹ Findings showed that the security forces often targeted specific protesters, using discriminatory grounds, such as gender and ethnicity. Security forces threatened one woman that “she would be shot at if she did not put her hijab back on, while other women were called whores and told that there was no such a thing as ‘Woman, Life, Freedom’ before being shot at.”²⁰

The United Nations also reported many injuries, hundreds with life-changing injuries. Addressing the Human Rights Council in Geneva in March 2024, Chairperson of the International Fact-Finding Mission on Iran, Sara Hossain, reported that the “security forces shot at protesters and also at bystanders at very short distances in a targeted fashion, causing injuries to their heads, necks, torsos, genital areas, but particularly to the eyes.” She further stated, “We found hundreds of protesters had these life changing injuries, with many of them now blinded and branded essentially for life marked as dissidents.”²¹

13. Hamidreza Azizi & Erwin van Veen, *Protests in Iran in Comparative Perspective: A Revolutionary State in Trouble*, NETH. INST. OF INT’L RELS. (Mar. 2023), https://www.clingendael.org/sites/default/files/2023-03/Protests_in_Iran.pdf [<https://perma.cc/E8QX-DLRF>].

14. *Id.* at 9.

15. *Id.* at 10.

16. Niels de Hoog & Elena Morresi, *Mapping Iran’s Unrest: How Mahsa Amini’s Death Led to Nationwide Protests*, THE GUARDIAN (Oct. 31, 2022), <https://www.theguardian.com/world/ng-interactive/2022/oct/31/mapping-irans-unrest-how-mahsa-aminis-death-led-to-nationwide-protests> [<https://perma.cc/J6Q9-T733>].

17. 2024 Iran Rep., *supra* note 10, ¶ 22.

18. *Id.*

19. *Id.* ¶ 24.

20. *Id.* ¶ 30.

21. *Iran: Repression Continues Two Years After Nationwide Protests*, UN NEWS (Mar. 18, 2024) <https://news.un.org/en/story/2024/03/1147681> [<https://perma.cc/Z83J-SQF7>].

The United Nations report also found that the morality police arbitrarily arrested or detained protesters for a wide range of protected conduct, “such as dancing, chanting or writing slogans on walls and honking car horns.”²² The authorities have also arrested journalists and the family members of protesters, as well as those expressing solidarity such as teachers, artists, athletes and social media influencers. Those arrested face torture and ill-treatment, sexual and gender-based violence, as well as the possibility of the death penalty. The Iranian regime even targeted protesters and journalists abroad. In December 2023, the British foreign secretary, David Cameron, said the Iranian regime continued to “threaten people on UK soil”, and that “there had been at least 15 credible threats to kill or kidnap British nationals and others living in the UK since the beginning of 2022.”²³

Although beyond the scope of this article, the situation in Iran highlights the need for a treaty specifically addressing Crimes Against Humanity. The United Nations found that crimes against humanity had been committed in Iran.²⁴ Crimes against humanity law would apply in peacetime, not just when there is a war. The Draft articles on Prevention and Punishment of Crimes Against Humanity defines “crimes against humanity” as “any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack” and then lists egregious acts such as murder, torture, enforced disappearance, rape, and persecution. Although crimes against humanity are included in the Rome Statute of the International Criminal Court, jurisdiction there is limited to individual criminal responsibility. A standalone crimes against humanity treaty would help bridge the impunity gap and allow victims to bring cases against powerful actors.

Over two years after the protests, the abuses continue as documented by the United Nations. The United Nations found persecutions against women and girls and those supporting human rights that were involved in the protests. The regime is using as a weapon against the protesters the death penalty and executions, arbitrary arrests and cases of torture and ill treatment, as well as other forms of harassment.²⁵

The incredible brutality and cruelty of the Iranian regime in suppressing the protests and the incredible fear it provoked is hard to comprehend. Although these inhumane tactics have been (mostly) successful as the protests

22. 2024 Iran Rep., *supra* note 10, ¶ 33.

23. Deepa Parent, ‘We Live With a Gun to Our Heads’: How Iran is Targeting Protesters in Britain, THE GUARDIAN (Dec. 18, 2023), <https://www.theguardian.com/global-development/2023/dec/18/we-live-with-a-gun-to-our-heads-how-iran-is-targeting-protesters-in-britain> [https://perma.cc/WUL7-9A5A].

24. 2024 Iran Rep., *supra* note 10, ¶ 108 (“The mission has also established that many of the serious human rights violations outlined in the present report amount to crimes against humanity, specifically those of murder, imprisonment, torture, rape and other forms of sexual violence, persecution, enforced disappearance and other inhumane acts, that have been committed as part of a widespread and systematic attack directed against a civilian population, namely women, girls and others expressing support for human rights.”).

25. HUM. RTS. COUNCIL, *Rep. of the Indep. Int’l Fact-finding Mission on the Islamic Republic of Iran*, ¶ 129, U.N. Doc. A/HRC/58/63 (Mar. 14, 2025) [hereinafter 2025 Iran Rep.].

mostly ended in spring of 2023, there are still pockets of protests and perhaps a quiet view to the future. Ghaemi, with the Center for Human Rights in Iran, said the “sense of defiance across the country remains strong” with “the basic message he hears a lot from the activists is that Iran has changed, and there is no turning back. In that sense, the message is that this movement is well and alive, and just because we are not on the streets does not mean that we are defeated.”²⁶

II. CIVILIANS UNDER INTERNATIONAL HUMANITARIAN LAW

Even in a time of war, civilians are supposed to enjoy protection from attack under international law. This formal protection emerged after World War II with the Geneva Conventions, hailed as a “moral revolution.”²⁷ Article 51(2) of the Additional Protocol (I) of the Geneva Conventions (1977) states: “The civilian population as such, as well as individual civilians, shall not be the object of attack.”²⁸ Under Article 50, a civilian is defined as not belonging to one of the categories that are understood to be members of the armed forces or a militia.²⁹ The principle of distinction, distinguishing between civilians and combatants, is “the cornerstone of International Humanitarian Law.”³⁰ The definition is supposed to be expansive: “A person shall be considered to be a civilian for as long as there is a doubt as to his or her status.”³¹ However, the protection is not absolute. International humanitarian law only applies during armed conflict, with broader rules applying for international armed conflicts. Also, civilians

26. Yuliya Talmazan & Ziad Jaber, *Iran's Protests Have Been Crushed, but Mahsa Amini's Death is Still Felt a Year Later Around the World*, NBC NEWS (Sep. 16, 2023), <https://www.nbcnews.com/news/world/irans-protests-crushed-mahsa-amini-death-still-felt-year-later-world-rcna105003> [https://perma.cc/JH2Z-5FVM].

27. DAVID TRAVEN, LAW AND SENTIMENT IN INTERNATIONAL POLITICS: ETHICS, EMOTIONS, AND THE EVOLUTION OF THE LAWS OF WAR 238-64 (2021).

28. Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol I) art. 51, June 8, 1977 [hereinafter Geneva Protocol I].

29. (1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.

(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:

(a) that of being commanded by a person responsible for his subordinates;
 (b) that of having a fixed distinctive sign recognizable at a distance;
 (c) that of carrying arms openly;
 (d) that of conducting their operations in accordance with the laws and customs of war.

(3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.

(6) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

30. *How Does Law Protect in War?*, ICRC (last visited Mar. 18, 2026), <https://casebook.icrc.org/law/principle-distinction> [https://perma.cc/8YYX-RXSQ].

31. Prosecutor v. Kunarac, Kovac and Vukovic, Case No. IT-96-23-T & IT-96-23/1-T, Judgement, ¶ 426 (Int'l Crim. Trib. For the Former Yugoslavia) (Feb. 22, 2001).

are often killed as ‘collateral damage.’³² Although they cannot be targeted under international humanitarian law, civilians can be killed provided the expected loss of civilian life is not “excessive in relation to the concrete and direct military advantage anticipated.”³³ This is known as the so-called ‘proportionality principle’ which often eviscerates the principle altogether, but the rhetoric of military leaders saying they are avoiding civilian categories is strong.

In fact, scholars have argued that protection of civilians is a universal concept. As Helen Kinsella has pointed out, “in regard to the protection of and respect for civilians, the striking congruence of political and legal convictions suggests that the civilian is an essential concept and category of international law and international relations and a crucial referent by which conflicts and conduct are judged.”³⁴ She uses the example of the Taliban, who in their code of conduct instructed the Afghanistan Mujahadeen to “do their best to avoid civilian deaths and injuries and damage to civilian property.”³⁵ And the United States Army General, in his capacity as NATO commander in 2008, claiming that in Afghanistan “even one civilian casualty is too many.”³⁶ David Traven has argued that the protection of civilians is broadly universal, not simply a norm based on culture-specific values.³⁷

I caution that the talking point of protecting civilians is only ‘universal’ in theory – giving military leaders the opportunity to take a moral high ground. However, whether protecting civilians happens in practice is a separate issue as seen in the same example of Afghanistan where civilian casualties are estimated to be 46,319 and probably much higher.³⁸ In fact, the United Nations estimates that ninety percent of war-time casualties are civilians.³⁹ As Luigi Daniele stated, “despite tragic trends in wartime civilian victimization, all military powers tend to represent their conduct of hostilities as characterized by exemplary efforts to minimize civilian harm.”⁴⁰

The distinction between civilians and combatants is the key part of many war crime definitions. In the Rome Statute of the International Criminal

32. Many scholars and humanitarians argue for greater protection for civilians. See Charles P. Trumbull IV, *Proportionality, Double Effects, and the Innocent Bystander Problem in War*, 59 STAN. J. INT’L L. 35 (2023); Luigi Daniele, *Incidental Harm in International Humanitarian Law and its Contra Legem Antonyms in Recent Discourses on the Laws of War*, 29 J. CONFLICT AND SEC. L. 21, 21–54 (2024).

33. Geneva Protocol I, *supra* note 29, art. 51

34. HELEN M. KINSELLA, *THE IMAGE BEFORE THE WEAPON: A CRITICAL HISTORY OF THE DISTINCTION BETWEEN COMBATANT AND CIVILIAN 2* (2011).

35. *Id.*

36. *Id.* at 1.

37. DAVID TRAVEN, *LAW AND SENTIMENT IN INTERNATIONAL POLITICS: ETHICS, EMOTIONS, AND THE EVOLUTION OF THE LAWS OF WAR* 267 (2021).

38. United States Institute of Peace, *USIP Hosts President Trump and the Board of Peace*, <https://www.usip.org/publications/2022/11/afghanistan-was-loss-better-peace> [<https://perma.cc/9Q5G-ZWQV>].

39. Press Release, Security Council, *Ninety Per Cent of War-Time Casualties Are Civilians, Speakers Stress, Pressing Security Council to Fulfil Responsibility, Protect Innocent People in Conflicts*, U.N. Press Release SC/14904 (May 25, 2022) <https://press.un.org/en/2022/sc14904.doc.htm> [<https://perma.cc/RKM9-UKV2>].

40. Luigi Daniele, *supra* note 33, at 25 (2024).

Court, crimes against humanity are various acts—murder, extermination, enslavement, torture, forcible transfers of populations, imprisonment, rape, persecution, enforced disappearance, and apartheid, among others—which are “committed as part of a widespread or systematic attack directed against any civilian population.”⁴¹

Because the difference between a combatant and civilian is paramount under international law, it is incredibly dangerous if someone who disagrees with you becomes a ‘combatant.’ When an individual is a ‘combatant,’ under the laws of war, they can be legally targeted. Essentially, under some interpretations of the law, this means combatants can be killed “wherever found, armed or unarmed, awake or asleep, on a front line or a mile or a hundred miles behind the lines.”⁴² The line can be blurred when civilians take a more active role in warfare. Civilians may not be aware of where the line is of aiding the war effort that can cross into making them a combatant. Under International Humanitarian Law, when a civilian crosses the line into “direct participation in hostilities” they can be attacked as if they were a combatant for as long as they directly participate in hostilities.⁴³ Increasingly, in the modern era, scholars argue there has been a blurring of the line between civilians and combatants and civilian objects and military objects.⁴⁴ Recently in Ukraine, some argue civilian ‘hacktivists’ can cross the line if they actively play a role in military operations.⁴⁵

Even within the category of ‘civilian,’ women and children are generally viewed as a special category. News reports often separately report the number of women and children killed, identifying this as especially egregious. A 1974 United Nations General Assembly resolution stated: “Attacks and bombings on the civilian population, inflicting incalculable suffering, especially on women and children, who are the most vulnerable members of the population, shall be prohibited, and such acts shall be condemned.”⁴⁶ International humanitarian law has provisions that explicitly prohibit rape and other forms of sexual violence against women, all of which may constitute war crimes. The Fourth Geneva Convention for the Protection of Civilian Persons in Time of War states: “Women shall be especially protected against any attack on their

41. Rome Statute of the International Criminal Court art. 7(2)(a), July 17, 1988, 2187 U.N.T.S. 90 [hereinafter Rome Statute].

42. Gary Solis, *Targeted Killing and the Law of Armed Conflict*, 60 NAVAL WAR COLL. REV. 1, 4 (2007).

43. *Direct Participation in Hostilities*, ICRC (last used Mar. 13, 2026), https://casebook.icrc.org/a_to_z/glossary/direct-participation-hostilities [<https://perma.cc/46M9-RPHV>]

44. Oona A. Hathaway, Azmat Khan & Mara Revkin, *The Dangerous Rise of “Dual-Use” Objects in War*, 134 YALE L. J. 2649, 2666 (2025).

45. Tilman Rodenhäuser & Mauro Vignati, 8 *Rules for “Civilian Hackers” During War, and 4 Obligations for States to Restrain Them*, EJIL:TALK! (Oct. 4, 2023) <https://www.ejiltalk.org/8-rules-for-civilian-hackers-during-war-and-4-obligations-for-states-to-restrain-them/> [<https://perma.cc/258U-6XWB>].

46. G.A. Res. 3318 (XXIX), Declaration on the Protection of Women and Children in Emergency and Armed Conflict, at 1 (Dec. 14, 1974).

honour, in particular against rape, enforced prostitution, or any form of indecent assault.”

A gendered notion of civilian, where military-aged men are viewed solely as combatants and women are viewed only as vulnerable victims is inherently problematic. That said, women and men may experience wars in different ways with women more likely to be victims of sexual violence and men more likely to be lethally targeted.⁴⁷ News reports revealed that civilian deaths in war zones under the Obama administration were vastly underreported as according to several administration officials military-aged males in strike zones were counted as combatants unless there was explicit evidence proving them ‘innocent.’⁴⁸ Men are also victims in war, especially marginalized groups. During the ‘war on terror,’ military-aged men who were not combatants were swept up into Guantanamo and black sites. Even military experts warn assuming “women and children” are civilians and “military-aged males” are combatants can influence targeting decision and increases the risk of misidentifying threats.⁴⁹

The idea of innocence and the ‘innocent civilian,’ generally women and children, in international law comes with its own dangers. Civilians, like the girls and women in Iran, can hope and protest for a future where they have autonomy and a democratic government structure, and their protests may be a powerful tool to effectuate change, but they are still civilians. Helen Kinsella pointed out, “innocence is, paradoxically perhaps, premised on passivity, an apolitical and dependent status that may be both impossible and dangerous to maintain in times of war. To be innocent is also to be without the freedom or agency to act in one’s own defense and for one’s own life. These discourses can be as dangerous to the principle of distinction as they are necessary to its existence.”⁵⁰ As Christiane Wilke and Helyeh Doutaghi have argued, “[c]ivilians don’t need to be ‘innocent.’ They are ordinary humans with political views, dreams, emotions in the face of war, and the desire to not be killed. They might protest a military occupation or they might support repressive policies, yet they are not military targets.”⁵¹

47. Anne-Kathrin Kreft & Mattias Agerberg, *Imperfect Victims? Civilian Men, Vulnerability, and Policy Preferences*, 118 AM. POL. SCI. REV. 274, 274 (2024).

48. Jo Becker & Scott Shate, *Secret ‘Kill List’ Proves a Test of Obama’s Principles and Will*, N.Y. TIMES (May 29, 2012) <https://www.nytimes.com/2012/05/29/world/obamas-leadership-in-war-on-al-qaeda.html> [<https://perma.cc/ZG6U-K6NR>].

49. *Deep Dive Recap: Drones and Gender Perspectives*, NATO (Nov. 18, 2024), https://www.nato.int/cps/en/natohq/news_230601.htm?selectedLocale=en [<https://perma.cc/6PYL-GMMA>]. Although straying from the topic of this paper, the gendered notions of civilian may impact refugee decisions, at great cost. Men fleeing Russia to avoid being conscripted into a war with Ukraine that they thought was unjust, were unlikely to be granted refugee status in Europe as they were viewed as a threat when instead this should have been seized as an opportunity.

50. KINSELLA, *supra* note 35, at 196.

51. Christiane Wilke & Helyeh Doutaghi, *Conceptualizing Civilians Beyond “Innocence,”* LIEBER INSTITUTE (Oct. 27, 2023), <https://lieber.westpoint.edu/conceptualizing-civilians-beyond-innocence/> [<https://perma.cc/9DLY-8EUXJ>].

The laws of war protect civilians. Charlie Dunlap examined the peril in the indication that the laws of war only protect innocent civilians, as the words ‘innocent civilian’ were included in the United States Department of Defense Civilian Harm Mitigation and Response Action Plan.⁵² Any idea of ‘innocence’ in the law of war also has individual troops trying to decide who is innocent or not.⁵³ This would put military members in “legal jeopardy and civilians in physical peril.”⁵⁴ However, the idea of the ‘innocent’ civilian permeates scholarly writing and news reports.

Scholars who have examined the desire in theory to differentiate between innocent and non-innocent civilians have rejected the distinction as unworkable in reality. Aaron Xavier Fellmeth explored whether to reject civilian immunity in international law as civilians contributing to an unjust war are “not ‘innocent’ in the ethical sense, but are rather offenders against international peace and . . . more appropriate targets for attack than combatants prosecuting a just war.”⁵⁵ However, he comes to the conclusion that although theoretically appealing, rejecting civilian immunity on this basis does not work in practice.⁵⁶ Expecting combatants and potential combatants to independently evaluate the justness of each of their actions, and the overall war, especially when they may be legally required to participate in an unjust war, would prove unworkable.⁵⁷ Similarly, Charles Trumbull⁵⁸ pointed out that replacing current civilian immunity to one based on innocence could actually lead to lower protections for all civilians.⁵⁹ Also, protecting civilians adds a level of humanity to war rather than an all out war where anyone on the other side is an enemy to be killed.⁶⁰

It is not clear whether there ever was a bright-line distinction between civilians and combatants and whether there has been real respect for the line in war; however, the protesters in Iran are most definitely civilians. The protestors may not be ‘innocent’ in the sense of apolitical and they may pose a real danger to the regime as their ultimate goal is to topple it, but they are still civilians and should not be targeted as combatants.

52. Charlie Dunlap, *Does the Law of War Protect Only ‘Innocent’ Civilians?* LAWFIRE (Aug. 10, 2023), <https://sites.duke.edu/lawfire/2023/08/10/does-the-law-of-war-protect-only-innocent-civilians/> [https://perma.cc/3C89-8E9L].

53. *Id.*

54. *Id.*

55. Aaron Xavier Fellmeth, *Questioning Civilian Immunity*, 43 TEX. INT’L L.J. 453, 462 (2008).

56. *Id.* at 464.

57. *Id.* at 465.

58. Trumbull, *supra* note 33, at 69.

59. Charles Trumbull, *Collateral Damage and Innocent Bystanders in War*, LIEBER INSTITUTE (July 10, 2023). <https://lieber.westpoint.edu/collateral-damage-innocent-bystanders-war/> [https://perma.cc/QN2T-YLCP].

60. Hugo Slim, *Why Protect Civilians? Innocence, Immunity and Enmity in War*, 79 INT’L AFFS. 481, 500 (2003) (“The idea of the civilian, recognizing as it does that the enemy are also people like us, is an extremely important idea in war precisely because it offers a pattern of restraint and human relationship between enemies that can be something good to remember in the making of peace.”).

III. PROTESTERS AS COMBATANTS

In our time, political speech and writing are largely the defence of the indefensible. Things like the continuance of British rule in India, the Russian purges and deportations, the dropping of the atom bombs on Japan, can indeed be defended, but only by arguments which are too brutal for most people to face, and which do not square with the professed aims of political parties. Thus political language has to consist largely of euphemism, question-begging and sheer cloudy vagueness.

-George Orwell

By framing the protesters as combatants, the Iranian authorities then unleashed a war machine against them, using the power of war rhetoric and trying to use the weight of international law⁶¹ to justify killing peaceful protesters. Because unlike human rights law and basic ideas of justice, where the individual has the right not to be killed, “[t]he international law of armed conflict, which is very much older in its origins than human rights law, starts from a totally different premises. The soldier has the right to kill another soldier.”⁶² As Brian L. Cox has pointed out, “there is no direct relationship between human rights law and the law of armed conflict.”⁶³ In fact, there is an incredible disconnect between human rights law and the law of armed conflict, as the former is supposed to protect an individual and their rights and the latter legalizes killing and destruction. One can sanitize it, changing the name from Department of War to Department of Defense, but the basic goal of any military is to kill.

From the very beginning of the protests, the language of war was used. Mohsen Mansouri, the Governor of Tehran, said on September 21, 2022, “We are in a hybrid war, part of which has been demonstrated in these recent events.”⁶⁴ The authorities also claimed that the people killed were by “infiltrators” from foreign groups and secessionist forces⁶⁵ making it an international

61. International law, of course, has been criticized for being unjust itself as promoting a binary view in which the “West leads the way and the rest of the globe follows.” See Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INT’L L.J. 201, 245 (2001). Scholars, often referred to as TWAIL (Third World Approaches to International Law) scholars, have long argued that international law itself “legitimizes, reproduces and sustains the plunder and subordination of the Third World by the West.” Makau Mutua, *What is TWAIL?*, 94 AM. SOC. OF INT’L L. 31, 31 (2000).

62. Nathaniel Berman, *Privileging Combat? Contemporary Conflict and the Legal Construction of War*, 42 COLUM. J. TRANSNAT’L L. 1, 3 (2004) (quoting Francois Hampson, *Human Rights Law and International Humanitarian Law: Two Coins or Two Sides of the Same Coin?*, 1 BULL. HUMAN RIGHTS 46, 50 (1991)).

63. Brian L. Cox, *Regulating Military Force Series – Rhetoric and Warfare in the Age of Rights*, LIEBER INSTITUTE (Feb. 21, 2024), <https://lieber.westpoint.edu/rhetoric-warfare-age-of-rights/> [<https://perma.cc/MA57-AZYU>].

64. Omid Shams & Shima Mehrani, *Waging War on Civilians: Exposing Iran’s Repressive Units and Crimes Against Humanity*, JUSTICE FOR IRAN, (March 20, 2024), <https://justice4iran.org/persian/wp-content/uploads/2024/03/Waging-war-on-civilians.pdf> [<https://perma.cc/M67G-X4N9>].

65. Maziar Motamedi, *Iran’s Pro-government Counter-protesters Try to Change Narrative*, AL JAZEERA (Sept. 25, 2022), <https://www.aljazeera.com/news/2022/9/25/iran-organises-counter-demonstrations-as-protests-continue> [<https://perma.cc/HX6K-C3AT>].

armed conflict. A report by Justice for Iran detailed the many instances when war rhetoric was used to justify lethal force.⁶⁶ The protesters are repeatedly called the ‘enemy.’ On September 21, 2022, the Commander of the Quds Headquarters of the IRGC Ground Force used the term “Holy Defense” a term used by Iranian officials for the Iran-Iraq war: “the Holy Defence is not over, and today, we are in a hybrid war against the enemy. In other words, the enemies of the Iranian nation have come to the field with all their efforts and capabilities.” On December 4, 2022, SHAK, the main body that authorized the use of force against protester issued a statement: “the enemy, in utter despair from the strategy of maximum pressure, turned to hybrid warfare. The impactful death of Ms. Mahsa Amini prompted the enemy to expedite the implementation of its intricate design in the hybrid war, which was planned to commence under various pretexts.”⁶⁷

Amnesty International obtained a leaked copy of an official Iranian document that demonstrated the authorization of lethal force using the rhetoric of war. The document stated that, on September 21, 2022, the General Headquarters of Armed Forces issued an order to commanders in all provinces instructing them to “severely confront troublemakers and anti-revolutionaries.”⁶⁸ Later that evening, the use of lethal force across the country escalated with dozens of men, women and children killed that night alone.

Iran also blamed Kurdish opposition groups in northern Iraq for fomenting the protests and smuggling in arms, accusing them of direct involvement as well as having ties to Israel.⁶⁹ On September 28, 2022, Iran launched a drone and missile attack against Iraq’s Kurdistan region.⁷⁰ The United States National Security Advisor Jake Sullivan made a statement condemning the attacks, “Iran cannot deflect blame from its internal problems and the legitimate grievances of its population with attacks across its borders.”⁷¹

The regime framed the mostly peaceful protests as threats to national security or public order. The United Nations found that the authorities labelled the protesters as “rioters” or “agents of the enemy.”⁷² Governments often use emergency orders or national security as a way to repress basic rights when they feel threatened. Protest is protected under international law through various

66. See generally Shams & Mehrani, *supra* note 65.

67. *Id.* at 25.

68. AMNESTY INT’L, *Iran: Leaked Documents Reveal Top-level Orders to Armed Forces to ‘Mercilessly Confront’ Protesters* (Sept. 30, 2022), <https://www.amnesty.org/en/latest/news/2022/09/iran-leaked-documents-reveal-top-level-orders-to-armed-forces-to-mercilessly-confront-protesters/> [<https://perma.cc/QVV8-HBVT>].

69. Qassim Abdul-Zahra & Samya Kullab, *Blaming Kurds for Unrest, Iran Threatens Iraq with Offensive*, AP NEWS (Nov. 18, 2022), <https://apnews.com/article/iran-middle-east-iraq-tehran-baghdad-c0b63cf0ad45f5e087eb67e1110437b6> [<https://perma.cc/D7LW-US9C>].

70. American Presidency Project, *Statement by National Security Advisor Jake Sullivan on Iran’s Missile and Drone Attacks in Northern Iraq* (Sept. 28, 2022), <https://www.presidency.ucsb.edu/documents/statement-national-security-advisor-jake-sullivan-irans-missile-and-drone-attacks-northern> [<https://perma.cc/2WXN-K594>].

71. *Id.*

72. 2024 Iran Rep., *supra* note 10, ¶ 21.

international instruments and enshrined in the Universal Declaration of Human Rights.⁷³ Some of the rights involved are: the right to peaceful assembly, right to freedom of expression, the right to life, to freedom of association, to privacy, and to be free from arbitrary arrest and detention, and from torture and other ill-treatment or punishment.⁷⁴ However, as Florian Kriener has pointed out, “protest movements also sit on the fringes of international law.”⁷⁵ He argues “civil resistance is not covered by human rights protections. Civil resistance measures are non-violent interferences in the public spheres that impede or hamper elements of public order. They are important forms of protest and key for raising awareness and situating protest in the public realm.”⁷⁶

The right to peaceful assembly is a core human right and often enables the promotion of other fundamental rights. When the state crushes peaceful assemblies, it often leads to violence. As the Special Rapporteur on the rights to freedom of peaceful assembly and of association found, “when demonstrations were not allowed or were repressed, it was a sign of an authoritarian regime, and prohibition or repression of demonstrations might lead to a deep-rooted crisis and even to armed conflict.”⁷⁷

When peaceful protests are violently quashed, those protesters may then resort to violence. Sociologists have found “support for political violence results from a conscious decision that occurs when people come to see peaceful protest as futile.”⁷⁸ After the violent repression of peaceful protesters in Derry, Ireland, peaceful protesters turned to more violent means and greater support for the Irish Republican Army.⁷⁹ Many in Ireland see a missed opportunity with the peaceful protesters, a “‘what if?’ moment when the violence that followed might have been averted through reform.”⁸⁰ More recently, in Myanmar, after security forces fired on protesters and the protesters realized no international help was coming, some turned to violence.⁸¹ “‘It was difficult to know where to begin our armed struggle’, says George. ‘We were normal people, with no experience of military training.’”⁸²

73. G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 20 (Dec. 10, 1948).

74. International Covenant on Civil and Political Rights (ICCPR) art. 21, Dec. 16, 1966, 999 U.N.T.S. 171.

75. Florian Kriener, *Protests Movements: On the Fringes of International Law*, 117 AM. SOC’Y INT’L L. PROC. 323, 325 (2024).

76. *Id.*

77. HUM. RTS. COUNCIL, *Summary of the Panel Discussion on the Promotion and Protection of Human Rights in the Context of Peaceful Protests, with a Particular Focus on Achievements and Contemporary Challenges*, ¶ 14, U.N. Doc. A/HRC/50/47 (Apr. 8, 2022).

78. Robert W. White, *From Peaceful Protest to Guerrilla War: Micromobilization of the Provisional Irish Republican Army*, 94 AM. J. OF SOC. 1277, 1297 (1989).

79. *Id.* at 1297-98.

80. Sean O’Hagan, *Northern Ireland’s Lost Moment: How the Peaceful Protests of ‘68 Escalated into Years of Bloody Conflict*, THE GUARDIAN (Apr. 22, 2018), <https://www.theguardian.com/politics/2018/apr/22/lost-moment-exhibition-northern-ireland-civil-rights-1968-troubles-what-if> [<https://perma.cc/J3QV-UL6V>].

81. Jonathan Head, *Myanmar: Why Once Peaceful Protesters are Now Choosing Violence*, BBC NEWS (Jan. 29, 2022), <https://www.bbc.com/news/world-asia-60137053> [<https://perma.cc/WR7X-K9Q4>].

82. *Id.* In advocating for Black Americans to march and protest, Martin Luther King Jr. wrote in *Letter from a Birmingham Jail*, “If . . . repressed emotions do not come out in these nonviolent ways, they will come out in ominous expressions of violence. This is not a threat; it is a fact of history.”

By framing the protesters as combatants, Iran is using the hard-fought language of international law that was made to protect civilians to justify killing them. International law has become a weapon. In an interview with NBC News anchor Lester Holt almost a year after the protests, Iran's then President Ebrahim Raisi defended the actions against the protesters, "It was a hybrid war and a cognitive war. It was a political war. It was an economic war, a media war, and a psychological war against the Islamic Republic of Iran," he said. "They did not care about Madam Amini." Despite what Raisi called Western attempts to impose pressure on Iran over its dress code, "I believe that they have been defeated in this area, and they will be defeated in future, as well," he said.⁸³ Interestingly, even the Islamic Republic of Iran wanted to be able to defend their actions on some level using international law.

As Elke Schwarz and Neil Renic remind us, separating international law from ethics can pose massive risks to human rights. They use the example of when Pentagon Press Secretary Major General Pat Ryder was asked if Israel's pager attack in Lebanon fell "within the ethical conduct of a war." He replied, "I'm not a lawyer."⁸⁴ However, complying with international law is only a minimum obligation.⁸⁵ Especially as it pertains to civilian protections, parties to an armed conflict should think morally and ethically and go beyond mere legal requirements that can be contorted. "Ethics must be foregrounded; its centrality affirmed and reaffirmed. Because without it we are lost, doomed to endure an endless spiral of legally systematized violence and counter-violence."⁸⁶

Protesters in other contexts have also been targeted as combatants. During the "Great March of Return," Israel framed the protesters as combatants and used lethal force against them. However, the United Nations Human Rights Council found "the demonstrations were civilian in nature, had clearly stated political aims and, despite some acts of significant violence, did not constitute combat or a military campaign."⁸⁷ Therefore, the Human Rights Council found that "demonstrators were shot in violation of their right to life or the principle of distinction under international humanitarian law."⁸⁸

83. *Full Transcript: Read Lester Holt's Interview with Iranian President Ebrahim Raisi*, NBC NEWS (Sep. 13, 2023), <https://www.nbcnews.com/news/world/full-transcript-read-lester-holts-interview-iranian-president-ebrahim-rcna104913> [https://perma.cc/X7HW-47PV].

84. Elke Schwarz & Neil Renic, *Beyond Law: Reaffirming the Centrality of Ethics in War*, JUST SEC. (Oct. 7, 2024), <https://www.justsecurity.org/103464/beyond-law-reaffirming-the-centrality-of-ethics-in-war/> [https://perma.cc/4JY8-HG44].

85. *Id.*

86. *Id.* But see Jessica Wolfendale, *Beyond Law: When States Use Ethics to Excuse War Crimes*, JUST SEC. (Nov. 20, 2024), <https://www.justsecurity.org/104969/states-ethics-excuse-war-crimes/> [https://perma.cc/SCG9-JR2A].

87. HUM. RTS. COUNCIL, *Rep. of the Indep. Int'l Comm'n of Inquiry on the Protests in the Occupied Palestinian Territory*, ¶ 32, U.N. Doc. A/HRC/40/74 (Feb. 25, 2019).

88. *Id.*

The United States used the rhetoric of War, the “War on Terror,” after the 9/11 terror attack to justify military action all around the world and human rights abuses. Capitalizing on the fear of the public in the aftermath of 9/11, the United States government framed anyone who disagreed with it as an ‘enemy,’ a combatant, upon whom war could be waged. On October 11, 2001, President Bush announced a military campaign of unprecedented scope:

The attack took place on American soil, but it was an attack on the heart and soul of the civilized world. And the world has come together to fight a new and different war, the first, and we hope the only one, of the 21st century. A war against all those who seek to export terror, and a war against those governments that support or shelter them.⁸⁹

In 2002, Philip B. Heyman, former deputy attorney general under President Clinton, warned “by labeling the United States’s fight against terrorism a war . . . it has already put pressure on the society to abandon its traditional standards of rights, liberties and basic fairness.”⁹⁰ As Bruce Ackerman has pointed out, if the public is convinced that a large ‘war on terror’ is going on, separate wars – invading Afghanistan and Iraq – can be “repackaged as mere ‘battles.’”⁹¹ Arguing that even a hegemon must “resort to the various means of persuasion at its disposal”⁹² Tawia Ansah has argued: “The emotional aftermath of September 11, fear, vengeance, and punishment, invested the terms ‘war’ and ‘self-defense’ with meanings that delimited the rational, political and juridical constraints with which those terms might still be imbued.”⁹³ In fact, twenty-four years after 9/11 the AUMF is still being used to justify military action around the world that has no connection whatsoever to those attacks.

The Iranian Regime also used the language and weight of Islamic law of war, charging protesters with *moharebeh*, which translates to “waging war on God.”⁹⁴ As anyone who commits this crime is a mohareb or “belligerent against God,” and under Article 282 of Iran’s penal code, the death penalty can be used.⁹⁵ Iran used this false charge to justify using the death penalty against protesters and the people that supported them. According to Iran’s Islamic Penal Code 279, Moharebeh is defined as “drawing a weapon on the

89. *Global War on Terror*, GEORGE W. BUSH PRESIDENTIAL LIBRARY (last visited June 23, 2025), <https://www.georgewbushlibrary.gov/research/topic-guides/global-war-terror> [<https://perma.cc/FR72-F7XP>].

90. Alison Mitchell, *The Nation: A War Like No Other; The Perilous Search for Security at Home*, N.Y. TIMES (July 28, 2002), <https://www.nytimes.com/2002/07/28/weekinreview/the-nation-a-war-like-no-other-the-perilous-search-for-security-at-home.html/> [<https://perma.cc/82RG-UBDC>].

91. Bruce Ackerman, *This is Not a War*, 113 YALE L.J. 1871, 1876 (2004).

92. Tawia Ansah, *War: Rhetoric & Norm-Creation in Response to Terror*, 43 VA. J. INT’L L. 797, 800 (2003).

93. *Id.*

94. ASSOCIATED PRESS, *Iran Carries Out the First Known Execution of a Prisoner Arrested in Recent Protests*, NPR (Dec. 8, 2022), <https://www.npr.org/2022/12/08/1141509858/iran-execution-protests-shekari> [<https://perma.cc/46R2-YHRZ>].

95. *Id.*

life, property or chastity of people or to cause terror as it creates the atmosphere of insecurity.”⁹⁶ And further, as per Article 281, “robbers, thieves or smugglers who resort to weapons and disrupt public security or the security of the roads shall be considered as mohareb.”⁹⁷

Western media and leaders used the language of revolution to indicate how powerful the protests could be. Headlines read: “Mahsa Amini: The Spark That Ignited A Women-Led Revolution”⁹⁸ “Two years after the death of Mahsa Amini, a ‘quiet revolution’ is still under way in Iran.”⁹⁹ President Macron of France said in an interview when asked to qualify what was happening in Iran: “Something unprecedented is happening, the grand children of the revolution are carrying out a revolution and are devouring it.”¹⁰⁰ Protest can lead to real change. Iran feared the protesters’ power and waged war against them.

IV. FEAR OF PROTESTERS

Although labelling the protesters as combatants is completely false, it does indicate how fearful of the protesters the Iranian regime is. Contemporary social movements widely use nonviolent action as it “is more likely to be effective than armed struggle, including against the most repressive regimes.”¹⁰¹ Research by Erica Chenoweth found that nonviolent campaigns are twice as likely to achieve their goals as violent ones.¹⁰² She further found that 3.5% of the population actively participating in the protests has historically brought about serious political change.

Just as Western media proclaimed a ‘revolution,’ the regime feared that the protests could turn into one. Protest is a powerful tool that can topple regimes, and change society. Protest can give attention to a cause or an issue, but it can also lead to profound societal change. It can “disrupt the existing political order, transcend or abandon its ideological trappings, and create new possibilities.”¹⁰³ The world watched the protests, amazed by their fearlessness in front of a brutal regime that would suppress them with all the might of the state. As Oren Gross and Fionnuala Ní Aoláin have pointed out, “[t]he term

96. Hudud [Islamic Penal Code, The Islamic Republic of Iran, Book 2] 2012, arts. 279, 281 & 282, translation available at <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/> [https://perma.cc/LMB7-CJ2B].

97. *Id.*

98. McGrath, *supra* note 3.

99. Bahar Makooi, *Two Years After the Death of Mahsa Amini, A ‘Quiet Revolution’ is Still Under Way in Iran*, FRANCE 24 (Sept 26, 2024), <https://www.france24.com/en/asia-pacific/20240916-two-years-after-death-mahsa-amini-quiet-revolution-in-iran-women-protest-reformers> [https://perma.cc/M4BU-NSP9].

100. *Macron Calls Iran Protests a ‘Revolution’, Says Crackdown Harms Nuclear Deal Chances*, FRANCE 24 (Nov. 14, 2022), <https://www.france24.com/en/middle-east/20221114-macron-calls-iran-protests-a-revolution-says-crackdown-harms-nuclear-deal-chances> [https://perma.cc/TNA9-3L4A].

101. ERICA CHENOWETH & MARIA STEPHAN, *WHY CIVIL RESISTANCE WORKS: THE STRATEGIC LOGIC OF NONVIOLENT CONFLICT* 227 (2011).

102. *Id.*

103. AIDAN MCGARRY, ITIR ERHART HANDE ESELEN-ZIYA, OLU JENZEN & UMUT KORKUT, *THE AESTHETICS OF GLOBAL PROTEST: VISUAL CULTURE AND COMMUNICATION* 16 (2020).

‘war’ makes people hypersensitive to particular narratives and heightens their feelings of fear, hysteria, panic, insecurity, outrage, and xenophobia.”¹⁰⁴

What is fear? The American Psychological Association defines fear as “a basic, intense emotion aroused by the detection of imminent threat, involving an immediate alarm reaction that mobilizes the organism by triggering a set of physiological changes.”¹⁰⁵ Ralph Adolphs similarly “urges a functional concept of fear, defining this emotion in terms of being caused by particular patterns of threat-related stimuli, and in turn causing particular patterns of adaptive behaviors to avoid or cope with that threat.”¹⁰⁶ The Iranian regime saw a threat and used their war arsenal to try to counter it using the military, trained for war and killing, against peaceful protesters.

Iranian students recognize this fear as a sign of their power. A statement by the students at the Farabi Campus of Tehran University said, “[e]very oppressive power’s fear has come true: Students can no longer be obedient sacrificial pawns, for they are inherently free-thinking and freedom-loving.”¹⁰⁷ They also stated, “[t]he times when students submitted to oppression have come to an end.”¹⁰⁸ The regime made a similar conclusion that this generation would be harder to control and expressed their fear of that threat. *Sobh-e-Sadegh*, an Iranian Revolutionary Guard Corps-affiliated weekly magazine, published an article in 2022 warning of the threat young people pose to the ‘system.’ By studying their online behavior, they found “governing this generation will not be as easy as previous generations. Because this generation . . . has a mainly protesting nature towards the current situation.”¹⁰⁹

Examining the fear the Iranian regime has of the protesters is useful. Iranian officials have claimed the average age of the protesters is fifteen. The regime is fearful of their incredible emotion and desire for change. The regime is likely afraid that the protestors are unfearful – protestors are young, they do not have families to support, so they are harder to threaten. Many of them also have expressed that they have nothing left to lose, so they are not afraid of the consequences. “I can’t choose what I wear, the teen told her mom. I don’t have the right to dance in public. By law, I’m not allowed to be myself. “I’m already dead,” Alinejad says the girl told her mother. “But when I go to the streets, I have a dream. And that makes me alive.”¹¹⁰ As Natana DeLong-Bas has pointed out, “the regime clearly expects its iron-fist rule to stir fear and

104. Oren Gross & Fionnuala Ní Aoláin, *The Rhetoric of War: Words, Conflict, And Categorization Post-9/11*, 24 CORNELL J. OF L. PUB. POL’Y 241, 254 (2014).

105. *Fear*, APA DICTIONARY OF PSYCHOLOGY (April 19, 2018), <https://dictionary.apa.org/fear> [<https://perma.cc/CP24-LHEZ>].

106. Ralph Adolphs, *The Biology of Fear*, 23 CURR BIOL. 79, 79–93 (2013), <https://pmc.ncbi.nlm.nih.gov/articles/PMC3595162/> [<https://perma.cc/8UAK-QZ3R>].

107. Press Release, Ctr. for Hum. Rts. in Iran, Students Across Iran Say “No” to Forced Hijab, (June 19, 2023), <https://iranhumanrights.org/2023/06/students-across-iran-say-no-to-forced-hijab/> [<https://perma.cc/94JU-VNWF>].

108. *Id.*

109. Holly Dagues, *How Gen Z is Driving the Uprising*, FOREIGN POL’Y (Nov. 1, 2022), <https://foreignpolicy.com/2022/11/01/iran-protests-gen-z-mahsa-amini-social-media/> [<https://perma.cc/6Q28-7722>].

110. McGrath, *supra* note 3.

quell the protests, but the government is missing the protesters' points: Their desire for personal freedoms and autonomy is greater than their fear of the regime; that there is power in numbers; and that they will continue to express their defiance."¹¹¹

In turn, the regime is using fear as a weapon of suppression. In addition to killing and injuring protesters, the regime has arrested them and their family members. Protesters and their families have been jailed and tortured. It has used the language of fear of becoming a civil war and 'another Syria.' Ruling by fear, in addition to being ineffective to those who have lost their fear, may work in the short term, but is unlikely to work in the long term. "Rule purely by fear can, in principle, be created and sustained, but is it likely to last? Clearly not."¹¹² Kavka gives the example that:

Perfect tyranny rests solely on a system of mutual expectations about one another's fear-based loyalty to the ruler. Hence, any public, or widely known, event that casts doubt on the depth and range of loyalty to the ruler, and his ability to enforce his orders, can cause a quick unraveling of the net of fear. The event might be a public protest, the loss of a foreign war or of the support of a foreign ally, or the conspicuous growth of influence of a rival to the ruler.¹¹³

The United Nations Report of the Independent International Fact-Finding Mission on the Islamic Republic of Iran specifically noted the use of fear as a weapon. Although not a focus of the report, fear and its use by the regime was repeatedly mentioned throughout the report. Measures, including electronic surveillance, harassment and intimidation of victims, witnesses and their families both inside and outside the country, led to pervasive fear making the UN's work difficult as it deterred many people who may have had information from working with the mission.¹¹⁴ Many of those injured by the regime or tortured "were denied medical care or did not report the torture when they were released, owing to a fear of reprisals."¹¹⁵ Some students left their schools or universities out of fear of retaliation by security officials.¹¹⁶ Lawyers "repeatedly raised concerns about their fear of prosecution for defending protesters."¹¹⁷ School children were poisoned "as an effort to suppress resistance, instill fear in and punish children, in particular girls and their families, for their role in the protests."¹¹⁸ "Against the backdrop of impunity for sexual and gender-based

111. *Behind the Protests in Iran: A Q&A with Theology Associate Professor of the Practice Natana DeLong-Bas, Past President of the American Council for the Study of Islamic Societies*, BC NEWS (Mar. 18, 2026), <https://www.bc.edu/bc-web/bcnews/nation-world-society/international/delong-bas-q-a-on-iran.html> [<https://perma.cc/P6QY-9UJC>].

112. Gregory S. Kavka, *Rule by Fear*, 17 *NOÛS* 601, 614 (1983).

113. *Id.* at 615.

114. 2024 Iran Rep., *supra* note 10, ¶ 3.

115. *Id.* ¶ 45.

116. *Id.* ¶ 77.

117. *Id.* ¶ 82.

118. *Id.* ¶ 87.

violence, the security forces played on social and cultural stigma connected to sexual and gender-based violence to spread fear and humiliate and punish women, men and children, including LGBTQI+ persons or their families for participation in the protests.¹¹⁹

After the 9/11 attacks, the United States as a nation was fearful and also used the language of war, calling the fight against al-Qaeda “the war on terror.” As Andrea Bianchi and Anne Saab have pointed out, “it is reasonable to speculate that the choice to have recourse to the vocabulary and the legal categories of the laws of war may have been prompted by the fear of the then ‘unknown’ magnitude and striking capacity of al-Qaeda.” By framing it as a war, “had a significant impact on law-making and other important decision-making processes. The US resorted to the use of force against Afghanistan.”¹²⁰ Fear is a powerful motivator, and as Cass Sunstein has said: “fear can lead to human rights violations of the most grotesque kind.”¹²¹

Fear of peaceful protests is widespread. Almost all governments are afraid of a peaceful protesters. There are countless examples from across the globe.¹²² As Alireza Nourani-Dargiri has pointed out, there is almost a ‘universal effort to curtail protest’ with monitors finding seventy-five percent of countries regularly violating the right of the people to protest.¹²³ Governments’ fear of protesters is apparent as they frame peaceful protesters as criminals, rioters,¹²⁴ terrorists, extremists, or human shields. In the United States, forty-one anti-protest bills have been introduced in twenty-two states since the beginning of 2025.¹²⁵ Both authoritarian and democratic countries have undermined and restricted the rights to protest and used law to criminalize protest behavior that expresses dissent.¹²⁶

119. *Id.* ¶ 48.

120. Andrea Bianchi & Anne Saab, *Fear and International Law Making: An Exploratory Inquiry*, 32 LEIDEN J. INT'L L. 351, 356 (2019).

121. See generally CASS R. SUNSTEIN, LAWS OF FEAR 226 (2005).

122. Favour Olijade, *Why Do African Governments Fear Peaceful Protesters?* THE REPUBLIC (Nov. 10, 2024), <https://republic.com.ng/october-november-2024/african-governments-protests/> [https://perma.cc/WFV2-BMCE]. In the United States, the International Center for Not-for-profit law has tracked legislation limiting the right to peaceful assembly. Twenty-three states have enacted 54 bills limiting the right since 2017. *US Protest Law Tracker*, INT'L CTR. FOR NOT-FOR-PROFIT LAW (last accessed May 2, 2025) <https://www.icnl.org/usprotestlawtracker/?location=&status=enacted&issue=&date=&type=legislative#> [https://perma.cc/8D8C-3JDU].

123. Alireza Nourani-Dargiri, *The Universal Effort to Curtail Protests*, 62 U. LOUISVILLE L. REV. 633, 636 (2024).

124. Nick Robinson, *Rethinking the Crime of Rioting*, 107 MINN. L. REV. 77, 101 (2022) (arguing for the elimination of the offenses of rioting and incitement to rioting as duplicative of other criminal offenses and leading to abuse).

125. *US Protest Law Tracker*, *supra* note 123.

126. Rossella Semini & Anna DiRonco, *The Criminalization of Dissent and Protest*, 52 CRIME & JUST. 197, 198 (2023).

V. MORAL OUTRAGE OF PROTESTERS

The incredible outpouring of emotion, specifically moral outrage,¹²⁷ of the protesters was seen and felt around the world. The response to Mahsa Amini's death – the protests – were spontaneous, leaderless, and overwhelming. The 2022 protests were “the most widespread in the history of the Islamic Republic.”¹²⁸ Within the first weeks, each of the thirty-one provinces and more than one hundred cities saw protests.¹²⁹ The protesters shouted, “Women, Life, Freedom.”¹³⁰ Women cut their hair, and took off and even burned their hijabs in protest. There were also chants of “Death to Dictator.” As has been pointed out, “A major aspect of these protests has been the centrality and visibility of women—as victims and as voices—claiming the right to personal autonomy.”¹³¹ The emotion of the protesters was so strong that they protested despite any fear they had of the inevitable backlash of the regime. Moral outrage can be a powerful force for change.

Mahsa Amini's death stirred up emotion about the rights of women, but also personal autonomy more generally. Protesters in Iran are fighting an oppressive regime that does not allow any dissent and those working for reform are imprisoned, exiled or killed.¹³² The protests were never just about the veil. “The veil that is being removed is therefore not an insistence only on the right to personal freedom and expression – though it may be that for some who are removing it – but also a rejection of patriarchal norms that have animated both the pre-revolutionary regime and the Islamic Republic.”¹³³

The world, and world leaders, took notice of the protesters and their incredible emotion acknowledging such powerful protest can lead to change. President Joe Biden viewed the protesters emotion with optimism and surprise. He said, “And Iran has to end the violence against its own citizens simply exercising their fundamental rights. And, you know, Masha [sic] Amini's death

127. I have written about moral outrage in the context of international law looking at its incredible power, but also its limits – basically, how hard it is to sustain and use to enforce international human rights law. See generally Heidi R. Gilchrist, *Ukraine, Moral Outrage, and International Law*, 84 OHIO STATE L.J. 1465, 1471 (2024); Heidi R. Gilchrist, *No Hiding from Justice: Universal Jurisdiction in Domestic Courts*, 57 TEX. INT'L L.J. 215 (2022). There, I defined moral outrage as “[t]he intense emotion of moral outrage is a “response to what people perceive as violations of their rights or justifiable expectations and those of others. It is grounded in a feeling of justice and its violation—it is based on what is right and therefore peoples’ rights, and “justifiable anger” when violated.”

128. Hamidreza Azizi & Erwin van Veen, *Protests in Iran in Comparative Perspective: A Revolutionary State in Trouble*, NETH. INST. OF INT'L RELS. (Mar. 2023), https://www.clingendael.org/sites/default/files/2023-03/Protests_in_Iran.pdf [<https://perma.cc/E8QX-DLPF>].

129. *Id.*

130. Seyma Bayram & Diba Mohtasham, *Iran's Protesters Find Inspiration in a Kurdish Revolutionary Slogan*, NPR (Oct. 27, 2022), <https://www.npr.org/2022/10/27/1131436766/kurdish-roots-iran-protest-slogan> [<https://perma.cc/BG28-3QCM>].

131. BC NEWS, *supra* note 112.

132. Amy Motlagh, *The Veil in Iran has been an Enduring Symbol of Patriarchal Norms – but its Use has Changed Depending on Who is in Power*, THE CONVERSATION (Nov. 14, 2022), <https://theconversation.com/the-veil-in-iran-has-been-an-enduring-symbol-of-patriarchal-norms-but-its-use-has-changed-depending-on-who-is-in-power-193689> [<https://perma.cc/CUU9-YFQM>].

133. *Id.*

was - I've been doing foreign policy a long, long time. It stunned me what it awakened in Iran. And it's awakened something that I don't think will be quieted in a long, long time."¹³⁴

Protest is often based on emotion and outrage at injustice. Iranian students protest out of the sense of righteous duty. "It is this sense of outrage over injustice that they take to heart and act upon, perhaps, even more readily than their elders do," Denis Sullivan says. "They feel obligated to right the wrongs of the society, especially the wrongs that come down on their generation."¹³⁵ Researchers have shown that moral obligation is one of the main motivations for people to participate in collective action.¹³⁶

The incredible outrage of the protesters surpassed the fear of the incredible military response of the Iranian regime against them. As Amnesty International noted: "The bravery of protesters facing a spiraling deadly response by the Iranian security forces over the past days after the death of Mahsa Amini reveals the extent of outrage in Iran over abusive compulsory veiling laws, unlawful killings, and widespread repression."¹³⁷

The protesters' incredible emotion and demands for change contrasts starkly to the idea of the stoic combatant following orders. Generally, military culture discourages openly expressed emotions, with "emotional self-control" seen as key to success in battle.¹³⁸ In fact, some scholars argue that International Humanitarian Law "tries to 'deactivate' the emotions of fighting soldiers."¹³⁹ Images of the orderly military parade, with officers all in matching uniforms marching in unison, contrasts sharply to the outraged, angry protesters, many women in colorful garb.

Mahsa Amini's face became the image of the movement. Her family has wondered if her 'ordinariness' is what resonated so deeply with people.¹⁴⁰ She could have been anyone's daughter or sister walking the streets of Iran and that led to the extreme moral outrage about her unjust death. During the protests in Iran, tens of thousands of protesters waved placards with her face

134. C-SPAN, President Biden Remarks on the Economy and Lowering Costs (on file with the Harvard Human Rights Journal).

135. Alena Kuzub, *Will an Opposition Leader Emerge in Iran Protests? Outrage Over Injustice Defies Violent Crackdowns*, NE. U. NEWS (Oct. 11, 2022), <https://news.northeastern.edu/2022/10/11/iran-protests-defy-violent-crackdowns/> [<https://perma.cc/EZX2-3W3Y>].

136. See generally José-Mauel Sabucedo, Marcos Dono, Monica Alzate & Gloria Seoane, *The Importance of Protesters' Morals: Moral Obligation as a Key Variable to Understand Collective Action*, 9 FRONT PSYCHOL. 1 (2018).

137. *Iran: World Must Take Meaningful Action Against Bloody Crackdown as Death Toll Rises*, AMNESTY INT'L (Sept. 23, 2022), <https://www.amnesty.org/en/latest/news/2022/09/iran-world-must-take-meaningful-action-against-bloody-crackdown-as-death-toll-rises/> [<https://perma.cc/U72T-KXJP>].

138. See generally Yasmine L. Konheim-Kalkstein, Ryan G. Erbe & Orin Strauchler, *10 Tips for Promoting Emotional Integration in the Military*, 12 J. CHARACTER & LEADERSHIP DEV. 82 (2025).

139. See generally NELE VERLINDEN, *TO FEEL OR NOT TO FEEL? EMOTIONS AND INTERNATIONAL HUMANITARIAN LAW* (2018).

140. Farnaz Fassihi, *An Innocent and Ordinary Young Woman*, N.Y. TIMES (Sept. 16, 2023), <https://www.nytimes.com/2023/09/16/world/middleeast/mahsa-amini-iran-protests-hijab-profile.html/> [<https://perma.cc/V925-VQQH>].

and shouted, “Say her name: Mahsa Amini. Mahsa Amini.”¹⁴¹ Her face has been on a huge billboard in Times Square, murals in Berlin and Paris, and on Barcelona’s soccer team’s private jet.¹⁴² Scholarships in her name have been set up at universities in the United States and Canada. Along with her face, are the powerful images of women and girls cutting their hair and ripping off their headscarves in defiance, fearless.

CONCLUSION

Protesters protest for many reasons, but research has shown that a sense of injustice is a strong motivator for protest.¹⁴³ As Martin Luther King, Jr. famously said “I am in Birmingham because injustice is here.” The moral outrage of injustice combined with a hope for change bring people together in a community to protest. However, governments - both authoritarian and democratic - are quick to quash protests characterizing protesters as criminals, terrorists, rioters, and human shields. One worries if people are not allowed to peacefully protest, will that lead to violent action. Protest matters and can make a difference. There is a moral imperative to protest. Weeks after younger Bulgarian galvanized a large protest movement in Bulgaria, much of it beginning on TikTok and Instagram, the prime minister resigned. One protester, Konstantin Tuzharov, spoke with his friends in disbelief: “Did we do that?”¹⁴⁴

In Iran, the struggle continues quietly and mostly underground. But at the second anniversary of the 2022 nationwide protests, several student organizations and students in Iran issued a statement reaffirming their stance against “this inhumane regime.” The students pledged to “constantly challenge” and “overthrow” it. In their statement, the students declared: “We neither forgive nor forget, express regret, nor fear, nor will we retreat. Sooner or later, the Islamic Republic will be dismantled by the revolutionary movement coursing through the veins of society.”¹⁴⁵

141. *Id.*

142. *Id.*

143. *The Emotional Pulse of Protest: Why People Stand Up Against Injustices*, UVA (Nov. 3, 2025), <https://www.uva.nl/en/shared-content/faculteiten/en/faculteit-der-maatschappij-en-gedragswetenschap-pen/news/2025/11/the-emotion-behind-protest.html?cb> [<https://perma.cc/CH3B-TX5A>].

144. Lara Jakes & Boryana Dzhambazova, ‘Did We Do That?’ Gen Z Protesters Help Tip the Balance Against Bulgaria’s Leaders, N.Y. TIMES (Dec. 12, 2025), <https://www.nytimes.com/2025/12/12/world/europe/bulgaria-young-protesters-gen-z.html> [perma].

145. *Mahsa Amini’s father: Iran Officials Silent 2 Years after Daughter’s Death*, VOICE OF AMERICAN PERSIAN (Sept. 13, 2024), <https://www.voanews.com/a/mahsa-amini-s-father-iran-officials-silent-2-years-after-daughter-s-death/7783702.html> [<https://perma.cc/FT44-NPX3>].

