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|---|---|
| Transitioning from Fossil Fuel-Based Transport to Clean Energy Vehicles in Africa: Challenges and Prospects   | Kariuki Muigua                                |
| Civilian Protection in War; An Insurmountable Task? Prohibited & Legally Permissible Conduct During Hostilities   | Nzeki Daniel Mutunga<br>& Kenneth Wyne Mutuma |
| Investment Treaties and The Arbitrability of Illegal Contracts: A Review of the Arbitral Award World Duty Free Company Limited Versus the Republic of Kenya | Muthomi Thiankolu                             |
| Charting a New Path for Environmental Management and Conservation in Kenya  | Kariuki Muigua                                |
| The Law and Emerging Jurisprudence on the Jurisdiction of Political Parties Dispute Tribunal (PPDT) of Kenya  | Wilfred A. Mutubwa<br>& Rosemary Kamathi      |
| An Analysis of The Right of Refugees to Access Public and Private Services in Kenya   | Leah Aoko                                     |
| Managing Water Scarcity in Kajiado County   | Berita Musau                                  |
| Military Siege: A Contemporary Analysis of its Effects on Civilian Protection During Armed Conflict   | Daniel Mutunga Nzeki                          |
| Accountability – The Bloodline of Universal Health Coverage   | Oseko Louis D Obure                           |

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## **Military Siege: A Contemporary Analysis of its Effects on Civilian Protection During Armed Conflict**

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### **Abstract**

*The concept of a “military siege” or “encirclement” is an old practice under International Humanitarian Law (IHL), in fact, it is as old as military warfare. However, the current international humanitarian law framework does not define what the term military siege is, despite its repercussions. This paper seeks to undertake a surgical review of the different sets of rules and principles of International Humanitarian Law that are relevant to sieges. First, the conduct of hostilities in general will be discussed, in which the paper argues that it is not prohibited under IHL to attack military objectives within a besieged area, provided such attacks are carried out in conformity with the principles of: distinction; proportionality; precautions, among other fundamental IHL principles.*

*Secondly, this paper conceptualizes the prohibition of starvation of civilians as a method of warfare, along with the rules regulating humanitarian relief operations. This is informed by the fact that the ultimate aim of a siege is usually to force the enemy to surrender, historically through starvation and thirst, though in contemporary conflicts, besieging forces usually attempt to capture the besieged area through hostilities.*

*Lastly, the paper discusses the principles relating to the evacuation of civilians. Despite the fact that it is prohibited to prevent the evacuation of civilians, this paper argues that it is not prohibited to besiege an area where there are only enemy forces or to block their reinforcement or resupply, including achieving their surrender through starvation. The paper will conclude by making recommendations on the best practices aimed at the protection of civilians during a military encirclement.*

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## Introduction

From the mid-19<sup>th</sup> century, requirements for reaching agreements between and among countries with regards to armed conflicts were initiated.<sup>2</sup> The purpose of the institutionalization of IHL is a purely humanitarian objective, whose major objective is to limit the suffering caused as a result of ongoing hostilities.<sup>3</sup> International Humanitarian Law applies to the belligerent parties, irrespective of the reasons for the conflict, or the justness of the causes for which they are engaged hostilities. This is premised on the fact that if it were otherwise, implementing the law would literally be impossible, because every party would claim the victim of aggression, hence the justification for retaliation.<sup>4</sup>

In short, IHL or *Jus in bello*, is the law that governs the way in which warfare is conducted, and it is independent from questions for the justification or reasons for the war, or its prevention, which is primarily covered by *Jus ad bellum*.<sup>5</sup> It can, therefore, be conclusively assumed that IHL is intended to protect victims of armed conflict regardless of party affiliation, and as a result, this is the primary reason why *Jus in bello* must remain independent of *Jus ad bellum*.<sup>6</sup>

Pursuant to Article 22 of the Hague Regulations,<sup>7</sup> belligerents cannot adopt unlimited options when seeking to cause harm to the enemy. As a result, IHL

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<sup>2</sup> Cooper, J. R. *Another view of the revolution in military affairs*, (1994, Diane Publishing).

<sup>3</sup> Ferraro, T. *The ICRC's legal position on the notion of armed conflict involving foreign intervention and on determining the IHL applicable to this type of conflict*, (2015, International Rev. Red Cross, 97, 1227).

<sup>4</sup> International Committee of the Red Cross, *What Are Jus Ad Bellum And Jus In Bello?* (2021) <https://www.icrc.org/en/document/what-are-jus-ad-bellum-and-jus-bello-0> accessed 16 April 2021.

<sup>5</sup> Stahn, C. '*Jus ad bellum*,' '*jus in bello*,' '*jus post bellum*'?—*Rethinking the Conception of the Law of Armed Force*, (2006, The European Journal of International Law, 17(5)) pp. 921-943.

<sup>6</sup> Moussa, J. *Can Jus ad bellum override jus in bello? Reaffirming the separation of the two bodies of law*, (2008, International Rev. Red Cross, 90, 963).

<sup>7</sup> Article 22, The Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907,

is primarily guided by several tenets, such as the principle of distinction, as enunciated under Articles 48 and 52 of Additional Protocol 1 of 1977,<sup>8</sup> which are collectively to the effect that only combatants may be targeted and the stipulation that attacks on civilians or civilian objects are recognized as war crimes, which is effectively codified as one of the four major crimes that the International Court of Justice can exercise its jurisdiction over, pursuant to Article 8 of the Rome Statute.<sup>9</sup> In the *Advisory opinion on the legality of the threat or use of nuclear weapons*,<sup>10</sup> the ICJ opined that deliberate attacks on civilians and civilian objects is expressly prohibited under International Humanitarian Law.

In IHL, the civilian population is negatively defined as comprising all persons who are neither members of the armed forces of a party to the conflict nor participants in a *levée en masse*.<sup>11</sup> This definition also includes civilians accompanying the armed forces without being incorporated in the war, for example, war correspondents who are journalists who cover stories first-hand from a war-zone.<sup>12</sup> If there is any doubt about a person's civilian status, that person must be considered a civilian, as espoused under Article

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available at: <https://www.refworld.org/docid/4374cae64.html> [accessed 19 May 2021].

<sup>8</sup> Articles 48 & 53, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3, available at: <https://www.refworld.org/docid/3ae6b36b4.html> [accessed 19 May 2021].

<sup>9</sup> Article 8, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6, available at: <https://www.refworld.org/docid/3ae6b3a84.html> [accessed 19 May 2021].

<sup>10</sup> *Legality of the Threat or Use of Nuclear Weapons*, ICJ Advisory Opinion, 8 July 1996, [1996] ICJ Rep. 226, at 257 (para. 78).

<sup>11</sup> Art. 50(1) and (2), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3, available at: <https://www.refworld.org/docid/3ae6b36b4.html> [accessed 19 May 2021], & 'Customary IHL - Rule 5. Definition Of Civilians' (Ihl-databases.icrc.org, 2021) [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter1\\_rule5](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter1_rule5) accessed 19 May 2021.

<sup>12</sup> Melzer, N. *International Humanitarian Law: a comprehensive introduction*, (2016, International Committee of the Red Cross).

50(1) of Additional Protocol I.<sup>13</sup> In the judgment of the case of *Prosecutor v Tihomir Blaskic*, the International Criminal Tribunal of the Former Yugoslavia (ICTY) also defined civilians as “persons who are not, or no longer, members of the armed forces.”<sup>14</sup>

Despite the many benefits that have been brought about by the institutionalization of IHL, as well as the existing legal framework with regards protection of civilians during hostilities, the fact that there is non-compliance with IHL remains a big challenge, which has had a long-lasting effect to civilians, their families and the communities they are part of.<sup>15</sup> It is, therefore, imperative that we take a closer examination of the concept of protection of civilians in armed conflicts with the sole purpose of advancing jurisprudence on how to best achieve the main objective of IHL. Based on the fact that there are numerous undertakings that take place during hostilities, this paper will focus on the concept of military sieges during armed conflicts, and its effect on civilian protection.

### **Defining and Conceptualizing a Military Siege**

There currently exists no universally accepted definition of the term military siege, under the international humanitarian law framework, be it the four Geneva Conventions of 1949, or their subsequent protocols. The only international law framework that has come close to enhancing the concept of a military siege is the 1907 Hague Regulations, which at Article 27 states that,

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<sup>13</sup> Art. 50(1), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3, available at: <https://www.refworld.org/docid/3ae6b36b4.html> [accessed 19 May 2021].

<sup>14</sup> *Prosecutor v Tihomir Blaskic (Trial Judgement)*, IT-95-14-T, International Criminal Tribunal for the former Yugoslavia (ICTY) 3 March 2000, available at [https://www.refworld.org/cases ICTY\\_4146f1b24.html](https://www.refworld.org/cases ICTY_4146f1b24.html) accessed 24 March 2021.

<sup>15</sup> Bugnion, F. *The International Committee of the Red Cross and the Development of International Humanitarian Law*, (2004, Chi. J. Int'l L., 5, 191).

*In sieges and bombardments, all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.*

However, this does not define the concept with certainty, and calls for conjecture. As a consequence, this paper relies on the definition(s) advanced by the writings of highly qualified publicists, whose opinions by virtue of Article 38 (1) (d) of the International Court of Justice Statute,<sup>16</sup> can be relied upon in the advancement of international law principles.

Despite the failure to have a definitive definition of the term military siege within the mainstream international Humanitarian Law framework, there has been attempts to define and conceptualize the term. For instance, the International Committee of the Red Cross (ICRC) argues that; “a siege can be described as a plan or undertaking, through which an armed force encircles the enemy’s armed forces, with the objective of either preventing their free movement from the encircled area, or with a view of cutting off their supplies and supply channels, in order to force them to surrender.”<sup>17</sup> Professor Elżbieta Mikos-Skuza, a Research Professor at the Institute of International Law at the University of Warsaw on the other hand argues that:

*...the term “siege” derives from a Latin word “sedere” (“to sit”) and means military encirclement of a village, town, city or just*

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<sup>16</sup>Article 38 (1) (d), The Statute of the International Court of Justice, 33 UNTS 993, 18<sup>th</sup> April, 1946, available at: <https://www.refworld.org/docid/3deb4b9c0.html> [accessed 19 April 2021].

<sup>17</sup>International Committee of the Red Cross, *International Humanitarian Law And The Challenges Of Contemporary Armed Conflicts: Recommitting to Protection in Armed Conflict on The 70<sup>th</sup> Anniversary of The Geneva Conventions*, (International Review of the Red Cross, 2019) [https://international-review.icrc.org/sites/default/files/pdf/1590391258/irc101\\_2/S1816383119000523a.pdf](https://international-review.icrc.org/sites/default/files/pdf/1590391258/irc101_2/S1816383119000523a.pdf) accessed 19 April 2021.

*military installations or an area of land,<sup>18</sup> in order to impose isolation, to prevent the enemy from having contact with the outside world and thus reduce his resistance and enforce surrender.<sup>19</sup>*

From the above arguments, the following key points can be qualified. First, the art of military siege is as old as the institution of military warfare. The practice entails a military army surrounding and encircling the enemy from a two-pronged perspective; when the army is not in a position to enter an urban area, and where the enemy has refused to surrender.<sup>20</sup> In theory, the concept entails two key elements; encirclement and bombardment. The main purpose of the former is to isolate the area under focus, while the latter is the main definitive characteristic of a siege.<sup>21</sup>

Having established that military sieges entail tactics to encircle an enemy's armed forces, in order to prevent their movement or cut them off from support and supply channels,<sup>22</sup> this paper consequently argues that the ultimate aim of a siege is usually to force the enemy to surrender, historically through starvation and thirst, though in contemporary conflicts, besieging forces usually attempt to capture the besieged area through hostilities.

Additionally, sieges or other forms of encirclement may also be part of a larger operational plan. For instance, they can be used to isolate pockets of

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<sup>18</sup> Mikos-Skuza, E. *Siege Warfare in the 21st Century from the Perspective of International Humanitarian Law*, (2018, Wroclaw Review of Law, Administration & Economics, 8(2)) pp. 319-330.

<sup>19</sup> Mikos-Skuza, E. *Siege Warfare in the 21st Century from the Perspective of International Humanitarian Law*, (2018, Wroclaw Review of Law, Administration & Economics, 8(2)) pp. 319-330.

<sup>20</sup> Jensen, E. T. *Shelling in Urban Area: When Does Imprecision Become Indiscriminate? In Proceedings of the 16th Bruges Colloquium, Urban Warfare* ((2015, December, Vol. 129, pp. 16-26).

<sup>21</sup> Chatham House., *Military Sieges, The Law And Protecting Civilians*, (2021) [https://www.chathamhouse.org/sites/default/files/publications/research/2019-06-27-Sieges-Protecting-Civilians\\_0.pdf](https://www.chathamhouse.org/sites/default/files/publications/research/2019-06-27-Sieges-Protecting-Civilians_0.pdf) accessed 19 April 2021.

<sup>22</sup> *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, (2015, 32IC/15/11), pp. 52–53; available at <https://www.icrc.org/en/download/file/15061/32ic-report-on-ihl-and-challenges-of-armed-conflicts.pdf>. Accessed 19<sup>th</sup> April, 2021.

enemy forces left behind during an invasion. Ördén Hedvig argues that a siege that does not involve attempts to capture an area through assault may be aimed at obtaining a military advantage in relative safety for the armed forces of the besieging party. It avoids the hazards of urban fighting for the besieging party and may also be a means to limit the heavy civilian casualties often associated with urban fighting.<sup>23</sup>

### **Analysis of the International Legal Framework on the Protection of Civilians During a Military Siege**

Despite the fact that the existing legal framework has not codified with certainty the concept of military siege, there are several provisions within the framework that discuss the concept, though in passing. For a start, Article 27 of the Regulations annexed to the Convention (IV) Respecting the Laws and Customs of War on Land adopted in The Hague in 1907,<sup>24</sup> commonly referred to as “The Hague Regulations of 1907,” provides for and enhances the protection of civilian objects during a military siege. As a result, this provision places an obligation on the besieged party to ensure that the presence of such installations is distinctively identifiable through visible signs.

This was discussed in the case of *The Prosecutor v. Bosco Ntaganda*,<sup>25</sup> where the ICC Appeals chamber opined that, “willful attacks on property of exceptional religious, historical or cultural value is deemed as an attack on civilian installations, which consequently is tantamount to war crimes.” This in consequence can be said to relate directly to the principle of distinction,

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<sup>23</sup> Ördén, Hedvig. *Cities under siege: the new military urbanism*, (2013) pp. 398-401.

<sup>24</sup> Article 27, The Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907, available at: <https://www.refworld.org/docid/4374cae64.html> [accessed 19 May 2021].

<sup>25</sup> Situation in the Democratic Republic of the Congo, *Prosecutor v Ntaganda (Bosco)*, Judgment on the prosecutor's appeal against the ... 904 (ICC 2006), 13th July 2006, International Criminal Court [ICC]; Appeals Chamber [ICC] Case no ICC-01/04-169.



as stipulated under Articles 48, 51(2) and 52(2) of Additional Protocol 1,<sup>26</sup> which cumulatively are to the effect that only military objects are to be attacked. In interpreting and enhancing the principle of distinction with regards to civilians and civilian installations, the ICTY in the case of *Prosecutor v. Martić*,<sup>27</sup> held that;

*...religious and educational institutions are protected as long as they meet the special requirement of “cultural heritage of people”, meaning “objects whose value transcends geographical boundaries, and which are unique in character and are intimately associated with the history and culture of a people”*<sup>28</sup>

Article 15 of Geneva Convention I<sup>29</sup> provides for evacuation of civilians or wounded casualties on a besieged area in the field, while Article 18 of Geneva Convention II<sup>30</sup> provides for evacuation of the sick and the wounded from a besieged area in the sea, such as a ship. Consequently, Article 17 of Geneva Convention IV<sup>31</sup> puts an obligation on the parties to a conflict to arrive at local agreements, which has been interpreted by different scholars

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<sup>26</sup> Articles 48, 51 (2) & 52 (2), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3, available at: <https://www.refworld.org/docid/3ae6b36b4.html> [accessed 20 May 2021].

<sup>27</sup> *Prosecutor v. Martić, Case No. IT-95-11*, ICTY T. Ch. Judgement of 12 June 2007, para. 97).

<sup>28</sup> Commentary Rome Statute: Part 2, Articles 5-10: Case Matrix Network' (Casematrixnetwork.org, 2021) <https://www.casematrixnetwork.org/cmn-knowledge-hub/icc-commentary-clicc/commentary-rome-statute/commentary-rome-statute-part-2-articles-5-10/#c1975> accessed 20 April 2021

<sup>29</sup> Article 15, Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention), 12 August 1949, 75 UNTS 31, available at: <https://www.refworld.org/docid/3ae6b3694.html> [accessed 19 May 2021].

<sup>30</sup> Article 18, Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention), 12 August 1949, 75 UNTS 85, available at: <https://www.refworld.org/docid/3ae6b37927.html> [accessed 19 May 2021].

<sup>31</sup> Article 17, Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287, available at: <https://www.refworld.org/docid/3ae6b36d2.html> [accessed 19 May 2021].

to signify the need to end the conflict, which as a result enhances the protection of besieged civilians and civilian objects.<sup>32</sup>

### **The Protection of Civilians Leaving or Being Evacuated from a Besieged Area**

When it comes to an encircled area, civilians have two options: one, flee the said area, or two, be voluntarily evacuated. In the 21<sup>st</sup> century, a siege will only be termed as lawful, only when it has been directed on the enemy forces exclusively, in strict compliance with the principle of distinction.<sup>33</sup> This draws inspiration from the fact that shooting at or otherwise attacking civilians who are fleeing a besieged area would in consequence be deemed as a direct attack on civilians and is absolutely prohibited.

Secondly, it is the position of this paper that IHL rules and principles effectively apply to the conduct of hostilities during sieges. Pursuant to Rule 22 on Customary IHL, *the parties to the conflict must take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks.*<sup>34</sup> In effect, this rule requires both parties to allow civilians to leave the besieged area whenever possible or convenient to do so. In particular, constant care must be taken to spare the civilian population in all military operations, and all feasible precautions must be taken, notably in the choice of means and methods of warfare, to avoid or minimize incidental loss of civilian life, injury to civilians and damage to civilian objects. In a besieged area where hostilities are taking place, and in view of the risk that poses to them, one obvious precautionary

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<sup>32</sup> Mikos-Skuza, E. *Siege Warfare in the 21<sup>st</sup> Century from the Perspective of International Humanitarian Law*, (2018, Wroclaw Review of Law, Administration & Economics, 8(2)) pp. 319-330.

<sup>33</sup> *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, (2015, 32IC/15/11), pp. 52–53; available at <https://www.icrc.org/en/download/file/15061/32ic-report-on-ihl-and-challenges-of-armed-conflicts.pdf>, Accessed 19<sup>th</sup> April, 2021.

<sup>34</sup> Rule 22, Customary IHL., *Principle of Precautions Against The Effects Of Attacks*, (Ihl-databases.icrc.org, 2022) [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule22](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule22) accessed 31 January 2022.

measure is to evacuate civilians, or at least allow them to leave.<sup>35</sup> Parties must also give effective advance warnings of attacks that may affect the civilian population, the purpose of which is precisely to enable civilians to take measures to protect themselves.<sup>36</sup>

On the other hand, the besieged party has obligations, too. Article 17 of the Fourth Geneva Convention states that Parties "shall endeavor to conclude local agreements for the removal from besieged or encircled areas" of protected persons.<sup>37</sup> For a start, it must take all feasible precautions to protect the civilian population under its control from the effects of attacks. This can entail allowing civilians to leave or otherwise removing them from the vicinity of military objectives, for example by evacuating them from a besieged area where hostilities are ongoing or expected to take place.<sup>38</sup> According to the ICRC, the besieged party might be tempted to prevent the civilian population from leaving because having a besieged area cleared of civilians would make it easier for the besieging forces to starve out the besieged forces or give the former more leeway when attacking military objectives in the besieged area.<sup>39</sup> However, IHL categorically prohibits using the presence of civilians to render certain areas immune from military operations, for instance, in attempts to impede the military operations of the besieging forces. Article 28 of the fourth Geneva Convention states that, "the presence of a protected person may not be used to render certain points or

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<sup>35</sup> Muhammedally, S. *Minimizing civilian harm in populated areas: Lessons from examining ISAF and AMISOM policies*, (2016, International Review of the Red Cross, 98(901)) pp. 225-248.

<sup>36</sup> Rule 20, Customary IHL., *Advance Warning*, (Ihl-databases.icrc.org, 2022) [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule20](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule20) accessed 31 January 2022

<sup>37</sup> Article 17, *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287, available at: <https://www.refworld.org/docid/3ae6b36d2.html> [accessed 31 January 2022].

<sup>38</sup> Melzer, N. *International Humanitarian Law: a comprehensive introduction*, (2016, International Committee of the Red Cross).

<sup>39</sup> Amarasinghe, K. *The shape of war in the 21<sup>st</sup> Century: An analysis of the challenges posed by the contemporary armed conflicts with reference to international humanitarian law*, (2021).

areas immune from military operations.”<sup>40</sup> This would amount to using the civilian population as human shields,<sup>41</sup> which pursuant to Article 8(2)(b)(xxiii) of the Rome Statute amounts to constitutes a war crime in international armed conflicts.<sup>42</sup>

With regards to the starvation of civilians as a method of warfare, Article 54(1) of Additional Protocol I<sup>43</sup> read with Article 14 of the 1977 Additional Protocol II<sup>44</sup> are to the effect that starvation of civilians as a method of combat is prohibited. This is further enunciated under Article 8(2)(b)(xxv) of the Rome Statute,<sup>45</sup> which provides that, “[i]ntentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions” and is tantamount to a war crime in international armed conflicts.

The Rome Statute provision was as a result of an amendment to the Rome Statute proposed by Switzerland in 2019, due to the effects that result from starvation of civilians in conflict.<sup>46</sup> This led to adoption of *UNSC Resolution*

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<sup>40</sup> Article 28, *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287, available at: <https://www.refworld.org/docid/3ae6b36d2.html> [accessed 31 January 2022].

<sup>41</sup> Watts, S. *Under Siege: International Humanitarian Law and Security Council Practice Concerning Urban Siege Operations*, (2014, Available at SSRN 2479608).

<sup>42</sup> Article 8(2)(b)(xxiii), *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, ISBN No. 92-9227-227-6, available at: <https://www.refworld.org/docid/3ae6b3a84.html> Accessed 31 January 2022.

<sup>43</sup> Article 54(1), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 UNTS 3, available at: <https://www.refworld.org/docid/3ae6b36b4.html> [accessed 19 May 2021]

<sup>44</sup> Article 14, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977, 1125 UNTS 609, available at: <https://www.refworld.org/docid/3ae6b37f40.html> [accessed 19 May 2021].

<sup>45</sup> Article 8(2)(b)(xxv), *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, ISBN No. 92-9227-227-6, available at: <https://www.refworld.org/docid/3ae6b3a84.html> [accessed 19 May 2021].

<sup>46</sup> Assembly of Parties, *Report of The Working Group on Amendments*, (ICC-ASP/18/32, Eighteenth session The Hague, 2-7 December 2019, *Asp.icc-cpi.intl.* )

74/149 of 2019 on the right to food.<sup>47</sup> As a result, UNSC/Res/74/149/2019 enunciates factors that are tantamount to starvation of civilians, to include factors such as; “to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies, and irrigation works.”<sup>48</sup> In the Article, *Seventy Years of the Geneva Conventions; What of the Future?*, the ICRC contends that, “there is general agreement that the term ‘starvation’ should be given a wide interpretation that goes beyond just deprivation of food and water, to include deprivation of other goods essential to survival in a particular context, such as heating oil or blankets.”<sup>49</sup>

Having established that starvation as a method of warfare is by its own right outrightly impermissible, the question that then begs an answer is, does prohibition of starvation as a method of warfare extend to combatants? For instance, in order to fight the rebels of Jonas Savimbi’s UNITA movement, it was established that the Angolan government had been using famine as its preferred weapon in its long final assault against the rebels.<sup>50</sup> Ayad Christophe argues that; “determined to cut UNITA’s supply lines, the Angolan armed forces have had no compunction about razing entire villages and forcing the inhabitants to gather in closely guarded camps.”<sup>51</sup>

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[https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP18/ICC-ASP-18-32-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP18/ICC-ASP-18-32-ENG.pdf) accessed 31 January 2022.

<sup>47</sup> UNSC Res/74/149 of 2019, (The sUnited Nations Digital Library, 2019) <https://undocs.org/en/A/RES/74/149> accessed 20 May 2021

<sup>48</sup> Ibid.

<sup>49</sup> Chatham House, *Sieges, Starvation Of Civilians As A Method Of Warfare, And Other Practices That May Deprive Civilians Of Objects Indispensable To Their Survival*, (International Affairs Think Tank, 2021) <https://www.chathamhouse.org/2020/03/seventy-years-geneva-conventions/sieges-starvation-civilians-method-warfare-and-other> accessed 20 May 2021.

<sup>50</sup> Online Casebook, *Angola, Famine as A Weapon | How Does Law Protect in War?* (Casebook.icrc.org, 2021) <https://casebook.icrc.org/case-study/angola-famine-weapon> accessed 20 May 2021.

<sup>51</sup> Ayad Christophe, *L’arme de la famine en Angola*”, in *Libération*, Paris, (28 June 2002, Original in French, unofficial translation).

In his 1970 report, the then Secretary General of the United Nations, U Thant,<sup>52</sup> while emphasizing the need for distinction of combatants and civilians in using starvation as a method of warfare was very categorical in quoting a noteworthy statement by Castrin and Moore, whereby in 1924 they argued that:

*It is hard to believe that the world is prepared to concede that, in the next war, the first and legitimate measure of the belligerent forces will be to bomb or otherwise destroy producers of foodstuff and other contributory classes heretofore considered as non-combatant; and yet if the distinction between combatants and non-combatants has ceased to exist, such a measure would be legally justified and strategically correct ... No one contributes more to this essential military gesture than the grower of grain ... The most dangerous fighter is the tiller of the soil. It is, however, gratifying to reflect upon the fact that there is not a single government today that is either accepting or supporting such a theory.<sup>53</sup>*

In his article, *Starvation as a Method of Warfare; Conditions for Regulation by Convention*, Esbjorn Rosenblad argues that:

*Current international law sanctions the starving out of combatants with a view to forcing them to capitulate... a prohibition by Convention, of the starvation of combatants would not appear to be an urgent necessity. Such a prohibition would hardly be feasible. In a suitable context-e.g., the preamble to Additional Protocols to the 1949 Geneva Conventions-it might be possible to affirm that the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy. The aim is to win the war, not to cause suffering which is unnecessary for its successful prosecution. It follows that the object of starving out*

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<sup>52</sup> The UN Secretary General, 'Respect for Human Rights in Armed Conflicts: Report of The Secretary-General A/8052' (UN Digital Library, 1970) <https://digitallibrary.un.org/record/647214?ln=en> accessed 20 May 2021.

<sup>53</sup> Eagleton, C. *of the Illusion that War does not Change*, (1941, American Journal of International Law, 35(4)) pp. 659-662.

*combatants is to force a capitulation and not to starve them to death.*<sup>54</sup>

As a result, therefore, this paper contends that the starvation of combatants within the confines of the principle of military necessity is permissible, as a way of weakening the military forces. In the words of former British Foreign Secretary Michael Stewart in the House of Commons; “we must accept that, in the whole history of warfare, any nation which has been in a position to starve its enemy out has done so.”<sup>55</sup> The only problem with this is that it may lead to starvation of civilians within the encircled areas by the besieging party, through their cut-off supplies such as naval blockades against the besieged party. For instance, this was witnessed during the 900-day siege of Leningrad, in which more than a million Russian civilians died of starvation, while the intention was actually to starve the Russian army, by the Nazi German Army.<sup>56</sup>

This paper opines that even where the besieging army uses starvation of combatants as a strategy to achieve their ultimate surrender, the civilians do not have to suffer. In this case, the paper suggests that the besieging army balance the competing interests, and put the interests of the civilians first, by allowing humanitarian relief access to the besieged area, under the confines of IHL. This paper acknowledges how difficult it is to balance the said interests, since there has been evidence of the besieging parties actually going to steal the supplies given to civilians in order not to starve, as evidence in the siege of Leningrad. However, it is the position of this paper that the principles of necessity and proportionality must be given special consideration in this case, such that the practice minimizes to its level best the consequences on the starvation on civilians.

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<sup>54</sup> Rosenblad, E. *Starvation as a method of warfare—conditions for regulation by convention*, (1973, The International Lawyer) pp. 252-270.

<sup>55</sup> The United Kingdom House of Commons Parliament Hansard, (Scholar.smu.edu, 1971) <https://scholar.smu.edu/cgi/viewcontent.cgi?article=3931&context=til> accessed 20 May 2021.

<sup>56</sup> Union, S., von Leeb, W. R., von Küchler, G., Mannerheim, C. G. E., Heinrichs, E., Popov, M., ... & Meretskov, K. (1941). *Siege of Leningrad*, (1942, Timeline, 7(7.2)).

## **Arising Issues Under the Concept of Military Sieges**

Having conceptualized and analyzed the legal framework when it comes to military sieges, this paper surmises that the concept has been engulfed with numerous issues when it comes to protection of civilians during hostilities, which due to the contemporary nature of warfare as well as the dynamism resulting thereof, calls for attention on some of the issues that come with the practice. Among many other arising key issues, this paper focuses on two key areas; the urbanization of armed conflicts and the effective protection of the civilian population during sieges/encirclements.

### **1.1.1 The Urbanization of Armed Conflicts**

In the contemporary society, the development of cities has come with the close intermingling between military personnel and civilians. As a result, the association comes with many challenges, both in military terms and avoiding civilian harm, when the parties are engaged in hostilities. At the 70<sup>th</sup> Anniversary of the 1949 Geneva Conventions, a report tabled by ICRC was to the effect that;

*...because urban warfare endangers civilians in ways particular to it, the protection afforded by the principles and provisions of IHL is critical. Policies can also be an effective tool to protect civilians and limit the effects of urban warfare, but they must not be used to offer protection to civilians that would be weaker or less than that afforded by IHL.<sup>57</sup>*

There are many challenges that are faced by attacks in urban areas. A 2015 report by ICRC, *Urban Services during Protracted Armed Conflict: A Call for a Better Approach to Assisting Affected People*,<sup>58</sup> argues that services essential to the civilian population in urban areas rely on a complex web of interconnected infrastructure systems. The most critical infrastructure nodes within a system enable the provision of services to a large part of the

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<sup>57</sup> Amarasinghe, K. *The shape of war in the 21st century: An analysis of the challenges posed by the contemporary armed conflicts with reference to international humanitarian law*, (2021).

<sup>58</sup> People, T. A. A. *Urban Services During Protracted Armed Conflict*, (2015).



population and damage to them would be most concerning when it causes the whole system to fail. Given this complexity and interconnectedness of essential service systems, it is particularly important to consider not only incidental civilian harm directly caused by an attack but also reverberating effects, provided they are foreseeable.<sup>59</sup>

In the case of *The Prosecutor v S. Galić*,<sup>60</sup> the ICTY rendered itself thus;

*The Sarajevo Romanija Corps directed shelling and sniping at civilians who were tending vegetable plots, queueing for bread, collecting water, attending funerals, shopping in markets, riding on trams, gathering wood, or simply walking with their children or friends. People were even injured and killed inside their own homes, being hit by bullets that came through the windows. The attacks on Sarajevo civilians were often unrelated to military actions and were designed to keep the inhabitants in a constant state of terror. Because of the shelling and sniping against civilians, the life of every Sarajevo inhabitant became a daily struggle to survive. Without gas, electricity or running water, people were forced to venture outside to find basic living necessities. Each time they did, whether to collect wood, fetch water or buy some bread, they risked death. In addition to the sheer human carnage that the shelling and sniping caused, the endless threat of death and maiming caused extensive trauma and psychological damage to the inhabitants of Sarajevo.*

As evidenced in the above case, displacement within cities, or to other areas, is one of the many harmful effects on civilians of urban warfare.<sup>61</sup> In addition to the threat to civilian lives coupled with the disruption of essential urban

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<sup>59</sup> Cullen, A. *The characterization of remote warfare under international humanitarian law*, (2017, *Research Handbook on Remote Warfare*, Edward Elgar Publishing).

<sup>60</sup> No. IT-98-29-1.

<sup>61</sup> ICRC, *Displaced in Cities: Experiencing and Responding to Urban Internal Displacement Outside Camps*, ICRC, 2018, available <https://shop.icrc.org/displaced-in-cities-experiencing-and-responding-to-urban-internaldisplacement-outside-camps-2926.html> accessed 7 March 2021.

services, one of the key drivers of long-term displacement is the damage or destruction of civilian homes, typically caused by the use of heavy explosive weapons. While displacement is not expressly mentioned under the principles of proportionality and precautions as a relevant type of civilian harm, depending on the circumstances, it may increase the risk of death, injury or disease. More generally, the displacement of civilians expected when incidentally damaging their homes will affect the weight to be given to that damage under these principles.<sup>62</sup>

### **1.1.2 The Protection of the Civilian Population During Sieges/Encirclements**

First and foremost, a siege that does not involve attempts to capture an area through assault may be aimed at obtaining a military advantage in relative safety for the armed forces of the besieging party, and in doing so, it must seek to avoid the hazards of urban fighting for the besieging party, and also be a means to limit the heavy civilian casualties often associated with urban fighting.<sup>63</sup> This stems from the fact that civilians are often trapped within when entire towns or other populated areas are besieged, causing unspeakable suffering. IHL offers vital protection to these civilians by imposing limits to what the parties can do during such sieges. While it may go too far to say that it is now impossible to conduct a siege that complies with IHL, the significant vulnerability of civilians caught up in sieges puts particular emphasis on the need for both besieging and besieged forces to comply scrupulously with the legal provisions for the protection of civilians and to conclude agreements for their evacuation.<sup>64</sup>

On the other hand, sieges that do involve attempts to capture an area through assault may increase the intensity of the fighting and the associated risks of

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<sup>62</sup> *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, (2015, 32IC/15/11), pp. 52–53; available at <https://www.icrc.org/en/download/file/15061/32ic-report-on-ihl-and-challenges-of-armed-conflicts.pdf>, Accessed 19<sup>th</sup> April, 2021.

<sup>63</sup> Ördén, H. *Cities under siege: the new military urbanism*, (2013).

<sup>64</sup> Hamilton, P., Klappe, B., Heffes, E., & Gillard, E. C. *Discussion on challenges raised by contemporary urban conflicts in humanitarian action*, (2020, *The Military Law and the Law of War Review*, Vol. 58(2)) pp. 206-208.

incidental harm for civilians. This is particularly the case if the besieged forces are left with no option other than to fight or surrender.<sup>65</sup> Under IHL, it is not prohibited to besiege an area where there are only enemy forces or to block their reinforcement or resupply, including to achieve their surrender through starvation.<sup>66</sup> It is also not prohibited to attack military objectives within a besieged area, provided such attacks can be carried out in conformity with the principles of distinction, proportionality and precautions.<sup>67</sup> Unfortunately, civilians are often trapped within when entire towns or other populated areas are besieged, causing unspeakable suffering. IHL offers vital protection to these civilians by imposing limits to what the parties can do during such sieges. Civilians may flee a besieged or an otherwise encircled area or be voluntarily evacuated. Today, sieges are lawful only when directed exclusively against an enemy's armed forces.<sup>68</sup>

For instance, the Grozny military siege of 1994-1995, in Grozny, Chechnya, resulted in the death of at least 35,000 inhabitants of the city,<sup>69</sup> while the siege of Sarajevo during the Bosnian war of 1992-1996 resulted in the death of some 10,000 of the city inhabitants and many more wounded and injured.<sup>70</sup> As a matter of fact, in 2003, the ICTY in subsequent case of *Prosecutor v Stanilav Galić*<sup>71</sup> found that Sarajevo had been effectively

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<sup>65</sup> Fenrick, W. J. *Attacking the Enemy Civilian as a Punishable Offense*, (1996, Duke J. Comp. & Int'l L., 7, 539).

<sup>66</sup> Amarasinghe, K. *The shape of war in the 21<sup>st</sup> Century: An analysis of the challenges posed by the contemporary armed conflicts with reference to international humanitarian law*, (2021).

<sup>67</sup> Petersen, L. I. R. *Siege Warfare and Military Organization in the Successor States (400-800 AD): Byzantium, the West and Islam*, (2013, Brill).

<sup>68</sup> Petersen, L. I. R. *Siege Warfare and Military Organization in the Successor States (400-800 AD): Byzantium, the West and Islam*, (2013, Brill).

<sup>69</sup> McCafferty, C. S. *Lessons Learned from The Battle of Grozny, 1994-1995*, (2000, United States Military Academy. H, 1386).

<sup>70</sup> T Jaques, *Dictionary of Battles and Sieges: A Guide to 8500 Battles from Antiquity through the Twenty-first Century, 3 Volumes*, (2006); PN Stearns, *The Encyclopedia of World History: ancient, medieval, and modern* (6th ed. 2001, C Townshend, The Oxford History of Modern War, 2000).

<sup>71</sup> *Prosecutor v. Stanilav Galic (Trial Judgement and Opinion)*, IT-98-29-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 5 December 2003, available at: <https://www.refworld.org/cases,ICTY,4147fb1c4.html> [accessed 18 April 2021].

besieged, in spite of the fact that there were very limited possibilities for the civilians to leave the city. This is premised on the fact that the very few possibilities for leaving the city were marred with lots of danger, in which the civilians were prone to attacks by the besieging party, and hence the qualification for an effective besieging of the area.

In effect, it is, therefore, the position of this paper that whereas the civilians may be able to leave the besieged area, if the possibilities of civilians leaving the besieged area are encompassed with danger of attack from either the besieging or besieged party, then this is tantamount to prevention of civilians evacuating from the besieged area. As a consequence, both the besieging and the besieged party have obligations towards the protection of civilians during a military siege, by allowing for evacuation and supplies of relief utilities specifically for the civilians thereof.

### **Recommendations**

First, in spite of the fact that the importance of the proportionality principle is uncontested, the key concepts on which it relies, such as, incidental civilian harm, military advantage, and excessiveness would benefit from further clarification.<sup>72</sup> Where conditions allow, advance warnings must be given of attacks that may affect the civilian population. Most attacks in urban areas may well do so.

This paper opines that the effectiveness of a warning should be assessed from the perspective of the civilian population that may be affected. It should reach and be understood by as many civilians as possible among those who may be affected by the attack, and it should give them time to leave, find shelter, or take other measures to protect themselves. Advance warnings do not relieve the party carrying out the attack from the obligation to take other precautionary measures, and civilians who remain in the area that will be affected by the attack – whether voluntarily or not – remain protected.<sup>73</sup> It is,

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<sup>72</sup> Gillard, E. C. *Proportionality in the conduct of hostilities: the incidental harm side of proportionality assessments*, (2018).

<sup>73</sup> Quéguiner, J. F. *Precautions under the law governing the conduct of hostilities*, (2006, International Review of the Red Cross, 88(864)), 793-821.

therefore, the position of this paper that the principles of distinction, proportionality and precautions are complementary, and all three must be respected for an attack to be lawful.

Secondly, during a siege, the parties continue to be bound by IHL obligations relating to relief operations and humanitarian access. IHL provides that impartial humanitarian organizations have a right to offer their services in order to carry out humanitarian activities, in particular when the needs of the population affected by the armed conflict are not being met. Once impartial humanitarian relief operations have been agreed to, the parties to the armed conflict – which retain the right to control the humanitarian nature of relief consignments – must allow and facilitate rapid and unimpeded passage of these relief operations.

This is in compliance with Article 23 of the Fourth Geneva Convention (1949),<sup>74</sup> in which parties to the conflict are obliged to ensure the passage of consignments of foodstuff and medicines intended for children under the age of fifteen and pregnant women. Article 70 of Additional Protocol I ensures that priority is given to the distribution of relief consignments to pregnant women and children, but in addition, parties to the conflict must "allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel...even if such assistance is destined for the civilian population of the adverse Party."<sup>75</sup> In the case of *AlBassiouni v Prime Minister of Israel*,<sup>76</sup> the Israeli High Court of Justice accepted the application of Article 70 Additional Protocol I together with Article 54 Additional Protocol I as customary international law.

Lastly, there should be prosecutions carried out against those who engage in activities that harm civilians, such as starvation of civilians during

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<sup>74</sup> Article 23, *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287.

<sup>75</sup> Article 70, Additional Protocol I, 8<sup>th</sup> June 1977, 1125 UNTS 3.

<sup>76</sup> H CJ 9132-07, 2008.

hostilities.<sup>77</sup> In the case of *The Prosecutor v Stanilav Gall*,<sup>78</sup> the ICTY found that attacks on the civilian population during the siege of Saijevo included both direct and disproportionate attacks, which amounted to "unlawfully inflicting terror upon civilians".

## Conclusion

This paper concludes first by asserting the three most fundamental maxims of IHL relevant to the conduct of hostilities, especially during military sieges. The first one is pursuant to the St. Petersburg Declaration of 1868, which is to the effect that, "the only legitimate object which States should endeavor to accomplish during war is to weaken the military forces of the enemy."<sup>79</sup> Secondly, in pursuing this aim, The right of the Parties to the conflict to choose methods or means of warfare is not unlimited, as provided for under Article 22 of the 1907 Hague Regulations<sup>80</sup> read with Article 35(1) of Additional Protocol I<sup>81</sup> and lastly, the civilian population and individual civilians are mandated to enjoy general protection against dangers arising from military operations, as provided for under Article 51 (1) of Additional Protocol I.<sup>82</sup>

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<sup>77</sup> Power, S. *Siege Warfare in Syria: Prosecuting the Starvation of Civilians*, (2016, Amsterdam LF, 8, 1).

<sup>78</sup> *Prosecutor v. Stanilav Galic (Trial Judgement and Opinion)*, IT-98-29-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 5 December 2003, available at:

<https://www.refworld.org/cases/ICTY,4147fb1c4.html> [accessed 7 March 2021].

<sup>79</sup> ICRC., *Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight*, (Saint Petersburg, 29 November / 11 December 1868).

<sup>80</sup> Article 22, *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land*, 18 October 1907, available at: <https://www.refworld.org/docid/4374cae64.html> [accessed 31 January 2022]

<sup>81</sup> Article 35(1), *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention)*, 12 August 1949, 75 UNTS 31, available at

<https://www.refworld.org/docid/3ae6b3694.html> [accessed 31 January 2022]

<sup>82</sup> Article 51(1), *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention)*, 12 August 1949, 75 UNTS 31, available at:

<https://www.refworld.org/docid/3ae6b3694.html> [accessed 31 January 2022]

Further, the basis of International Humanitarian Law is to protect the civilian population from the effects of hostilities and more so during military sieges. This is guided by the principle of distinction, which provides that belligerents must “*at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.*”<sup>83</sup> The protective purpose of this principle can only be achieved if civilians and combatants, and civilian objects, and military objectives are well defined, and if the scope and conditions of the protection afforded to civilians and civilian objects are clear, and the rules of IHL during military sieges must be adhered to the latter, and proscriptive measures taken against those who commit atrocities against civilians during military sieges.

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<sup>83</sup> Article 48, Article 51(1), *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention)*, 12 August 1949, 75 UNTS 31, available at: <https://www.refworld.org/docid/3ae6b3694.html> [accessed 31 January 2022]

## **Bibliography**

### **Journal Articles**

Amarasinghe, K. *The shape of war in the 21<sup>st</sup> Century: An analysis of the challenges posed by the contemporary armed conflicts with reference to international humanitarian law*, (2021).

Ayad Christophe, *L'arme de la famine en Angola*”, in *Libération*, Paris, (28 June 2002, Original in French, unofficial translation)

Bugnion, F. *The International Committee of the Red Cross and the Development of International Humanitarian Law*, (2004, Chi. J. Int'l L., 5, 191)

Chatham House, *Sieges, Starvation Of Civilians As A Method Of Warfare, And Other Practices That May Deprive Civilians Of Objects Indispensable To Their Survival*, (International Affairs Think Tank, 2021) <https://www.chathamhouse.org/2020/03/seventy-years-geneva-conventions/sieges-starvation-civilians-method-warfare-and-other>

Chatham House., *Military Sieges, The Law And Protecting Civilians*, (2021) [https://www.chathamhouse.org/sites/default/files/publications/research/2019-06-27-Sieges-Protecting-Civilians\\_0.pdf](https://www.chathamhouse.org/sites/default/files/publications/research/2019-06-27-Sieges-Protecting-Civilians_0.pdf)

Commentary Rome Statute: Part 2, Articles 5-10: Case Matrix Network' (Casematrixnetwork.org, 2021) <https://www.casematrixnetwork.org/cmn-knowledge-hub/icc-commentary-clicc/commentary-rome-statute/commentary-rome-statute-part-2-articles-5-10/#c1975>

Cooper, J. R. *Another view of the revolution in military affairs*, (1994, Diane Publishing).

Eagleton, C. *of the Illusion that War does not Change*, (1941, American Journal of International Law, 35(4)) pp. 659-662.



Fenrick, W. J. *Attacking the Enemy Civilian as a Punishable Offense*, (1996, Duke J. Comp. & Int'l L., 7, 539).

Ferraro, T. *The ICRC's legal position on the notion of armed conflict involving foreign intervention and on determining the IHL applicable to this type of conflict*, (2015, International Rev. Red Cross, 97, 1227).

Gillard, E. C. *Proportionality in the conduct of hostilities: the incidental harm side of proportionality assessments*, (2018).

Hamilton, P., Klappe, B., Heffes, E., & Gillard, E. C. *Discussion on challenges raised by contemporary urban conflicts in humanitarian action*, (2020, The Military Law and the Law of War Review, Vol. 58(2)) pp. 206-208.

ICRC, *Displaced in Cities: Experiencing and Responding to Urban Internal Displacement Outside Camps*, ICRC, 2018, available <https://shop.icrc.org/displaced-in-cities-experiencing-and-responding-to-urban-internaldisplacement-outside-camps-2926.html>

International Committee of the Red Cross, *International Humanitarian Law And The Challenges Of Contemporary Armed Conflicts: Recommitting to Protection in Armed Conflict on The 70<sup>th</sup> Anniversary of The Geneva Conventions*, (International Review of the Red Cross, 2019) [https://international-review.icrc.org/sites/default/files/pdf/1590391258/irc101\\_2/S1816383119000523a.pdf](https://international-review.icrc.org/sites/default/files/pdf/1590391258/irc101_2/S1816383119000523a.pdf)

International Committee of the Red Cross, *What Are Jus Ad Bellum And Jus In Bello?* (2021) <https://www.icrc.org/en/document/what-are-jus-ad-bellum-and-jus-bello-0> accessed 16 April 2021.

*International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, (2015, 32IC/15/11), pp. 52–53; available at <https://www.icrc.org/en/download/file/15061/32ic-report-on-ihl-and-challenges-of-armed-conflicts.pdf>.

*International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, (2015, 32IC/15/11), pp. 52–53; available at <https://www.icrc.org/en/download/file/15061/32ic-report-on-ihl-and-challenges-of-armed-conflicts.pdf>

*International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, (2015, 32IC/15/11), pp. 52–53; available at <https://www.icrc.org/en/download/file/15061/32ic-report-on-ihl-and-challenges-of-armed-conflicts.pdf>, Accessed 19<sup>th</sup> April, 2021.

Jensen, E. T. *Shelling in Urban Area: When Does Imprecision Become Indiscriminate? In Proceedings of the 16th Bruges Colloquium, Urban Warfare* ((2015, December, Vol. 129, pp. 16-26).

McCAFFERTY, C. S. *Lessons Learned from The Battle of Grozny, 1994-1995*, (2000, United States Military Academy. H, 1386).

Melzer, N. *International Humanitarian Law: a comprehensive introduction*, (2016, International Committee of the Red Cross)

Melzer, N. *International Humanitarian Law: a comprehensive introduction*, (2016, International Committee of the Red Cross)

Mikos-Skuza, E. *Siege Warfare in the 21st Century from the Perspective of International Humanitarian Law*, (2018, Wroclaw Review of Law, Administration & Economics, 8(2))

Moussa, J. *Can Jus ad bellum override jus in bello? Reaffirming the separation of the two bodies of law*, (2008, International Rev. Red Cross, 90, 963.

Muhammedally, S. *Minimizing civilian harm in populated areas: Lessons from examining ISAF and AMISOM policies*, (2016, International Review of the Red Cross, 98(901))

Online Casebook, *Angola, Famine as A Weapon / How Does Law Protect in War?* (Casebook.icrc.org, 2021) <https://casebook.icrc.org/case-study/angola-famine-weapon>

Ördén, Hedvig. *Cities under siege: the new military urbanism*, (2013)

Petersen, L. I. R. *Siege Warfare and Military Organization in the Successor States (400-800 AD): Byzantium, the West and Islam*, (2013, Brill).

Power, S. *Siege Warfare in Syria: Prosecuting the Starvation of Civilians*, (2016, Amsterdam LF, 8, 1).

Quéguiner, J. F. *Precautions under the law governing the conduct of hostilities*, (2006, International Review of the Red Cross, 88(864)), 793-821.

Rosenblad, E. *Starvation as a method of warfare—conditions for regulation by convention*, (1973, The International Lawyer) pp. 252-270.

Stahn, C. 'Jus ad bellum,' 'jus in bello'.. 'jus post bellum'?—Rethinking the Conception of the Law of Armed Force, (2006, The European Journal of International Law, 17(5)) pp. 921-943.

Union, S., von Leeb, W. R., von Kuchler, G., Mannerheim, C. G. E., Heinrichs, E., Popov, M., ... & Meretskov, K. (1941). *Siege of Leningrad*, (1942, Timeline, 7(7.2)).

Watts, S. *Under Siege: International Humanitarian Law and Security Council Practice Concerning Urban Siege Operations*, (2014, Available at SSRN 2479608).

## **Books**

Cullen, A. *The characterization of remote warfare under international humanitarian law*, (2017, Research Handbook on Remote Warfare, Edward Elgar Publishing).

Ördén, H. *Cities under siege: the new military urbanism*, (2013).

People, T. A. A. *Urban Services During Protracted Armed Conflict*, (2015).  
T Jaques, *Dictionary of Battles and Sieges: A Guide to 8500 Battles from Antiquity through the Twenty-first Century, 3 Volumes*, (2006); PN Stearns, *The Encyclopedia of World History: ancient, medieval, and modern* (6th ed. 2001, C Townshend, The Oxford History of Modern War, 2000).

### **International Instruments**

'Customary IHL - Rule 5. Definition Of Civilians' (Ihl-databases.icrc.org, 2021)[https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter1\\_rule5](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter1_rule5)

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention), 12 August 1949, 75 UNTS 31, available at:  
<https://www.refworld.org/docid/3ae6b3694.html>

*Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention)*, 12 August 1949, 75 UNTS 31, available at:  
<https://www.refworld.org/docid/3ae6b3694.html>

Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention), 12 August 1949, 75 UNTS 85, available at:  
<https://www.refworld.org/docid/3ae6b37927.html>

Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287, available at: <https://www.refworld.org/docid/3ae6b36d2.html>

*Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land*, 18 October 1907, available at:  
<https://www.refworld.org/docid/4374cae64.html>

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3, available at: <https://www.refworld.org/docid/3ae6b36b4.html>

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, 1125 UNTS 609, available at: <https://www.refworld.org/docid/3ae6b37f40.html>

Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6, available at: <https://www.refworld.org/docid/3ae6b3a84.html>

Rule 20, Customary IHL., *Advance Warning*, (Ihl-databases.icrc.org, 2022) [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule20](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule20)

Rule 22, Customary IHL., *Principle of Precautions Against The Effects Of Attacks*, (Ihl-databases.icrc.org, 2022) [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule22](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule22)

The Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907, available at: <https://www.refworld.org/docid/4374cae64.html>

The Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907, available at: <https://www.refworld.org/docid/4374cae64.html>

The Statute of the International Court of Justice, 33 UNTS 993, 18<sup>th</sup> April, 1946, available at: <https://www.refworld.org/docid/3deb4b9c0.html>

## Reports

Assembly of Parties, *Report of The Working Group on Amendments*, (ICC-ASP/18/32, Eighteenth session The Hague, 2-7 December 2019, *Asp.icc-cpi.intl.* ) [https://asp.icc-cpi.int/icedocs/asp\\_docs/ASP18/ICC-ASP-18-32-ENG.pdf](https://asp.icc-cpi.int/icedocs/asp_docs/ASP18/ICC-ASP-18-32-ENG.pdf)

ICRC., *Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight*, (Saint Petersburg, 29 November / 11 December 1868).

The UN Secretary General, 'Respect for Human Rights in Armed Conflicts: Report of The Secretary-General A/8052' (UN Digital Library, 1970) <https://digitallibrary.un.org/record/647214?ln=en>

The United Kingdom House of Commons Parliament Hansard, (Scholar.smu.edu, 1971) <https://scholar.smu.edu/cgi/viewcontent.cgi?article=3931&context=til>

*UNSC Res/74/149 of 2019*, (The Nations Digital Library, 2019) <https://undocs.org/en/A/RES/74/149>

## Case Laws

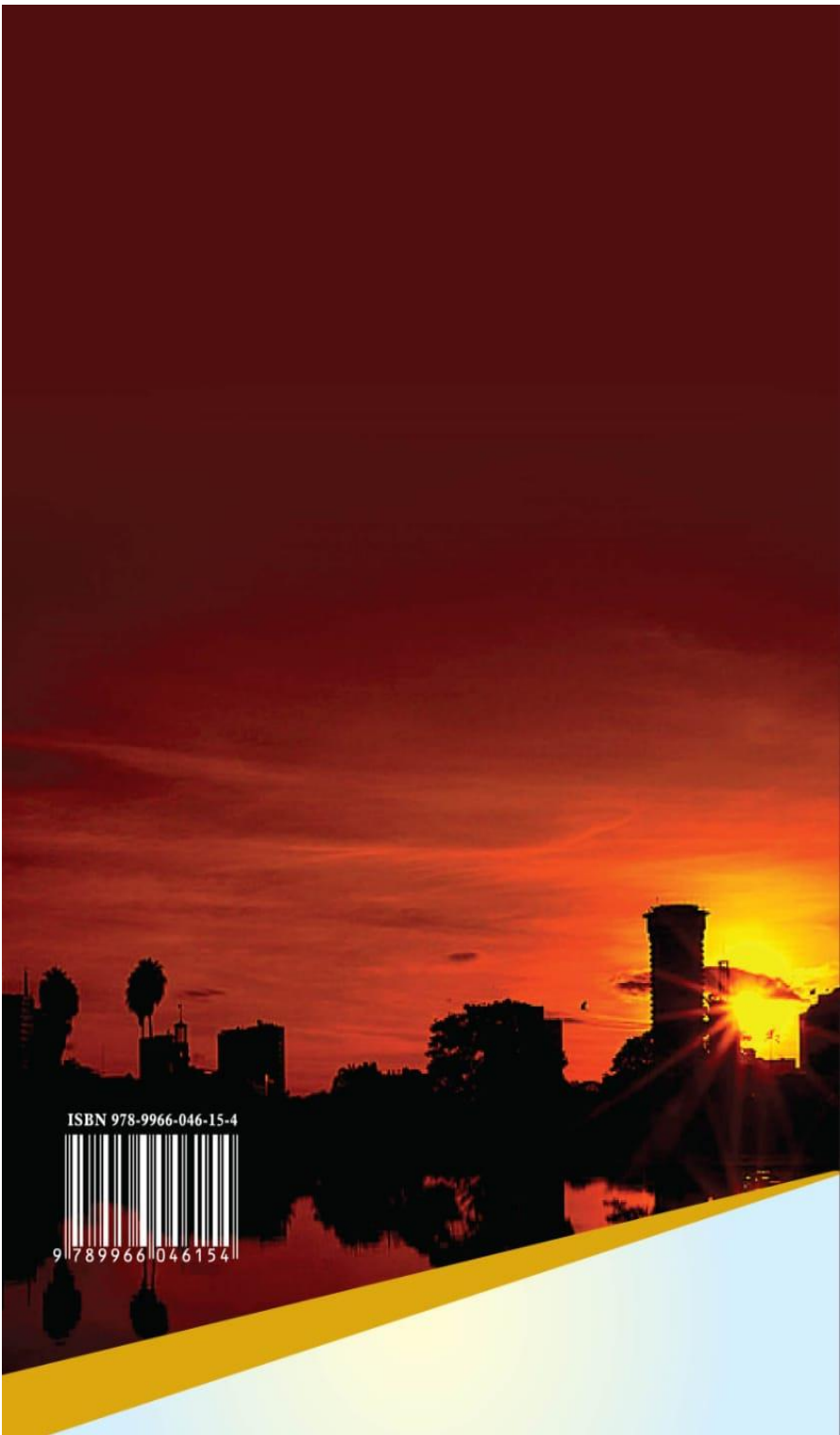
*Legality of the Threat or Use of Nuclear Weapons*, ICJ Advisory Opinion, 8 July 1996, [1996] ICJ Rep. 226

*Prosecutor v Tihomir Blaskic (Trial Judgement)*, IT-95-14-T, International Criminal Tribunal for the former Yugoslavia (ICTY) 3 March 2000, available at <https://www.refworld.org/cases,ICTY,4146f1b24.html>

*Prosecutor v. Martić, Case No. IT-95-11*), ICTY T. Ch . Judgement of 12 June 2007, para. 97).

*Prosecutor v. Stanilav Galic (Trial Judgement and Opinion)*, IT-98-29-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 5 December 2003, available at: <https://www.refworld.org/cases,ICTY,4147fb1c4.html>

Situation in the Democratic Republic of the Congo, *Prosecutor v Ntaganda (Bosco)*, Judgment on the prosecutor's appeal against the ... 904 (ICC 2006), 13th July 2006, International Criminal Court [ICC]; Appeals Chamber [ICC] Case no ICC-01/04-169.



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