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International Humanitarian Law and the Use of Starvation as a Method of Warfare: Positive Duties on the Parties to the Conflict

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Abstract

Starvation is one of the numerous humanitarian consequences following armed conflicts as a result of the obstruction in the chain of production and distribution. However, the situation becomes worrisome when starvation is employed by the parties to a conflict as a method of warfare. This trend was obvious in a number of contemporary armed conflicts such as Russia-Ukraine war, Syrian war, Ethiopia-Tigray war, and Yemeni war, to mention but a few. These were all characterized by the destruction of objects indispensable to the survival of the civilian population and in some cases the obstruction of humanitarian access to civilians in need of humanitarian assistance. Against this background, the paper focuses on examining the rules of International Humanitarian Law regulating the use of starvation as a method of warfare, with a view to identifying the positive obligation of the parties to conflict towards strengthening these rules. The study adopted the traditional doctrinal method of legal research combined with qualitative approach. It is the finding of this paper that deliberate attacks against objects indispensable to the survival of the civilian population; and the obstruction of humanitarian access to civilians in need of humanitarian assistance are the major ways through which civilians are starved in situations of armed conflicts. To tackle this problem, the paper recommended among other things, the use of the distinctive emblems to enhance the distinction between civilian objectives and military objectives; and the facilitation of the passage relief materials particularly foodstuff for civilians in need of humanitarian assistance.

KEYWORDS: Starvation, Armed Conflicts, International Humanitarian Law, Method of Warfare

Introduction

Every human being needs a certain level of caloric energy intake to stay alive and perform optimally.¹ This need is recognised in international law² and exists in the form of right to food. Every human person is entitled to food and other basic needs of life.³ The right to food is achieved ‘when every man, woman and child, alone or in a community with others, has physical and economic access at all times to adequate food or means for its procurement.’⁴ In other words, the right to food entails that food is available, accessible and adequate.⁵ However, records as at May 2022 shows that 811 million people globally are hungry with no hope of where their daily food will come from.⁶ This is as result of, among other factors, the on-going armed conflicts around the world⁷ witnessing the employment of starvation as a method of warfare.

Armed conflicts come with so many consequences including starvation.⁸ Thus, D’Alessandra asserts that ‘starvation of civilians is an all frequent feature of armed conflict.’⁹ The FAO also confirms that in situations of armed conflict, the number of people who are undernourished is three times higher than in peacetime.¹⁰ Records further show that in situations of armed conflicts,

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¹ TC Weiss, Fitness and Nutrition, ‘What happens when we Starve? Phases of Starvation’, (Disabled World 2016) <<https://www.disabled-world.com/fitness/starving.php>> accessed 2 January 2023

² International Covenant on Economic, Social and Cultural Rights, 1966, Article 11 (2); Universal Declaration of Human Rights, 1948, Article 25; Convention on the Elimination of All Forms of Discrimination against Women, 1979, Article 12(2); Convention on the Rights of the Child Article 24(2)(c) & (e)

³ Ibid

⁴ United Nations Office of the High Commissioner for Human Rights, ‘The Right to Adequate Food’ Fact Sheet No. 34 2

⁵ Ibid

⁶ Plan International, ‘The World Needs to pay attention to Save the 811 Million People Struggling to Find Food and the 45 Million on the Brinks of Starvation from becoming a forgotten Statistics, says Plan International’ <<https://www.relief.int/report/world-needs-pay-attention-save-811-people-struggle>> accessed 25 January 2023

⁷ TC Weiss, above note 1

⁸ J Pejic, ‘The Right to Food in situations of Armed Conflicts: the Legal Framework’ (2001) 83 No. 844 *International Review of the Red Cross* 1097

⁹ D’Alessandra, ‘The War Crime of Starvation in non-international Armed Conflict’, BSG Working Paper Series, BSG-WP-2019/031 1

¹⁰ AF Mazo, ‘The Protection of Access to Food or Civilians under International Humanitarian Law: Acts Constituting War Crimes,’ (2020) 14 *The Age of Human Rights Journal* 181, 182

people die more from starvation than from bullets and bombs.¹¹ While it is arguable that starvation may be a direct consequence of armed conflict and therefore unintended; records nevertheless show the intentional employment of starvation as a method of warfare by the parties to the conflict.¹² As a result, ‘hunger continues to inflict massive casualties in combat zones.’ This is notwithstanding, the current regulatory architecture of International Humanitarian Law prohibiting the use of starvation of civilians as a method of warfare.¹³ As such parties to the conflict must not destroy goods or objects indispensable to the survival of civilians or prevent them from obtaining such goods.¹⁴ Starvation is not only outlawed by Humanitarian Law but may also amount to a war crime in international armed conflict under the Rome Statute of the International Criminal Court.¹⁵

The prohibition of the use of starvation of civilians as a method of warfare exists by virtue of customary international law¹⁶ which has now been codified.¹⁷ Incidentally too, the United Nations Security Council, in the exercise of its responsibility of maintaining international peace and security passed the Resolution 2417¹⁸ where it reiterates that the use of starvation of civilians as a method of warfare may constitute a war crime irrespective of whether the armed conflict is international or non-international in character. This development bridged the dichotomy between international and non-international armed conflicts with respect to the status of starvation under the Rome Statute of the International Criminal Court.

The employment of starvation as a method of warfare dates back to the Peloponnesian War in 376 BC, where the Spartans employed starvation as a method of warfare against the

¹¹ Ibid, 181

¹² Ibid

¹³ J Henckaerts, L Doswald-Beck, (eds) *Customary International Law, vol. I, The Rules* (Cambridge University Press, 2005) Rule 53; Protocol Additional to the Geneva Conventions 1949 and relating to the Protection of Victims of International Armed Conflicts of 8 June 1977 (AP I), Article 54(1); Protocol Additional to the Geneva Conventions 1949 and relating to the Protection of Victims of Non-international Armed Conflicts of 8 June 1977 (AP II), Article 14

¹⁴ J Henckaerts, L Doswald-Beck, (eds), above note 13, Rules 54 & 55; Geneva Convention Relative to the Protection of the Civilian Population in Time of War, 1949, Article 23; AP I, Article 54; AP II, Articles 14 & 18

¹⁵ Article 8(2) (b) (xxv)

¹⁶ J Henckaerts, L Doswald-Beck, (eds), above note 13, Rule 53

¹⁷ AP I, above note 13, Article 54 (1); AP II, above note 13, Article 14

¹⁸ United Nations Security Council Resolution 2417 (2018)

Athens.¹⁹ Sadly, contemporary armed conflicts are decimated with incidences of starvation of civilians. This happens by deliberately withholding food;²⁰ imposition of blockades; impeding humanitarian access to both civilians and relief agencies;²¹ and by disruption of seasonal pattern of growing crops, displacement of farming populations, and destruction of farmlands or sources of food, among other things.²² These situations were witnessed in the Ethiopia's Tigray War where the *de facto* blockade imposed by the Ethiopian government made it impossible for humanitarian agencies to access the region to deliver food and other essential relief materials to civilians in need of humanitarian assistance.²³ This was also the case in Syria where the UN Commission of Inquiry on Syria observed that civilians were routinely denied access to essential foodstuffs and other basic supplies in order to compel them to surrender to the enemy.²⁴ In Yemen too, the experience is the same as the Eminent Experts on Yemen also observed that the *de facto* blockade enforced by coalition Naval forces on Yemeni seaports, impeded humanitarian access for civilians in need of essential relief materials and services.²⁵ Importantly, the Ukraine-Russian War has also been characterised by instances of deliberate starvation of the civilian population in Ukraine by Russian forces, as evident in the besieged city of Mariupol.²⁶ These situations raise serious concern. It is against this background that this study x-rays the use of starvation of civilians as method of warfare with a view to addressing the menace by proposing

¹⁹ M Trundle, *Fourth Century BC Wars, The Encyclopedia of Ancient Battles* (2017)

²⁰ Rodney Muhumuza, 'In Tigray, Food is Often a Weapon of War as Famine Looms.' (AP News, 11 June 2021) <<https://apnews.com/article/only-on-ap-united-africa-business-897bed43c6...>> accessed 2 February 2023

²⁰ AF Mazo, above note 10, 182-183

²¹ 'Trying to Survive: Millions in Tigray face Hunger as they wait in vain for Aid' (The Guardian, 23 March 2022) <<https://amp-theguardian.com.cdn.ampproject.org/v/s/amp.theguardian.com/globaldevelopment/2022/mar/23/trying-to-survive--m>> accessed 2 February 2023

²² 'The Rome Statute and Hunger as a Weapon of War- The Journey Towards Ending Impunity for Starvation Tactics' (IIEA, July 13 2022) <<https://www.iiea.com/blog>> accessed 6 February 2023

²³ 'Trying to Survive: Millions in Tigray face Hunger as they wait in vain for Aid' (The Guardian,...) <<https://amp-theguardian.com.cdn.ampproject.org/v/s/amp.theguardian.com/globaldevelopment/2022/mar/23/trying-to-survive--m>> accessed 2 February 2023

²⁴ Independent International Commission of Inquiry on the Syrian Arab Republic 'Siege as Weapons of War: Encircle Starve, Surrender, Evacuate' 29 May 2018, <<https://www.ohchr.org/Documrnts/HRCouncil/CoSyria/PolicyPaperSieges29May2018>> accessed 2 February 2023

²⁵ OCHR, 'Situation of Human s since Rights in Yemen, including Violations and Abuses since September 2014' Reports of the United Nations High Commissioner for Human Rights containing the Findings of the Group of Independent Eminent International and Regional Experts, 17 August 2018, UN Doc A/HRC/39/43 46-66

²⁶ A Schreck, 'The AP Interview: UN Food Chief says Mariupol is Starving', (ABC News, April 15 2022)

positive duty on the part of the parties to conflicts. The study argued that respect for the basic principle prohibiting starvation as a method of warfare is indispensable to addressing the issue of starvation in armed conflicts. The study first elucidates the applicable principles of International Humanitarian Law in relation to the prohibition of starvation. It also shows how starvation affects the protection of civilians who are the greatest beneficiaries of Humanitarian Law. It concludes by making specific recommendations aimed at addressing the anomaly.

Starvation Defined

Every person requires certain caloric intake for survival.²⁷ Starvation is ‘a severe deficiency in caloric energy intake needed to maintain human life.’²⁸ It is ‘a severe lack of food for a prolonged period - not enough calories of any sort to keep with the body’s energy needs...’²⁹ Starvation is a consequence of the imbalance between the intake of energy and its expenditure.³⁰ It is the extreme form of malnutrition.

The Commentary on the Additional Protocols defines the term ‘starvation’ in line with the Shorter Oxford English Dictionary as ‘the action of starving or subjecting to famine, i.e. to cause to perish of hunger; to deprive of or; ‘keep scantily supplied with food.’³¹

F D’Alessandra³² posits that ‘to starve a person is generally understood as the act of subjecting them to famine, extreme and general scarcity of food.’³³ Starvation is ‘suffering or death caused by lack of food.’³⁴ It is pertinent to note that starvation is used in the widest sense to imply ‘the process of depriving persons of food necessary for their survival.’³⁵

²⁷ Thomas C Weiss, Fitness and Nutrition, ‘What happens when we Starve? Phases of Starvation’, (Disabled World 2016) <<https://www.disabled-world.com/fitness/starving.php>> accessed 2 February 2023

²⁸ Ibid

²⁹ S Brink, ‘What Happens to the Body and Mind when Starvation Sets in?’ (Jefferson Public Radio, January 2021) <<https://www.ijpr/2016-01-21/what-happens-to-the-body-and-mind-when-starvation-sets-in>> accessed 4 February 2023

³⁰ Ibid

³¹ Y Sandoz, C Swinarski, and B Zimmermann (eds) *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of August 12 1949*, (Martinus Nijhoff Publishers: Geneva 1987) 653

³² F D’Alessandra, above note 9, 1, 18

³³ Ibid

³⁴ ‘Starvation’ (OED Online, OUP December 2018) cited in F D’Alessandra, ‘The War Crime of Starvation in non-international Armed Conflict’ BSG Working Paper Series (BSG-WP-2019/031, November 2019) 1, 18

³⁵ F D’Alessandra, above note 9, 18

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Starvation could be caused by such factors as illness, anorexia, deprivation, prolonged fasting or other factors outside of the control of a person³⁶ such as war.

Rules of International Humanitarian Law Prohibiting Starvation

Once armed conflict ensues, International Humanitarian Law comes into effect to bind the parties irrespective of who started the hostilities.³⁷ It is also immaterial whether the armed conflict is classified as international armed conflict (covering cases defined under common Article 2 of the Geneva Conventions 1949) or non-international armed conflict (as covered under common Article 3 of the Geneva Conventions 1949). As a general rule, parties to the conflict are bound to comply with the principle of distinction which requires them to distinguish between civilians and civilian objects on the one hand; and between combatants and military objective on the other hand.³⁸The purpose of this rule is to enable the parties limit attacks only to legitimate targets. Whereas combatants and military objective are lawful targets;³⁹ civilians and civilian objects are protected against attacks.^{40,41}

Another important rule of International Humanitarian Law prohibiting starvation is Article 35(1)⁴² to the effect that in any armed conflict, parties to the conflict are not unlimited in their choice of means and methods of warfare. Hence, such method of warfare that do not guarantee the safety of civilians and civilian objects (such as starvation) are forbidden.⁴³ Although there is no corresponding provision in this regard applicable to non-international armed conflict, this rule is nevertheless subsumed in the provisions of common Article 3⁴⁴ which serves as a miniature treaty for non-international armed conflict and provides a minimum standard required of parties in any armed conflict occurring within the territory of a High Contracting Party.

³⁶ TC Weiss, above note 1

³⁷ CC Wigwe, *International Humanitarian Law*, (Readwide Publishers, Accra 2010) 1 & 133

³⁸ AP I, above note 13, Articles 48 & 52

³⁹ Ibid

⁴⁰ Ibid, Article 51(1); AP II, above note 13, Article 13(1)

⁴¹ Ibid, Articles 48 & 52

⁴² AP I, above note 13

⁴³ AP I, above note 13, Article 54(1); AP II, above note 13 II, Article 14

⁴⁴ Geneva Conventions, 1949

Aside the general provisions, specific provisions also exist with regard to the prohibition against starvation. These are provided under Articles 54⁴⁵ and 14⁴⁶, applying to international and non-international armed conflicts respectively which prohibit the use of starvation as a method of warfare. The rules on the prohibition of starvation exist by virtue of customary international law which applies to both international and non-international armed conflicts.⁴⁷ The prohibition is codified under Articles 54(1)⁴⁸ and 14.⁴⁹

Article 54(1)⁵⁰ (which applies in situations of international armed conflicts) provides that ‘starvation of civilians as a method of warfare is prohibited.’ This provision is identical to the provisions of Article 14⁵¹ which applies to non-international armed conflicts. The prohibition is a preventive measure for the protection of the civilian population.⁵² Nevertheless, where armed conflict results in the starvation of the civilian population, there are also further provisions requiring the parties to the conflict to allow unimpeded passage of relief supplies for civilians in need of relief supplies.⁵³ The obligation of the parties in this regard is not to accept relief action in any case but not to arbitrarily refuse humanitarian assistance.⁵⁴

To further strengthen the rule on the prohibition against the use of starvation as a method of warfare, both AP I⁵⁵ and II⁵⁶ also forbid attack, destruction, removal, or rendering useless of objects indispensable to the survival of civilians such as foodstuffs, agricultural areas for foodstuff production, crops, livestock, drinking water installations and supplies and irrigation works, whether for the purpose of starving civilians, facilitating their movement or for any other reason.⁵⁷ Such objects will include: foodstuffs, crops, livestock, drinking water installations and

⁴⁵ AP I, above note 13

⁴⁶ AP II, above note 13

⁴⁷ J Henckaerts, L Doswald-Beck, (eds), above note 13, Rule 53

⁴⁸ AP I, above note 13

⁴⁹ AP II, above note 13

⁵⁰ AP I, above note 13

⁵¹ AP II, above note 13

⁵² J Pejic, above note 8, 1098

⁵³ AP I, above note 13, Article 70

⁵⁴ ICRC, 1987

⁵⁵ Article 54(2)

⁵⁶ Article 14

⁵⁷ AP I, above note 13, Article 54(2); AP II, above note 13, Article 14

supplies and irrigation works.⁵⁸This type of attack was witnessed in the Russia-Ukraine war where attack launched by Russia resulted in the destruction of Ukrainian source of water supply.⁵⁹

The expressions “to attack” “destroy” “remove” and “render useless” are carefully chosen and intended to cover all possibilities.⁶⁰ Hence, the expression includes pollution by chemical or other agents of water reservoirs or the destruction of crops by defoliants.⁶¹It has been opined that the intention of the adverse party with regards to the above provision could be ascertained from the express statement of the adverse party, or other circumstance (like the ability of the party to distinguish between civilians and combatants) and whether or not an adverse party allows the passage of relief supplies.⁶²Again, this kind of situation was witnessed in Yemen where naval blockade impeded humanitarian access for civilians in need of essential relief materials and services.⁶³ Importantly, the Ukraine-Russian War has also been characterized by instances of deliberate starvation of the civilian population in Ukraine by Russian forces, as evident in the besieged city of Mariupol.⁶⁴

Given the importance of the natural environment to the sustenance of the civilian population, International Humanitarian Law also protects the natural environment against wide-spread, long term and severe damage⁶⁵occasioned by the use of certain means of warfare such as chemical weapons.

Article 54(4)⁶⁶ further prohibits reprisal against objects indispensable to the civilian population. It is important to note that the prohibition against starvation as a weapon of warfare does not admit of any exceptions in the case of imperative military necessity (as it applies to other

⁵⁸ J Pejic, above note 8, 1098

⁵⁹ Center for Disaster Philanthropy’s (CDP), ‘Ukraine Humanitarian Crisis’,Center for Disaster Philanthropy’s (CDP), ‘Ukraine Humanitarian Crisis’ <<https://disasterphilanthropy.org/disasters/ukraine-humanitarian-crisis/?gclid=Cj0KCCQiAt6...>> accessed 12 February 2023

⁶⁰ Y Sandoz, C Swinarski, and B Zimmermann (eds),above note 31, 655

⁶¹ Ibid

⁶² AF Mazo,above note 10, 189

⁶³ OCHR, ‘Situation of Human since Rights in Yemen, including Violations and Abuses since September 2014’Reports of the United Nations High Commissioner for Human Rights containing the Findings of the Group of Independent Eminent International and Regional Experts, 17 August 2018, UN Doc A/HRC/39/43 46-66

⁶⁴ A Schreck, ‘The AP Interview: UN Food Chief says Mariupol is Starving’, (ABC News, April 15 2022)

⁶⁵AP I, above note 13, Article 55(1)

⁶⁶ AP I, above note 13

provisions).⁶⁷ This is because the above provision is made for the benefit of civilians.⁶⁸ However, where foodstuffs are solely used for the sustenance of the enemy armed forces, the prohibition against reprisal is not violated.⁶⁹ The provision is for instance violated where landmines are deployed in agricultural areas or in irrigation works with the specific purpose of depriving the civilian population of their means of sustenance.⁷⁰

Another important rule necessary for the prevention of starvation is the prohibition against forceful displacement. The Geneva Convention relative to the Protection of the Civilian Persons in Time of War of 12 August, 1949⁷¹ prohibits individual or mass forcible transfers of civilians from occupied territory to the territory of the Occupying Power or that of another country, whether it is occupied or not and irrespective of the intention. Where, however the evacuation of the civilian population is necessary for the safety of the population or is required for imperative military reasons, the Occupying Power must ensure that such transfers are carried out under satisfactory conditions. Unlawful movements of civilians by parties to the conflict, is a grave breach of the Geneva Conventions and Additional Protocol I and in fact constitutes a war crime.⁷² Article 17 of the AP II has an identical provision with Article 49 of the GC IV above.

The above provisions notwithstanding, where starvation results as a consequence of armed conflict, parties to the conflict are required to allow free passage of relief supplies including food to the civilian population.⁷³ The Geneva Convention relative to the Protection of the Civilian Persons in Time of War, 1949⁷⁴ also requires States Parties to allow free passage of certain types of goods intended for specific class of persons of the civilian population (such as children, expectant mothers and maternity cases) belonging to another State Party even if the latter is its adversary.⁷⁵ This provision is specifically intended for blockade areas. However, Additional Protocol I expanded the scope of free passage of relief materials to the entire civilian

⁶⁷ AF Mazo, above note 10, 187

⁶⁸ Y Sandoz, C Swinarski, B Zimmermann (eds), above note 31

⁶⁹ AP I, above note 13, Article 54(3)&(4); J Pejic, above note 8, 1099

⁷⁰ J Pejic, above note 8, 1099

⁷¹ Article 49

⁷² Rome Statute of the International Criminal Court, 1998, Article 8(2)(vii) and 8(b)(viii)

⁷³ AP I, above note 13, Article 70(1)

⁷⁴ Article 23

⁷⁵ J Pejic, above note 8, 1103

population.⁷⁶ Thus, relief action shall be undertaken by the parties to the conflict where the civilian population is not adequately provided with supplies such as food.⁷⁷ The relief action must be humanitarian and impartial and conducted without any adverse distinction.⁷⁸ This is nevertheless subject to agreement by the parties concerned. It also trite, that a State must accept relief actions when the civilian population is not adequately supplied.⁷⁹ It is therefore not optional to accept relief actions. Relief action can only be refused or withheld for exceptional reasons and not arbitrarily.⁸⁰

Although blockades are sometimes inevitable in order to restrict the movement of weapons by one of the parties to the conflict, nevertheless, blockades intended as a means of starving civilians by restricting the movement of, among other things essential materials indispensable for the survival of the civilian population is in violation of International Humanitarian Law. To be lawful therefore, such blockades must be preceded by a declaration indicating its duration; and the area covered. It must also be effective and apply without discrimination to the ships of all countries; and neutral states must have been informed of the blockades that have been implemented against a Party to the conflict.⁸¹ It follows then that the de facto blockade employed by the government of Ethiopia in order to bring the Tigray Liberation Front during the Ethiopia's Tigray armed conflict is in violation of International Humanitarian Law.

Under the Rome Statute of the International Criminal Court, 1998 intentionally denying civilians of objects indispensable to their survival and also obstructing the passage of relief supplies within the context of international armed conflict, is a war crime.⁸² Although there is no identical provision under the Rome Statute proscribing such act as a war crime in non-international armed conflicts, nevertheless, this exists by virtue of customary international law.⁸³ Again, intentionally

⁷⁶ Article 70(1)

⁷⁷ AP I, above note 13, Article 70(1)

⁷⁸ J Pejic, above note 8, 1103

⁷⁹ GC IV, Article 23; AP I, Article 70

⁸⁰ Y Sandoz, C Swinarski, B Zimmermann (eds), above note 31, 819-820

⁸¹ Ibid, 2094

⁸² Rome Statute, above note 72, Article 8(2)(b)(xxv)

⁸³ J Pejic, above note 8, 1100

launching an attack in the knowledge that it will cause widespread, long term and severe damage to the natural environment is a war crime under the Rome Statute.⁸⁴

Starvation as a Method of Warfare

As already noted, the right to food is an essential right of every human person.⁸⁵ Although, International Humanitarian Law did not expressly provide for the right to food, the prohibition against starvation implies that persons not taking active part in hostilities are not denied access to food.⁸⁶ The right to food among other things entails that food is adequate; accessible (physical and economic accessibility); and available.⁸⁷

Physical access to food means that food is at the reach of all, including but not limited to the victims of armed conflicts.⁸⁸ Although, it could be argued that armed conflicts stall the whole process of human nutrition (ranging from production, procurement, preparation, distribution and consumption),⁸⁹ sometimes without the parties to conflict intending it; records nevertheless show that starvation of civilians is intentionally employed by parties to the conflict as a method of warfare,⁹⁰ as witnessed in Ethiopia's Tigray war;⁹¹ Russian-Ukraine war;⁹² Yemen;⁹³ and Syria⁹⁴ to mention but a few. In IHL, however, it is not enough for starvation of the civilians to occur. To amount to a method of warfare within the meaning of Articles 54(1)⁹⁵ and 14,⁹⁶ such starvation must have been used as a method of warfare by the parties to the conflict, thereby causing the

⁸⁴ Article 8(b)(iv)

⁸⁵ International Covenant on Economic, Social and Cultural Rights, 1966, Article 11 (2); Universal Declaration of Human Rights, 1948, Article 25; Convention on the Elimination of All Forms of Discrimination against Women, 1979, Article 12(2); Convention on the Rights of the Child Article 24(2)(c) & (e)

⁸⁶ J Pejic, above note 8, 1098

⁸⁷ United Nations Office of the High Commissioner for Human Rights, 'The Right to Adequate Food' Fact Sheet No. 34 2

⁸⁸ Ibid, 3

⁸⁹ J Pejic, above note 8, 1097

⁹⁰ AF Mazo, above note 10, 181; F D'Alessandra, above note 9, 1

⁹¹ 'UN warns Famine Imminent in Ethiopia's Embattled Tigray Region', (AP News, 5 June 2021) <<https://apnews.com>> accessed 14 February 2023

⁹² FS Anderson, 'Russian Strategy to Starve Ukrainians creates misery and Refugees', (22 March 2022)

⁹³ 'Starvation Tactics in Yemen cause Hunger', (The Borgen Project, 23 January 2022)

⁹⁴ Report of the Commission of Inquiry on Syria Arab Republic to the Forty-sixth Regular Session of the Human Rights Council, March 2021

⁹⁵ AP I, above note 13

⁹⁶ Ibid

civilian population to suffer hunger as a result of being deprived of their sources of food or of supplies.⁹⁷

The use of starvation as a weapon of warfare or combat in the sense used under both AP I⁹⁸ and II⁹⁹ entails deliberately employing starvation in an attempt to ‘annihilate or weaken the population.’¹⁰⁰The Ethiopia’s Tigray war is illustrative of this point as the Ethiopian government intentionally employed blockade as a tactics to bring the Tigray’s People Liberation Front to its knees.¹⁰¹

Again, any action aimed at causing starvation also constitutes the use of starvation as a method of warfare within the meaning of Article 54(1) of the AP I¹⁰² and Article 14 of the AP II. Such actions will for instance include but are not limited to impeding humanitarian access to civilians in need of food through blockades or other means; destruction of farmlands or other agricultural stuff; destruction of civilians’ sources of water supply. Such actions were witnessed in the Ethiopia’s Tigray war;¹⁰³ Russian-Ukraine war;¹⁰⁴ Yemen;¹⁰⁵ and Syria.¹⁰⁶On the other hand, intentionally launching an attack in the knowledge that it will cause widespread, long term and severe damage to the natural environment also constitutes the use of starvation as a method of warfare since such actions are expected to result in the destruction of objects indispensable to the survival of the civilian population. For instance, with respect to the armed conflict in Yemen, the airstrikes launched by the Saudi-led coalition forces which among other things resulted in the destruction of farmlands, food stores and water wells,¹⁰⁷ explains very well the above point as such indiscriminate attack is expected to cause such damage.

⁹⁷Ibid, Article 54(1)

⁹⁸ Article 54(1)

⁹⁹ Article 14

¹⁰⁰ Y Sandoz, C Swinarski, B Zimmermann (eds), note 31, 2090

¹⁰¹ ‘UN warns Famine Imminent in Ethiopia’s Embattled Tigray Region’, (AP News, 5 June 2021)

<<https://apnews.com>>accessed 14 February 2023

¹⁰² Y Sandoz, C Swinarski, Zimmermann (eds), note 31, 2097

¹⁰³ ‘UN warns Famine Imminent in Ethiopia’s Embattled Tigray Region’, (AP News, 5 June 2021)

<<https://apnews.com>>accessed 14 February 2023

¹⁰⁴ FS Anderson, ‘Russian Strategy to Starve Ukrainians creates misery and Refugees’, (22 March 2022)

¹⁰⁵ ‘Starvation Tactics in Yemen cause Hunger’, (The Borgen Project, 23 January 2022)

¹⁰⁶ Report of the Commission of Inquiry on Syria Arab Republic to the Forty-sixth Regular Session of the Human Rights Council, March 2021.

¹⁰⁷ Human Rights Watch, Yemen- Events of 2020 <<https://www.hrw.org/world-report/2022>> accessed 4 February 2023

On the other hand, the destruction, removal, or rendering useless of objects indispensable to the survival of civilians such as foodstuffs, agricultural areas for foodstuff production, crops, livestock, drinking water installations and supplies and irrigation works, whether for the purpose of starving civilians, facilitating their movement or for any other reason,¹⁰⁸ constitutes the use of starvation as a method of warfare within the meaning of Article 54(1) of AP I. It is imperative to note that the verbs ‘attacking’, ‘destroying’, ‘removal’ and ‘rendering useless’ were intentionally employed to cover all possibilities.¹⁰⁹ Such situations will include the use of pollution by chemical or other agents,¹¹⁰ of water reservoirs, or the destruction of crops by defoliants.¹¹¹

The use of starvation as a method of warfare can also result from forceful displacement of the civilian population which more often breaks the cycle of food production and distribution.¹¹² The case of the Tigray civil war is very illustrative as the displacement of millions of Tigrayans caused them to abandon their food crops; and unable to join in the farming season for fear for their lives.¹¹³

Although blockade is not in itself a violation of IHL since the aim is to prevent an enemy Party from getting supplies necessary for conducting hostilities, however, blockade will violate the rule of IHL where it is used as a means of starving the civilian population.¹¹⁴ Therefore, a distinction must be drawn between cases where siege or blockade of a city where there are both combatants and civilians; and another case where the siege is in relation to purely military fortress. Thus, the use of starvation will be unlawful in the first case; but lawful in the second case.¹¹⁵ Hence, blockade and siege will only be lawful where it is directed against combatants.¹¹⁶ Nevertheless, where a blockade precipitates humanitarian crisis, the parties to the conflict must facilitate relief action in accordance with Article 70 of AP I.¹¹⁷

¹⁰⁸ AP I, above note 13, Article 54(2); AP II, above note 13, Article 14

¹⁰⁹ Y Sandoz, C Swinarski, B Zimmermann (eds), above 31, 2101

¹¹⁰ Human Rights Watch, Yemen- Events of 2020 <<https://www.hrw.org/world-report/2020>> access 4 February 2023

¹¹¹ Ibid

¹¹² J Pejic, above 8, 1100

¹¹³ R Muhumuza, ‘In Tigray, Food is Often a Weapon of War as Famine Looms’ (*AP News*, 11 June 2021) <<https://apnews.com/article/only-on-ap-united-africa-business-897bed43c6...>> accessed 12 February 2023

¹¹⁴ Y Sandoz, C Swinarski, and B Zimmermann (eds), above note 31, 2095

¹¹⁵ AF Mazo, above note 10, 187

¹¹⁶ Ibid

¹¹⁷ Y Sandoz, C Swinarski, and B Zimmermann (eds), above note 31, 2095

From the above, it is clear that for starvation of the civilian population to amount to a method of warfare, there must both be *actus reus* and *mens rea*.

Under the Rome Statute for instance, a crime can only be committed with intent and knowledge.¹¹⁸ Accordingly, intent is established if the person means to engage in the conduct, and that for consequences, intent is established if the person means to cause that consequence or is aware that it will occur in the ordinary course of events.¹¹⁹

The *actus reus* requires that the perpetrator must have starved civilians. Neither the Rome Statute nor the AP I and II require actual death of civilians to result from starvation or a certain level of suffering to occur for starvation to be established.¹²⁰ All that is required to be proved is that ‘the perpetrator deprived civilians of objects indispensable to their survival’ and that ‘the perpetrator intended to starve civilians as a method of warfare.’¹²¹ This is consistent with the provisions of the Rome Statute on Elements of Crime.¹²²

Employment of Starvation of Civilians in Contemporary Armed Conflicts

It is a known fact that starvation has always been part and parcel of armed conflicts and was in fact formerly considered as a lawful method of warfare until recently when it became outlawed.¹²³ However, contemporary armed conflicts witness the use of starvation of civilians as a method of warfare. The cases of Ethiopia’s Tigray war;¹²⁴ Russian-Ukraine war;¹²⁵ Yemen;¹²⁶ and Syria¹²⁷ are very illustrative of this fact and will be treated briefly.

(a) Russia-Ukraine War

¹¹⁸ Rome Statute, above note 72, Article 30

¹¹⁹ Ibid; F D’Alessandra, above note 9, 23

¹²⁰ F D’Alessandra, above note 9, 18

¹²¹ Elements of Crime, Article 8(2)(b)(xxv)

¹²² Article 8(2)(b)(xxv); F D’Alessandra, above note 9, 18

¹²³ E Rosenblad, ‘Starvation as a Method: Conditions for Regulation by Convention (1973) 7 International Lawyer 252, 266

¹²⁴ ‘UN warns Famine Imminent in Ethiopia’s Embattled Tigray Region’, (Al Jazeera, 5 June 2021) <<https://apnews.com>> accessed 14 February 2023

¹²⁵ FS Anderson, ‘Russian Strategy to Starve Ukrainians creates misery and Refugees’, (22 March 2022)

¹²⁶ ‘Starvation Tactics in Yemen cause Hunger’, (The Borgen Project, 23 January 2022)

¹²⁷ Report of the Commission of Inquiry on Syria Arab Republic to the Forty-sixth Regular Session of the Human Rights Council, March 2021

On 24th February, 2021, Russia committed aggression against Ukraine, an action which the international community condemned as violating the rules of international law prohibiting the use of force or threat of the use of force against the sovereignty of another state.¹²⁸ The aggression was preceded by President Putin's claim that Ukraine is an integral part of Russia,¹²⁹ a pronouncement which has also raised serious concern.

Since its commencement, the Russia-Ukraine war has been characterized by violation of IHL including deliberate attacks against objects indispensable to the survival of civilians in Ukraine; and the obstruction of humanitarian access to civilians in need of humanitarian assistance.¹³⁰ Amnesty International has in particular observed widespread death of civilians and destruction of civilian infrastructures following relentless bombardment of civilian residential areas.¹³¹ The recent attack against essential civilian infrastructure has for example resulted in the disruption of water supply in Ukraine.¹³² Again, the besieged city of Mariupol has also witnessed the blockade of humanitarian access to civilians in need of humanitarian assistance such as food;¹³³ and attack on ICRC warehouse.¹³⁴ These acts combined forces to heighten humanitarian crisis in Ukraine.

(b) Ethiopia's Tigray Civil War

The Ethiopia's Tigray war is by no means different from other armed conflicts. Thus, in the armed conflict that broke out in November 2020 between the government forces and the Tigray People's Liberation Front (TPLF), the use of starvation as a means of warfare was also recorded.

¹²⁸ United Nations Charter, 1945, Article 2(4)

¹²⁹ 'How Putin's Denial of Ukraine's Statehood Rewrites History' <<https://time.com/6150046/ukraine-statehood-russia-history-putin/>> accessed 11 February 2023

¹³⁰ Center for Disaster Philanthropy's (CDP), above note 59

¹³¹ Amnesty International, 'Anyone can Die at any time: Indiscriminate Attacks by Russia Forces in Kharkiv, Ukraine'

<<https://reliefweb.int/report/ukraine/anyone-can-die-ant-time-indiscriminate-attacks-russian...>> accessed 12 February 2023

¹³² 'Russia-Ukraine International Armed Conflict: Immense Damage to Essential Infrastructure will Cause Major Suffering as Winter Looms' (International Committee of the Red Cross News Release 2 November 2022) <<https://www.google.com/amp/s/www.icrc.or/en/document/russia-ukraine-international...>> accessed 12 February 2023

¹³³ FS Anderson, 'Russian Strategy to Starve Ukrainians creates misery and Refugees', (22 March 2022)

¹³⁴ REF/RL 'Ukraine says Russia is Blocking Aid to Mariupol, Civilians still Trapped' <<https://www.rferl.org/amp/ukraine-russia-blocking-mariupol-aid/31781075.html>> accessed 12 February 2023

The Tigray civil war ensued in an effort by the President Abiy Ahmed led government to checkmate the excesses of some leaders of the Tigray Liberation Front (TPLF), through his reformation policies.¹³⁵ Nevertheless, the attempt for reform was resisted by the TPLF and as a consequence, the TPLF launched an attack against the Army military base.¹³⁶ The government forces responded to the offensive and this escalated to a full-fledged armed conflict between the government forces and the TPLF.¹³⁷ The armed conflict has witnessed serious violations of IHL such as the obstruction of humanitarian access through the denial of visas to humanitarian aid workers and the introduction of stringent policies thereby making it difficult for humanitarian aid agencies to discharge their functions of delivering relief materials, including food to civilians in need of humanitarian assistance.¹³⁸ The situation has also occasioned the displacement of millions of Tigrayans who fled their homes, unable to harvest their crops, plant new crops or till the land, because they fear for their lives.¹³⁹ Amidst these hardships, the government also imposed *de facto* humanitarian aid blockade as a war tactic,¹⁴⁰ an action which has been considered as a deliberate means to starve civilians.¹⁴¹ The situation in Tigray has been described as the worst situation worldwide after the case of Somalia¹⁴² and the world's worst hunger crisis in a decade¹⁴³ which has resulted in an estimated death of 1 million people.¹⁴⁴

(c) Syrian Civil War

¹³⁵ R Muhumuza, above note 113

¹³⁶ A Nwotite, 'Unimpeded Access to Humanitarian Assistance as a Panacea for Civilian Protection: A Legal Perspective' (2022) 3 *International Journal of Law and Clinical Legal Education* (IJOLACLE) 121, 125

¹³⁷ Ibid

¹³⁸ B Parker, 'Relief for Tigray Stalled as Ethiopian Government Curbs Access' (The New Humanitarian, February, 2021) <<https://www.thenewhumanitarian.org>> accessed 15 February 2023; 'Trying to Survive: Millions in Tigray face Hunger as they wait in vain for Aid' (The Guardian, 23 March 2022) <<https://amp.theguardian.com/cdn.ampproject.org/v/s/amp.theguardian.com/globaldevelopment/2022/mar/23/trying-to-survive--m>> accessed 10 February 2023

¹³⁹ R Muhumuza, above note 113

¹⁴⁰ M Ayene, 'I Just Cry: Dying of Hunger in Ethiopia's Blockaded Tigray Region' (npr, 20 September 2021) <<https://www.npr.org/2021/09/20/1038858345/i-just-cry-dying-of-hunger-in-ethiopia-blockaded...>> accessed 13 February 2023

¹⁴¹ R Muhumuza, above note 113

¹⁴¹ AF Mazo, above note 10, 182-183

¹⁴² 'After Two Months of War, Tigray faces Starvation- Ethiopia's Government Appears to be Blocking Food Deliveries to the Region' (The Economist, 23 January 2021) <www.economist.com/middle-east-and-africa/2021/01/23/after-two-months-of-war-tig...> accessed 10 February 2023

¹⁴³ M Ayene, above note 140

¹⁴⁴ R Muhumuza, above note 113

The Syrian war ensued as a consequence of peaceful anti-government protests which were embarked upon by Syrians in 2011. The protests among other things, demanded the resignation of President Bashar al Assad. In an attempt to force the President Bashar al Assad government to resign, the Free Syrian Army launched an offensive against the government forces¹⁴⁵ and a counter offensive by the government forces culminated in the Syrian war.¹⁴⁶ The conflict involved many parties¹⁴⁷ with Russia and Iran backing the Syrian government while the non-state armed group was backed by US, Israel, Saudi Arabia, Qatar and Turkey.¹⁴⁸

The Syrian war has been described as one of the most violent wars in the 21st century.¹⁴⁹ Since it started, it has been decimated by the violations of IHL.¹⁵⁰ In fact, Miliband describes Syria as ‘a prime case where violations of International Humanitarian Law have become the norm.’¹⁵¹ Both the Syrian government forces and its Russian allies and the armed Syrian opposition groups have been allegedly guilty of indiscriminate attacks against civilians and civilian objects.¹⁵² Reports also confirmed the employment of prohibited method of warfare such as targeting of water sources and siege of civilian areas and denial of humanitarian access; targeting of humanitarian aid workers and humanitarian objects.¹⁵³ For instance, civilians in the al-Feijeh Spring at Wadi Barada, were deprived of access to potable water after their water source was attacked twice by Syrian Air strike, an action that point to the fact that the attack was deliberate.¹⁵⁴ On the other hand, Armed Syrian opposition groups also deprived civilians in the

¹⁴⁵ R Muhumuza, above note 113

¹⁴⁶ A Alameldeen, ‘Violation of International Humanitarian Law: Threats to Non-combatants in the Syrian Crises, 2011-2020’, *International Journal of Social Sciences and Humanities Invention* 8 2021 (1), 6649, 6651

¹⁴⁷ Ibid

¹⁴⁸ Ibid

¹⁴⁹ Ibid

¹⁵⁰ I Idris, ‘International Humanitarian Law and Human Rights Violations in Syria,’ <<https://gsdrc.org/publications/international-humanitarian-law-and-human-rights-violation-i...>> accessed 15 February 2023

¹⁵¹ Ukraine Crisis – Why is International Humanitarian Law important in Ukraine and around the World? 7 June 2023 <<https://www.rescue.org/article/why-international-humanitarian-law-important-ukraine-and-around...>> accessed 15 February 2023

¹⁵² I Idris

¹⁵³ Ibid; A Alameldeen, above note 146, 6651

¹⁵³ Ibid

¹⁵⁴ Ibid

besieged government controlled areas of food and medical supplies.¹⁵⁵ Attacks were further directed against humanitarian aid workers and supplies, thereby depriving civilians of essential humanitarian aid and access.¹⁵⁶ Furthermore, on 19 September 2016, suspected government and Russian aircraft bombed a UN/Syrian Arab Red Cross Crescent Aid convoy heading to eastern Aleppo thereby destroying aid Lorries carrying food and medical supplies.¹⁵⁷ These acts are in violation of the rules of IHL prohibiting the use of starvation as a means of warfare¹⁵⁸ or combat.¹⁵⁹ These acts have also added up to civilian suffering and frustrate their protection.

(d) Yemeni Civil War

In Yemen, the armed conflict between the government forces and the Ansar Allah separatists (also known as Houthi forces) started since 2015;¹⁶⁰ and it revolves around the ownership of the oil-rich northern city of Marib.¹⁶¹ While the government is supported by a coalition of Sunni Gulf Arab states, the Houthi forces is backed by Iran.¹⁶² Since its commencement, the Yemeni conflict has been characterized by violations of IHL by both parties.¹⁶³ The violations include killings, wounding, displacement of thousands of civilians; and the destruction of critical civilian infrastructures.¹⁶⁴ The parties have also resorted to imposing restrictions on trade and investments resulting to hikes in the prices of food.¹⁶⁵ A Saudi-led coalition forces has also conducted airstrikes that had damaged civilian farmlands, food stores and water wells,¹⁶⁶ thereby exposing civilians to starvation. In addition, the Human Rights Watch documented the blocking and

¹⁵⁵ A Alameldeen, above note 146, 6651

¹⁵⁶ Ibid

¹⁵⁷ I Idris, above note 150

¹⁵⁸ AP I, above note 13, Article 54(1)

¹⁵⁹ AP II, above note 13, Article 14

¹⁶⁰ United Nations, 'Yemen facing outright Catastrophe over rising Hunger', warns UN Humanitarians' (UN News, March, 2022) <<https://news.un.org/en/story/2022/03/1113852>> accessed 15 February 2023

¹⁶¹ Ibid

¹⁶² United Nations, 'Yemen facing outright Catastrophe over rising Hunger', warns UN Humanitarians' (UN News, March, 2022) <<https://news.un.org/en/story/2022/03/1113852>> accessed 15 February 2023

¹⁶³ Human Rights Watch, Yemen- Events of 2020 (Human Rights Watch, 2020) <<https://www.hrw.org/world-report/2020>> accessed 16 February 2023

¹⁶⁴ Ukraine Crisis – Why is International Humanitarian Law important in Ukraine and around the World?' (Rescue, 7 June 2022) <<https://www.rescue.org/article/why-international-humanitarian-law-important-ukraine-and-around...>> accessed 15 February 2023

¹⁶⁵ <<https://www.unicef.org>> accessed 16 February 2023

¹⁶⁶ Human Rights Watch, Yemen- Events of 2020 (Human Rights Watch, 2020) <<https://www.hrw.org/world-report/2020>> accessed 16 February 2023

obstruction of humanitarian access by both parties and their affiliated forces,¹⁶⁷ thereby obstructing the delivery of relief materials by UN and other relief agencies to millions of civilians.¹⁶⁸ In fact, the situation in Yemeni has been described as one of the world's worse food crisis.¹⁶⁹ This is contrary to the spirit of International Humanitarian Law imposes a positive duty on the parties to a conflict to prevent starvation of the civilian population.

Positive Duty to Prevent Starvation may sometimes be one of the consequences of armed conflicts.¹⁷⁰ As such starvation may occur not necessarily because any of the parties to the conflict intended it. Such situation may for instance occur where starvation results because of the inability of a population to embark on the usual farming activities as a result of armed conflict, or where the destruction of farmlands and agricultural produce occur as part of collateral damage. Collateral damage is envisaged by International Humanitarian Law provided that the attack is proportionate. However, it is also true that the parties or one of the parties to a conflict may cause starvation as a result of the failure to discharge the obligation imposed on it by IHL. IHL requires parties to the conflict to take certain positive steps to prevent starvation in situations of armed conflict. Such obligation include the obligation to respect the principle of distinction by limiting attacks to military objectives; and the duty to facilitate humanitarian relief action where starvation is inevitable.

The first duty is encapsulated in the principle of distinction which requires parties to the conflict to distinguish at all times between civilian civilians and civilian objects on the one hand and combatants and military objectives on the other hand; and to accordingly direct attacks against combatants and military objectives but not against civilians and civilian objects.¹⁷¹

¹⁶⁷Human Rights Watch, above note 166

¹⁶⁸ Ibid

¹⁶⁹ UNICEF, 'Yemen: Acute Hunger at Unprecedented Levels as Funding Dries up' <<https://www.unicef.org>> accessed 16 February 2023

¹⁷⁰ J Pejic, above note 8, 1097; F D' Alessandra, above note 9

¹⁷¹AP I, above note 13, Articles 48, 51, 52& 54(2)

Again, IHL imposes on the parties to the conflict the duty to facilitate and allow passage of essential supplies (Relief actions) to civilians in need of humanitarian assistance where starvation is inevitable.¹⁷² Each of these duties will be treated in details.

Duty to Distinguish between Civilians/Civilian Objects and Combatants/Military Objectives (Principle of Distinction)

In IHL, once armed conflict ensues, parties to the conflict are bound by the rules of IHL particularly the principle of distinction. The principle of distinction represents one of the fundamental principles of IHL through which, among other things, the prohibition against the use of starvation of civilians as a method of warfare is realised.

The principle of distinction exists by virtue of customary international humanitarian law,¹⁷³ which has also been codified under AP I.¹⁷⁴ Article 48 provides that parties to the conflict must ‘at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and shall accordingly direct their operations only against military objectives.’

The issue of whether a target is a combatant or a civilian or whether it is a civilian object or military objectives has some serious implications in IHL.¹⁷⁵ In international armed conflicts, for instance, as a matter of general rule, persons who are neither members of the armed forces of a party to the conflict nor participants in a *levee en masse* are civilians;¹⁷⁶ entitled to protection,¹⁷⁷ unless and for such time as they take a direct part in hostilities.¹⁷⁸ On the other hand, in non-international armed conflict, persons who are not members of state armed forces or members of

¹⁷² AP I, above note 13, Article 70; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949, (GC IV), Articles 23 & 59

¹⁷³ J Henckaerts, L Doswald-Beck, (eds), above note 13, Rule 1

¹⁷⁴ Article 48

¹⁷⁵ AP I, above note 13, Articles 48, 51, & 52

¹⁷⁶ Ibid, Article 43; GC III, Article 4A; Diakonia International Humanitarian Law Centre, ‘The Principle of Distinction’ , (Diakonia International Humanitarian Law Centre,) <<https://www.diakonia.se>> accessed 27 February 2023

¹⁷⁷ AP I, above note 13, Article 51(1)

¹⁷⁸ Ibid, Article 51(3)

organized armed groups of a party to the conflict are civilians entitled to protection,¹⁷⁹ unless and for such time as they take a direct part in hostilities.¹⁸⁰ Thus, ‘the principle of distinction permits direct attacks only against the armed forces of the parties to the conflict, while the peaceful civilian population must be spared and protected against the effects of the hostilities.’¹⁸¹ In like manner, the principle also prohibits direct attacks against civilian objects;¹⁸² and objects indispensable for the survival of the civilian population.¹⁸³ Such objects will for example include civilian homes, hospitals, schools, foodstuff, crops, livestock, source of drinking water, farmlands, to mention but a few. These are protected objects and not military objectives within the meaning of IHL.¹⁸⁴

Article 52¹⁸⁵ defines military objectives as objects which by their nature, location, purpose or use, contribute effectively to the military operation of a party; but whose neutralisation, destruction or capture will be of advantage to the military operations of an adverse party. Such military objectives will for instance include military Barracks, military means of transport, to mention but a few. These are legitimate targets.¹⁸⁶ However, even where a target is a lawful one (military objective), IHL further requires the parties to ensure that the attack is proportionate;¹⁸⁷ and that the necessary precautionary measures are taken¹⁸⁸ so as to minimise excessive loss of civilian lives.¹⁸⁹ The operation of the principle of distinction is predicated on the fact that the object of any armed conflict is just to overcome the armed forces of an adverse party,¹⁹⁰ and so only those acts that will facilitate the achievement of this object are permissible.

¹⁷⁹ AP II, above note 13, Article 13(1)

¹⁸⁰ Ibid, Article 13(3)

¹⁸¹ N Melzer, ‘The Principle of Distinction under International Humanitarian Law’ in *Targeted Killing in International Law* (Oxford University Press, 2008) 300

¹⁸² Articles 48 & 52; M Sassoli, ‘Legitimate Targets of Attacks under International Humanitarian Law’ *Background Paper. Harvard Program on Humanitarian Policy and Conflict Research, 1*

¹⁸³ AP I, above note 13, Article 54(2); AP II, above note 13, Article 14; Customary International Humanitarian Law Study, above note 13, Rule 54

¹⁸⁴ AP I, above note 13, Article 52(2)

¹⁸⁵ AP I, above note 13

¹⁸⁶ Ibid, Article 52.

¹⁸⁷ Ibid, Articles 51(5)(b) & 57(2)(a)(iii); Customary International Humanitarian Law Study, above note 13. Rule 14

¹⁸⁸ AP I, above note 13, Articles 57(1) & 58(c); Customary International Humanitarian Law Study, above note 13, Rules 15 and 22

¹⁸⁹ AP I, above note 13, Article 51(5)(b)

¹⁹⁰ St. Petersburg Declaration, 1868, Preamble, 2

Respect for the principle of distinction is enhanced by the prohibition against indiscriminate attacks.¹⁹¹ Indiscriminate attacks are attacks that are not directed at a specific military objective;¹⁹² or attacks that employ imprecise method or means of warfare;¹⁹³ or that which employs method or means of warfare the effect of which cannot be limited as required by IHL.¹⁹⁴ Such indiscriminate attacks will include bombardment; the use of cluster munitions, and an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination of the above¹⁹⁵ as in the case of bombardment of civilian residential areas. Indiscriminate attacks straddle the principle of distinction¹⁹⁶ and frustrates protection of civilians which underlies IHL.

Duty to Facilitate and Allow the Passage of Relief Materials

The parties to the conflict are responsible for ensuring the well-being of the population under their control,¹⁹⁷ whether the population is civilians in occupied territories or besieged territories, detainees or prisoners of war.¹⁹⁸ In other words, states have the primary duty to organise relief actions while humanitarian organisations only play a complementary role.¹⁹⁹ To that effect, where the population is inadequately supplied with essential materials, the parties to the conflicts under whose control the population is, have the obligation to consent to, facilitate and allow free passage of relief supplies, even if such assistance is meant for the civilian population of the adverse Party.²⁰⁰

¹⁹¹ AP I, above note 13, Article 51(4); Protocol II to the Convention on Certain Conventional Weapons, Article 3(3)

¹⁹² AP I, above note 13, Article 51(4)(a)

¹⁹³ AP I, above note 13, Article 51(4)(b)

¹⁹⁴ Ibid, Article 51(4)(5)

¹⁹⁵ Ibid, Article 51 & 57; Customary International Law Study, above note 13, Rule 14

¹⁹⁶ S Townley, 'Indiscriminate Attacks and the Past, Present, and Future of the Rules/Standards and Objective/Subjective Debates in International Humanitarian Law', (2021) 50 *Vanderbilt Law Review* 1223, 1271

¹⁹⁷ F Schwendimann, cited in A Nwotite, 'Unimpeded Access to Humanitarian Assistance As A Panacea for Civilian Protection: A Legal Perspective' (2022) 3 *International Journal of Law and Clinical Legal Education (IJOLACLE)* 121, 124; United Nations General Assembly Resolution 46/182 (1991) (Guiding Principles on Humanitarian Assistance), Annex para 4

¹⁹⁸ GC IV, above note 173, Article 69.

¹⁹⁹ A Nwotite, 'Unimpeded Access to Humanitarian Assistance As A Panacea for Civilian Protection: A Legal Perspective' (2022) 3 *International Journal of Law and Clinical Legal Education (IJOLACLE)* 121, 125

²⁰⁰ Customary International Humanitarian Law Study, above note 13, Rule 55; GC IV, Article 23; AP I, Article 70(2)(3)(c); AP II, Article 18(2)

The duty to facilitate and allow the supplies of goods indispensable for the survival of the civilian population exists first and foremost as customary international humanitarian law applicable to both international or non-international armed conflicts.²⁰¹ It is immaterial whether or not the parties are High Contracting Parties to the Geneva Conventions, 1949 and the Additional Protocols.

It is however, important to note that the delivery of relief supplies is subject to an agreement by the parties involved, although this rule just operates to enhance the practical implementation of relief operations. Thus, the parties to the conflict are bound not to refuse relief actions on political or military grounds. They may nevertheless stipulate measures, control and conditions necessary for facilitating the passage of relief actions which may also include searches.²⁰² Corollary to the duty to facilitate and allow free passage of relief supplies is the requirement for parties to the conflict to guarantee the protection of such humanitarian assistance; and not to deliberately impede the delivery of humanitarian assistance.²⁰³ They are also obliged to accord religious or other humanitarian organisations or any other agencies by whatsoever name known, (charged with the mandate of offering humanitarian assistance), all that is required to enhance their activities in accordance with the rules of IHL.²⁰⁴ It is therefore a war crime to 'willfully impede relief supplies' as part of the use of starvation of civilians as a method of warfare in the context of international armed conflict²⁰⁵

²⁰¹ J Henckaerts, L Doswald-Beck, (eds), above note 13, Rules 55 & 56

²⁰² AP I, above note 13, Article 70 (3)(a)(b)

²⁰³ GC IV, above note 173, Article 59(3)

²⁰⁴ AP I, above note 13, Article 81; AP II, above note 13, Article 18(1)

²⁰⁵ Rome Statute, above note 72, Article 8(2)(b)(xxv)

Also drawing from the duty to facilitate and allow free passage of relief supplies is the obligation to protect relief personnel (whether representatives of Protecting Powers, Red Cross or Red Crescent Societies, civil defense organisations, neutral States, or even the UN),²⁰⁶ and even objects used for relief actions.²⁰⁷ The protection of relief personnel is in fact customary;²⁰⁸ and flows from the protection accorded the civilian population in IHL.²⁰⁹ The common Article 3(2)²¹⁰ recognises humanitarian organizations. In fact IHL requires parties to seek the assistance of humanitarian organization such as the International Committee of the Red Cross and recognises their right to provide humanitarian assistance to victims of armed conflict and other emergency situations.²¹¹ Hence, humanitarian organisations are entitled to undertake relief actions in the event of armed conflicts.

Right of Humanitarian Organisations to undertake Relief Actions

Humanitarian organisations complement states in the discharge of their duty of organising relief actions.²¹² Hence, impartial relief organisations are entitled to undertake relief operations where the population is not adequately provided with supplies indispensable for its survival; or even where the population is suffering from undue hardship due to a lack of such supplies.²¹³

Humanitarian organisations are entitled to be allowed access for the purposes of evaluating and accessing individual's needs.²¹⁴ The International Committee of the Red Cross and other impartial humanitarian agencies may also offer humanitarian assistance and protection activities to civilians in situations of armed conflict.²¹⁵ The relief action must however relate to supplies indispensable for the survival of the civilian population such as food, clothing, and medical care, to mention but a few. The relief action must also be humanitarian, impartial in nature; and must

²⁰⁶ AP I, above note 13, Article 70(4); Convention on the Safety of UN Personnel, 1994, Article 7(1)

²⁰⁷ Ibid; J Henckaerts, L Doswald-Beck, (eds), above note 13, Rules 32

²⁰⁸ Ibid, Rules 25, 26, and 31

²⁰⁹ AP I, above note 13, Article 51; AP II, above note 13, Article 13

²¹⁰ Geneva Conventions, 1949

²¹¹ Ibid, Article 3(2); Statute of the International Committee of the Red Cross and Red Crescent Movement, Article 2(2)

²¹² A Nwotite, 'Unimpeded Access to Humanitarian Assistance As A Panacea for Civilian Protection: A Legal Perspective' (2022) 3 *International Journal of Law and Clinical Legal Education (IJOLACLE)* 121, 125

²¹³ Geneva Conventions, 1949, common Article 3(2); GC IV, above note 173, Articles 17, 23, & 59; AP I, Article 70; AP II, Article 18; J Henckaerts, L Doswald-Beck, (eds), Rules 55 & 56

²¹⁴ GC IV, above note 173, Article 30; AP I, above note 13, Article 70(1); AP II, above note 13, Article 18(2)

²¹⁵ Geneva Conventions above note 217, common Article 3; GC IV, above note 173, Article 10

be carried out without any adverse distinction, although priority should be given to the most vulnerable of the population such as children, expectant mothers, maternity cases and nursing mothers.²¹⁶

As part of this all important right, relief agents are entitled to respect and protection.²¹⁷ Hence, it is prohibited to direct attack against humanitarian agents.²¹⁸ In fact, this constitutes a war crime.²¹⁹ Important to the right of humanitarian organisations to undertake relief actions is the right of civilians to access such humanitarian relief and assistance.

Right of Civilians to Access Humanitarian Relief in Times of Armed Conflict

The protection of the civilian population is central to International Humanitarian Law.²²⁰ Hence, Article 51²²¹ and 13²²² respectively protects civilians against the effects of military operations. As part of this protection, civilians are entitled to have basic needs such as food, water, beddings, shelter, and medication. To that effect, Article 23(1)²²³ obligates each High Contracting Party to allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary, and also to provide essential foodstuffs, clothing and tonics intended for children under 15, expectant mothers and maternity cases. Again, Article 70(1)²²⁴ obligates controlling powers to undertake relief actions which are humanitarian and impartial in character and conducted without any adverse distinction, where the population of any territory other than occupied territory is not adequately provided with supplies in accordance with Article 69 of AP I. These provisions all point to the fact that the civilian population is entitled to humanitarian assistance regarding its basic needs.

²¹⁶ AP I, above note 13, Article 70(1)

²¹⁷ Ibid, Article 71(2); ; Convention on the Safety of UN Personnel, 1994, Article 7(1)

²¹⁸ AP I, above note 13, Article 70(4); Convention on the Safety of UN Personnel, 1994, Article 7(1)

²¹⁹ Rome Statute, above 173, Article 8(2)(b)(iii) & (e)(iii)

²²⁰ AP I, above note 13, Article 51; AP II, above note 13, Article 13

²²¹ AP I, above note 13

²²² AP II, above note 13

²²³ GC IV, above note 173

²²⁴ AP I, above note 13

Civilians in need of humanitarian assistance are entitled to such assistance, individually or collectively,²²⁵ although it has been opined that this right is not absolute in relation to every state in the world.²²⁶ This right is also subsumed in the duty imposed on States to see to the provision of the basic needs of the population under their control.²²⁷ The UN Committee on Economic Social and Cultural Rights identified such basic needs to include foods, primary health care and basic shelter and housing.²²⁸ This right to humanitarian access also applies to interns,²²⁹ the wounded and sick,²³⁰ prisoners of war²³¹ and any other persons, by whatsoever name known, protected by IHL. All protected persons are also entitled to apply to their Protecting powers, the International Committee of the Red Cross or any other humanitarian organisation by whatever known name, for humanitarian assistance whenever the need arises; and ²³²the relevant authorities are bound to facilitate such applications.²³³ Thus, civilian cannot be denied of supplies indispensable for their sustenance.²³⁴

CONCLUSION

Every human person requires food for survival. This is even more imperative for the victims of armed conflict who have been made more vulnerable by the situation. Truncating this very important need of the civilian population in the name of armed conflict, threatens the whole essence of International Humanitarian Law. This is because International Humanitarian Law limits the legitimate object of any armed conflict to subduing the armed forces of the adverse party. This does not of course extend to using starvation of the civilian population as a method of

²²⁵ GC IV, above note 173, Article 30(1)

²²⁶ Y Distein cited in A Nwotite, 'Unimpeded Access to Humanitarian Assistance As A Panacea for Civilian Protection: A Legal Perspective' (2022) 3 *International Journal of Law and Clinical Legal Education (IJOLACLE)* 121, 125

²²⁷ F Schwendimann, cited in A Nwotite, 'Unimpeded Access to Humanitarian Assistance As A Panacea for Civilian Protection: A Legal Perspective' (2022) 3 *International Journal of Law and Clinical Legal Education (IJOLACLE)* 121, 124; United Nations General Assembly Resolution 46/182 (1991) (Guiding Principles on Humanitarian Assistance), Annex para 4

²²⁸ F Schwendimann, above note 199, 1003

²²⁹ GC IV, above note 173, Article 108-111

²³⁰ *Ibid*, Article 16, 17 & 23; AP II, Article 7

²³¹ Geneva Convention Relative to the Treatment of Prisoners of War, 1949, Article 15, 72 & 73

²³² GC IV, above note 173, Article 30' AP I, above note 13, Article 70(1); AP II, above note 13, Article 18(2)

²³³ *Ibid*

²³⁴ AP I, above note 13, Article 54 (2); AP II, above note 13, Article 14

warfare. Thus, International Humanitarian Law requires the parties to the conflict to ensure the protection of the civilian population in all circumstances through respect for the fundamental principles of International Law. Such respect will require positive duty on the part of the parties to the conflict. These include:

1. Limiting attacks to military objectives as required by the principle of distinction.
2. Ensuring that they put in place measures that will facilitate the distinction between civilian objectives and military objectives. Such measures will include clear marking of civilian objects with the distinctive emblems of the Geneva Conventions (Red Cross, Red Crescent, Red Crystal).
3. Initiating relief action where starvation is inevitable by calling upon relief agencies to provide humanitarian assistance.
4. Granting unimpeded access to relief organizations such as the International Committee of the Red Cross, to provide relief materials including foodstuff to civilians in need of humanitarian assistance; and also help them to discharge their duty religiously through the removal of unnecessary procedures and taxes.

The above steps will help the use of starvation as a method of warfare and guarantee the protection of the civilian population.