

THE PLACE OF CITIES IN THE EVOLUTION OF INTERNATIONAL HUMANITARIAN LAW

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Abstract

The increasing interest in the global dimension of cities and their engagement with international law has coincided with the emergence of a new wave of scholarship covering the main legal challenges related to urban warfare. In recent years, the devastating humanitarian consequences of war in cities have raised new questions regarding how relevant rules of international humanitarian law are interpreted and applied: cities are portrayed not only as the seat of political leadership or as cultural property but increasingly also as “populated areas” and an “interconnected infrastructure of essential services”. Urban fighting is uniquely characterized by the proximity of military objectives with civilians and civilian objects: the question of the use of explosive weapons against military objectives in populated areas reflects the need for further clarification with respect to the application of the relevant rules of international humanitarian law (IHL). Much debate has been devoted to the legal implications of the contemporary resurgence of sieges of cities. Given that sieges are not per se an explicitly prohibited method of warfare under IHL, a key topic has been the precise scope of the “starvation of civilians” as a method of combat, for the purposes of the prohibition under Article 54(1) of Additional Protocol I and customary law. It is worth considering to what extent the specific representation of what amounts to a city has been considered as a factor in the current debate.

Keywords: cities; international humanitarian law; siege warfare; urban warfare; starvation of civilians.

1. INTRODUCTION

City centres and residential areas have become the battlefields of most armed conflicts of our time, with an estimated 50 million civilians around the world now affected by them. The asymmetric nature of contemporary conflicts contributes to explaining their urbanization: the parties that are weaker in military strength may be tempted to hide themselves in cities to balance their technological inferiority. For armed groups, “the city is a kind of urban, concrete jungle”.¹ In the

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¹ See “Interview with Eyal Weizman: Professor at Goldsmiths, University of London, Director of the Centre for Research Architecture and Director of Forensic Architecture”, IIRC, 2016, p. 21 ff., p. 29.

second decade of the twenty-first century, Aleppo, Homs, Raqqa, Mosul, Gaza, Sana'a have joined other cities – such as Stalingrad, Dresden, Hiroshima, and more recently Sarajevo – that, in different contexts of warfare, had previously experienced massive destruction of buildings and infrastructure as well as immeasurable human suffering.

The battle for the control of Aleppo between pro-Government forces and armed groups had become a paradigm of the brutality of violence: “civilians caught in the fighting were increasingly left vulnerable to repeated violations by all sides”.² The four-year situation of stalemate in Aleppo was broken when the Syrian and Russian air forces conducted a campaign of air strikes: “[d]ay after day, hospitals, markets, water stations, schools and residential buildings were razed to the ground”.³ The report of the Independent International Commission of Inquiry on Syria documented the numerous violations of international humanitarian law (IHL) committed by the parties to the conflict during the second half of 2016 and concluded that “[r]esorting to a concerted aerial campaign coupled with ground forces that encircled eastern Aleppo city, government forces and their allies employed brutal tactics to force the armed groups to surrender. [...] Widely used throughout the conflict, the use of this ‘surrender or starve’ tactic by the pro-Government forces has proven disastrous for civilians but successful for overtaking opposition-held territory”.⁴

Although Russia’s invasion of Ukraine in February 2022 has represented, in many respects, a fundamentally different scenario – being an international armed conflict, i.e. a resort to armed force between two or more States,⁵ rather than a civil war – there seems to be a sort of tragic continuity as for the effects on civilians in urban centres. In the order on the request for provisional measures in the *Allegations of Genocide (Ukraine v. Russian Federation)* case, the International Court of Justice described the impact of the “special military operation” by emphasizing the “increasingly difficult living conditions for the civilian population”: not only has it resulted in “numerous civilian deaths and injuries”, but it has also caused “the destruction of buildings and infrastructure”. It was further observed that: “[m]any persons have no access to the most basic foodstuffs, potable water, electricity, essential medicines or heating. A very large number of people are attempting to flee from the most affected cities under extremely insecure conditions”.⁶

Once again, civilians in cities find themselves living in the middle of war: “trapped, wounded, hungry, impoverished, held as hostages, used as human

² Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, UN Doc. A/HRC/34/64, 10 March 2017, para. 94.

³ *Ibid.*, para. 25.

⁴ *Ibid.*, para. 95.

⁵ Common Art. 2 to the four 1949 Geneva Conventions; see ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949*, 2nd ed., Cambridge, 2016, para. 218.

⁶ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order of 16 March 2022, available at: <<https://www.icj-cij.org/en/case/182>>, para. 75. See the contribution by FORLATI in this Volume.

shields and often prevented from fleeing”.⁷ Civilians, including women, children and the elderly, and not uniformed personnel, make up the overwhelming number of victims: deaths directly resulting from hostilities (i.e. deaths of both combatants and civilians) account for only about 10 per cent of estimated total war deaths in many contemporary conflicts. Most war deaths are caused indirectly by starvation and the spread of diseases typical for combat zones.⁸

The increasing interest in the global dimension of cities and their engagement with international law, at the beginning of this century,⁹ has coincided with the emergence of a new wave of scholarship covering the main legal challenges related to urban warfare. This is not by chance: although the conduct of military operations in the urban environment is far from being unprecedented, the processes of globalization, with the demographic predominance of urban over rural areas, have brought back war in cities and posed new challenges with respect to the effective application of IHL.

Urban fighting makes the implementation of IHL more demanding than in open territory because of the proximity of military objectives to protected persons and objects. Undoubtedly, cities are reshaping international law, also with respect to the law of armed conflicts. However, this dynamic has less to do with the active role of cities as global actors. Rather, the devastating humanitarian consequences of urban warfare have raised new questions regarding how relevant rules of IHL are interpreted and applied. The issue of the legal status of cities mainly remains that of an object of regulation. What emerges are the multiple dimensions that any city has: as a densely populated area; as a system of interconnected infrastructures for the provision of essential services; as the seat of political leadership; as cultural property.

2. WAR IN CITIES: THE DEFINING FEATURES OF URBAN CONFLICTS AS CHALLENGES TO INTERNATIONAL HUMANITARIAN LAW

At the beginning of this century, two overall trends encompassing the present-day armed conflicts were recognized: the civilianization¹⁰ as well as the urbanization of warfare.¹¹ Not only has the nature of war manifestly changed, but also central to this change has been the impact on the civilian population. In recent

⁷ BEEVOR, “Preface”, in *I Saw My City Die: Voices from the Front Lines of Urban Conflict in Iraq, Syria and Yemen*, Geneva, 2020, p. 7 ff.

⁸ WENGER and MASON, “The Civilianization of Armed Conflict: Trends and Implications”, IRRC, 2008, p. 835 ff., p. 842.

⁹ AUST and NIJMAN, “The Emerging Role of Cities in International Law – Introductory Remarks on Practice, Scholarship and the Handbook”, in AUST and NIJMAN (eds.), *Research Handbook on International Law and Cities*, Cheltenham, 2021, p. 1 ff.

¹⁰ See BARTOLINI, “The ‘Civilianization’ of Contemporary Armed Conflicts”, in RUIZ FABRI, WOLFRUM and GOGOLIN (eds.), *Select Proceedings of the European Society of International Law*, Vol. 2, Oxford/Portland, 2008, p. 570 ff.

¹¹ See HILLS, *Future War in Cities: Rethinking a Liberal Dilemma*, London, 2004; GRAHAM (ed.), *Cities, War and Terrorism: Towards an Urban Geopolitics*, Oxford, 2004.

decades, urban centres have been vulnerable to conflict for their specific strategic value: “as a core hub of people, power, economic activity, social institutions, history, and culture, and an embodiment of national identities, controlling cities and their inhabitants is seen as strategically critical by belligerents”.¹² Strategic studies on urban conflicts have focused on the linkage between the increased demographic pressures on urban systems, combined with the attractiveness of such spaces for non-State armed groups.¹³ This provides part of the explanation for the overall trend towards the “civilianization of armed conflicts”. Particularly in non-international armed conflicts, the relationship between civilians and combatants risks becoming complex and dynamic: civilians are victims, but they might also be perpetrators.¹⁴ The phenomenon of civilianization – including the recourse to private military and security companies – definitely poses a challenge to the cardinal principle of distinction: fundamental in this regard is the notion of “direct participation in hostilities”, the content of which the ICRC has sought to clarify,¹⁵ insofar as civilians lose their protection against attacks when and for such time as they directly participate.¹⁶

The concept of “urban warfare” has progressively entered the lexicon of the debate on the challenges posed by modern conflicts to international humanitarian law. Offering a definition of urban warfare is not an easy task as the literature on the subject remains quite fragmented by discipline and areas of analysis. According to a recent study, urban warfare is defined by the interplay of three factors: “the scale and geography of urban settlements, in which fighting occurs, the weaponry available to the combatants and the size of military forces – and their type”.¹⁷ Military doctrines have sought to identify the main features of the “urban environment”, essentially focusing on three parts: a complex man-made physical terrain, a population of significant size and density, and a supporting infrastructure.¹⁸ The urban terrain is described as multidimensional since military activities occur both in the external space (*outside* buildings and subterranean areas) as well as in the internal space (*within* buildings).¹⁹ Interestingly,

¹² GISEL et al., “Urban Warfare: An Age-old Problem in Need of New Solutions”, Humanitarian Law & Policy Blog, 27 April 2021, available at: <<https://blogs.icrc.org/law-and-policy/2021/04/27/urban-warfare/>>.

¹³ See SAMPAIO, “Before and after Urban Warfare: Conflict Prevention and Transitions in Cities”, IRRC, 2016, p. 71 ff.

¹⁴ WENGER and MASON, *cit. supra* note 8, p. 843.

¹⁵ See ICRC, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, Geneva, 2009, p. 11: “[a] continuous shift of the conduct of hostilities into civilian population centres has led to an increased intermingling of civilians with armed actors and has facilitated their involvement in activities more closely related to military operations”.

¹⁶ The rule is contained in both Art. 51(3) of Additional Protocol I and Art. 13(3) of Additional Protocol II.

¹⁷ KING, *Urban Warfare in the Twenty-First Century*, Cambridge, 2021, p. 15.

¹⁸ Headquarters, US Department of the Army (HQDA) and Headquarters, US Marine Corps (HQMC), *Urban Operations*, Army Techniques Publication (ATP) 3-06/Marine Corps Techniques Publication (MCTP) 12-10B, Washington DC, 2017, p. 1.

¹⁹ *Ibid.*, p. 1-4.

attempts have been made to differentiate the notion of “urban warfare” *stricto sensu* from other situations of military operations directed against cities and towns, like “long-range aerial strikes or artillery bombardments of urban areas in which infantry is not deployed in a contact zone with the enemy”.²⁰ In particular, it was authoritatively stated that the expression “urban warfare” – which refers to “intense and sustained fighting by ground troops for effective control of densely built-up (mostly residential) localities” – should not be confused with that of “siege warfare”, which is characterized by the resolve “to overcome resistance not through a ground assault but by forcing the opponent to submit as a consequence of running out of food and other resources”.²¹ However, other authors warned against attaching too much importance to this distinction: whereas urban battles encompassed entire cities in the 20th century, today “the urban battle has coalesced into a series of localized micro-sieges in which combatants struggle over buildings, streets and districts”.²²

Indeed, the re-emergence of the siege, particularly of urban areas, has been a qualifying aspect of contemporary armed conflicts. Its modern manifestations have been described as a blending of the traditional definition with concentric attacks: “modern sieges are not necessarily characterized by a blockade, but more by an isolation of an adversary through encirclement while maintaining sufficient firepower against the besieged to ensure steady pressure”.²³ When referring to the siege of Sarajevo, the International Criminal Tribunal for the former Yugoslavia had already stressed that “this was not a siege in the classical sense of a city being surrounded, it was certainly a siege in the sense that it was a military operation, characterized by a persistent attack or campaign over a period of fourteen months, during which the civilian population was denied regular access to food, water, medicine and other essential supplies, and deprived of its right to leave the city freely at its own will and pace”.²⁴ On various occasions in recent years, the UN Security Council expressed grave alarm at the significant deterioration of the humanitarian situation in Syria, in particular at “the dire situation of hundreds of thousands of civilians trapped in besieged areas”,²⁵ affirming that “sieges directed against civilian populations in Syria are a violation of international humanitarian law” and calling for the immediate lifting of all sieges”.²⁶

It is important to note that the UN Security Council has devoted specific meetings to the general topic of the “protection of civilians in urban settings”. In one of them, held in February 2022, the ICRC President Peter Maurer sum-

²⁰ DINSTEN, “The Special Dimensions of Urban Warfare”, *Israel Yearbook on Human Rights*, 2020, p. 1 ff., p. 2.

²¹ *Ibid.*

²² KING, *cit. supra* note 17, p. 16.

²³ See FOX, “The Reemergence of the Siege: An Assessment of Trends in Modern Land Warfare”, *Landpower Essay*, Vol. 18, No. 2, 2018, p. 2, available at: <<https://www.ousa.org/publications/reemergence-siege-assessment-trends-modern-land-warfare>>.

²⁴ *Prosecutor v. Dragomir Milošević*, Case No. IT-98–29/1-T, Judgment of 12 December 2007, para. 751.

²⁵ UN Doc. S/RES/2139 (2014).

²⁶ UN Doc. S/RES/2401 (2018).

marized the negative impact of the urbanization of conflicts by emphasizing the “mounting unacceptable harm to civilians of warfare in urban areas” as well as the “attacks on interconnected infrastructure”. In that context he stressed that “the application of IHL and other normative systems to reduce the impact of war in urban areas is objectively complex and needs more sophisticated guidance in order to increase compliance”.²⁷ There has been an increasing awareness in military circles of the need to adapt tactics and policies for armed forces in urban settings. NATO too considers that this environment will be present in current and future conflicts where its forces may participate.²⁸ The emerging information and weapons technologies have led military commanders to conclude that armed forces must be prepared to conduct limited operations in urban terrain: the point has been made that “planning considerations [...] have become increasingly sophisticated and focused on integrating all lines of military capability in order to deliver military effect”.²⁹ It is therefore not by chance that the ICRC took the initiative of developing a series of recommendations aimed at assisting “commanders in ensuring that they train their forces and plan and conduct their operations in a way that limits harm to civilians and others not involved in hostilities [...] and that the dead are treated with respect”.³⁰

3. VIOLENT CITIES AND THE THRESHOLD OF ARMED CONFLICT

The relationship between cities and violence has become even more complex in recent years. A debate about “urban fragility”, as a specific line of inquiry, has emerged within the framework of the relationship between cities and contemporary conflicts.³¹ With unprecedentedly fast urbanization rates, cities have emerged as a new category of fragility in the security and development landscape. In re-

²⁷ UN Doc. S/PV.8953, 25 January 2022, p. 4.

²⁸ See MUÑOZ MOSQUERA, “NATO’s Perspective on Urban Conflicts: Recent Developments”, *The Military Law and the Law of War Review*, 2020, p. 155 ff. In April 2019, the North Atlantic Council issued a concept on NATO Joint Military Operation in an urban environment.

²⁹ STEWART, “The Conduct of Military Operations in the Urban Environment”, *The Military Law and the Law of War Review*, 2020, p. 132 ff., p. 133. Moreover, see COPELAND and SANDERS, “Engaging with the Industry: Integrating IHL into New Technologies in Urban Warfare”, *Humanitarian Law & Policy Blog*, 7 October 2021, available at: <<https://blogs.icrc.org/law-and-policy/2021/10/07/industry-ihl-new-technologies/>>. The authors note that there are two competing views on the impact of technology on civilians during urban warfare: while some argue that the import of precision technologies and enhanced intelligence surveillance and reconnaissance systems can reduce harm to civilians by enabling better distinction, others suggest that technological developments encourage more frequent use of force in urban areas.

³⁰ ICRC, *Reducing Civilian Harm in Urban Warfare: A Commander’s Handbook*, Geneva, 2021, p. 7.

³¹ KLEINFELD and MUGGAH, “No War, No Peace: Healing the World’s Violent Societies”, in DE WAAL (ed.), *Think Peace: Essays for an Age of Disorder*, Washington DC, 2019, p. 27 ff.

cent research on urban violence, the socio-economic, environmental and political aspects of urban fragility present “specific characteristics and unique manifestations” as inhabitants grapple with rapid growth, inequality, segregation, informal settlements, and melting pots of ethnic and political tension.³² Moreover, the city as a “battlefield” of international conflict, including terrorism, has become a standard narrative within the grand saga of the urban age.³³

A key question is to what extent the different manifestations of urban violence could cross the threshold for the application of Common Article 3 and other provisions of humanitarian law applicable in non-international armed conflict. As is well known, “internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature” do not fall within the scope of the definition of armed conflict under both Article 3 common to the four Geneva Conventions and Article 1 of the 1977 Additional Protocol II. Consistent practice of States and international tribunals confirms that two determining criteria are indispensable for classifying a situation of violence as a non-international armed conflict under the lower threshold of Common Article 3: the parties involved must demonstrate a certain level of organization, and the violence must reach a certain level of intensity.³⁴

Non-international armed conflicts were traditionally envisioned as consisting of only those activities “evidencing some sort of politically motivated challenge to State authorities in order to attain political control and authority or displace those of the government”.³⁵ However, new forms of criminal organization seem to put that paradigm into question. The activities of armed gangs in certain urban scenarios could lead to the conclusions that they are highly organized and able to conduct hostilities with the government at the required level of intensity. One might wonder whether the increase in the rate of violence within various Latin-American countries – due to the confrontations between State forces and armed gangs or between these gangs themselves – amounts to armed conflicts of non-international character. As reported by the Global Study on Homicide, released by the United Nations Office on Drugs and Crime (UNODC) in 2019, “in the Americas membership of organized crime groups and gangs is largely responsible for the high homicide rates in that region”.³⁶ Whereas the criteria of organization and intensity certainly are not satisfied in most cases of urban violence in the continent, it has been argued that the drug-related violence between the govern-

³² OECD, *States of Fragility 2020*, Paris, 2020, p. 34.

³³ See RODILES, “The Global Insecure Counter Terrorism City”, in AUST and NIJMAN (eds.), *cit. supra* note 9, p. 214 ff., p. 215.

³⁴ See generally CULLEN, *The Concept of Non-International Armed Conflict in International Law*, Cambridge, 2010; SIVAKUMARAN, *The Law of Non-International Armed Conflict*, Oxford, 2012, pp. 155-156.

³⁵ SCHMITT, “The Status of Opposition Fighters in a Non-International Armed Conflict”, in WATKIN and NORRIS (eds.), *Non-International Armed Conflict in the Twenty-first Century*, Newport, 2012, p. 119 ff., p. 122.

³⁶ UNODC, “Global Study on Homicide 2019: Executive Summary”, July 2019, available at: <<https://www.unodc.org/documents/data-and-analysis/gsh/Booklet1.pdf>>.

ment and the cartels in Mexico could be classified as a non-international armed conflict:³⁷ a position strongly criticized by others.³⁸

A key question to be addressed is if, and to what extent, it is desirable to apply the standards of IHL to address these situations of extreme violence occurring in urban areas, or whether their qualification as an armed conflict would be misleading and even counterproductive. It is a shared view that the suggestion made by the 1952 Commentary that Common Article 3 “should be applied as widely as possible”³⁹ needs to be reconsidered for various reasons. As nowadays international human rights law (IHRL) is much more developed than 70 years ago, the threshold triggering the application of humanitarian law should not be too low: “life and personal dignity are better protected if only IHRL applies”.⁴⁰ As IHL authorizes conduct – such as killing or deprivation of liberty – which would not be admissible under IHRL, its application would tend to exacerbate violence.⁴¹

4. THE PLACE OF CITIES IN THE EARLY CODIFICATION OF IHL: FROM THE NOTION OF “OPEN TOWNS” TO THE CREATION OF “SAFE AREAS” BY THE UN SECURITY COUNCIL

Historical accounts are nonetheless important to better assess the place of cities in the evolution of IHL. One might wonder whether the very concept of *levée en masse* – which originated during the French revolution and was then incorporated into the first codified rules of armed conflict⁴² – was related to the mobilization of the citizenry particularly within urban contexts.⁴³ Included in all the

³⁷ “Armed Conflict in Mexico in 2012”, in CASEY-MASLEN (ed.), *The War Report 2012*, Oxford, 2013, p. 127. The Rule of Law in Armed Conflicts (RULAC) online portal also qualifies the situation in Mexico as a non-international armed conflict: <<https://www.rulac.org/browse/countries/mexico>>.

³⁸ See RODILES, “Law and Violence in the Global South: The Legal Framing of Mexico’s ‘NARCO WAR’”, *Journal of Conflict and Security Law*, 2018, p. 269 ff.; CRAWFORD (E.), *Identifying the Enemy: Civilian Participation in Armed Conflict*, Oxford, 2015, p. 183; DINSTEIN, *Non-International Armed Conflicts in International Law*, 2nd ed., Cambridge, 2021, p. 17.

³⁹ See PICTET (ed.), *Commentary on the Geneva Conventions of 12 August 1949, Vol. I: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, Geneva, 1952, p. 50.

⁴⁰ SASSÒLI, *International Humanitarian Law: International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, Cheltenham, 2019, p. 183.

⁴¹ RODILES, “Law and Violence”, *cit. supra* note 32, p. 280; moreover, see FUENTES, “Silent Wars in Our Cities: Alternatives to the Inadequacy of International Humanitarian Law to Protect Civilians during Endemic Urban Violence”, in PERRIN (ed.), *Modern Warfare: Armed Groups, Private Militaries, Humanitarian Organizations, and the Law*, Vancouver/Toronto, 2012, p. 287 ff.

⁴² See Art. 51, Instructions for the Government of Armies of the United States in the Field (Lieber Code), 24 April 1863.

⁴³ See CRAWFORD (E.), “Tracing the Historical and Legal Development of the *Levée en Masse* in the Law of Armed Conflict”, *Journal of the History of International Law*, 2017, p. 329 ff.

subsequent agreements on the law of armed conflict, from the Hague Regulations to the Geneva Conventions that further specified its requirements, a *levée en masse* occurs when inhabitants of a non-occupied territory, on the approach of the enemy, spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war. Under IHL, participants in a *levée en masse* are entitled to combatant privilege and prisoner of war status. Although it was suggested that advances in military technology had rendered the concept obsolete, the international armed conflict between Ukraine and Russia posed the question of *levée en masse* again, with respect to the correct qualification to be given to the initiatives taken by Ukrainian civilians taking arms to fight against Russian invaders. The point has been made that, even if it could not be excluded in the early days of the invasion, the “level of involvement on the part of the Ukrainian government would seem to preclude the existence of a *levée en masse*, by eliminating the ‘spontaneity’ element of a *levée*”.⁴⁴

In any case, since the early codification efforts of the laws of war in the 19th century, cities and other urban areas were considered as an object of protection: States, indeed, agreed on the importance of protecting the civilian population, by introducing a specific prohibition on attacking “open towns”. While this notion appeared in Article 15 of the 1874 Brussels Declaration,⁴⁵ the phrase was later abandoned in Article 25 of the Hague Regulations of 1907, which forbade “the attack or bombardment by any means whatever, of towns, villages, habitations, or buildings, which are not defended”.⁴⁶

On several occasions during the Second World War, belligerents declared towns to be “open towns”, claiming on that ground their exemption from lawful bombardment from the air. The declaration of Rome as an open city by the Italian Government in August 1943 was actually seen as “a public request to the Allies to state the conditions under which they would discontinue their bombing attacks on the city”.⁴⁷ Interestingly, the reasons why the Allies were not prepared to exempt Rome from bombardment were given by the Under-Secretary to the UK Foreign Office, in an answer to a question in the House of Commons in May 1944: “[n]o commitments have been made to accede to the request that Rome shall be treated as an open city. The German Army is still using its environs for military purposes”.⁴⁸

⁴⁴ CRAWFORD (E.), “Armed Ukrainian Citizens: Direct Participation in Hostilities, *Levée en Masse*, or Something Else?” EJIL: Talk!, 1 March 2022, available at: <<https://www.ejiltalk.org/armed-ukrainian-citizens-direct-participation-in-hostilities-levée-en-masse-or-something-else/>>.

⁴⁵ Project of an International Declaration concerning the Laws and Customs of War, Brussels, 27 August 1874.

⁴⁶ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907.

⁴⁷ JENNINGS, “Open Towns”, BYIL, 1945, p. 258 ff., p. 261.

⁴⁸ See *ibid.*, p. 263.

However, it must be clear that the question of whether a town is or is not an open town is distinct from whether it does or does not contain military objectives: an authoritative definition of open or undefended town described it as one “which is so completely undefended from within or without that the enemy may enter and take possession of it without fighting or incurring casualties”.⁴⁹ In other words, the reason for the prohibition is that there is no military need to attack a place that is not being defended. A prohibition on attacking “non-defended localities” was included in the 1977 Additional Protocol I: under Article 59, a party to the conflict may declare as a non-defended locality “any inhabited place near or in a zone where armed forces are in contact which is open for occupation by an adverse Party”. Moreover, this provision further clarifies the required conditions for the establishment of a non-defended locality, namely: evacuation of all combatants, as well as of weapons and military equipment; no hostile use of fixed military equipment; no act of hostility by the authorities or by the population; no activity in support of military operations.⁵⁰ The prohibition of directing an attack against a non-defended locality has been considered as a norm of customary international law applicable also in non-international armed conflict,⁵¹ and the Statute of the International Criminal Court includes the conduct of “intentionally attacking towns, villages, dwellings or buildings which are undefended and which are not military objectives”⁵² as a war crime in international armed conflicts.

“Non-defended localities” belong to the category of “protected areas” under IHL, which comprise zones with different nomenclatures (hospital zones, neutralized zones, demilitarized zones), having in common the removal of the area from the hostilities and the aim of providing shelter and care to the wounded and sick, pregnant women, and to civilians generally.⁵³ The notion of “safe area” – together with other expressions, like safe havens, neutralized zones, UN protected areas – has been employed by the UN Security Council in the exercise of its powers under Chapter VII of the UN Charter, to individuate specific zones, including urban centres, with the purpose of protecting the civilian population from the effect of the hostilities. For instance, during the conflict in the Balkans, the cities of Srebrenica, Sarajevo, Goradze, Tuzla, Zepa, and Bihac were declared safe areas, free from attacks and from any other hostile act.⁵⁴ However, the approach of the UN Security Council was criticized, due to the difficulties in

⁴⁹ *The Law of War on Land, being Part III of the Manual of Military Law*, Her Majesty's Stationery Office, 1958, para. 290.

⁵⁰ RONZITTI, “Protected Areas”, in CLAPHAM, GAETA and SASSÒLI (eds.), *The 1949 Geneva Conventions: A Commentary*, Oxford, 2015, p. 369 ff., p. 377.

⁵¹ HENCKAERTS and DOSWALD-BECK, *Customary International Humanitarian Law*, vol. I: Rules, Cambridge, 2005, p. 122: Rule 37.

⁵² Art. 8(2)(b)(v) of the Statute of the International Criminal Court.

⁵³ RONZITTI, *cit. supra* note 50, p. 379.

⁵⁴ UN Doc. S/RES/819 (1993); UN Doc. S/RES/824 (1993). See MARTIN, “Theatre of Operations”, in WELLER (ed.), *The Oxford Handbook of the Use of Force in International Law*, Oxford, 2015, p. 753 ff., p. 767; LAVOYER, “International Humanitarian Law, Protected Zones and the Use of Force”, in BIERMANN and MARTIN (eds.), *UN Peacekeeping in Trouble: Lessons Learned from the Former Yugoslavia*, Aldershot, 1998, p. 262 ff.

implementing a security zone without the agreement of the parties to a conflict:⁵⁵ as noted by the report of the UN Secretary-General on the fall of Srebrenica, “[p]rotected zones and safe areas can have a role in protecting civilians in armed conflict, but it is clear that either they must be demilitarized and established by the agreement of the belligerents, as in the case of the ‘protected zones’ and ‘safe havens’ recognized by IHL, or they must be truly safe areas, fully defended by a credible military deterrent. The two concepts are absolutely distinct and must not be confused”.⁵⁶ In other terms, “safe areas” presuppose that the establishing entity, such as the UN, is willing and able to defend them militarily: “if that is not the case, these zones endanger the war victims they receive, as evidenced by the tragedy of Srebrenica”.⁵⁷

In any case, the UN Security Council has insisted on the importance of establishing safe areas, indicating “its willingness to consider the appropriateness and feasibility of temporary security zones and safe corridors for the protection of civilians and the delivery of assistance in situations characterized by the threat of genocide, crimes against humanity and war crimes against the civilian population”.⁵⁸

5. CITIES AS “POPULATED AREAS”: PROTECTING CIVILIANS FROM THE EFFECTS OF HOSTILITIES

Academic debates⁵⁹ and diplomatic efforts in recent years have shed light on the legal implications of armed conflicts in cities. The significant amount of literature on the international law applicable to urban and siege warfare has helped to individuate the three groups of rules which are particularly relevant to that context. As civilians living in cities and towns have come under fire from heavy bombing and shelling, the first set comprises the rules governing the conduct of hostilities, which seek to strike a careful balance between military necessity and humanitarian considerations. The second set of rules, which finds application in besieged areas, includes the prohibition of starvation of civilians as a method of warfare, as well as the legal discipline of humanitarian relief operations. A third series of rules refers to evacuations, as a way of alleviating the adverse effects of

⁵⁵ See GILLARD, “‘Safe Areas’: The International Legal Framework”, IRRC, 2017, p. 1075 ff., p. 1088.

⁵⁶ Report of the Secretary-General Pursuant to General Assembly Resolution 53/35: The Fall of Srebrenica, UN Doc. A/54/549, 15 November 1999, para. 499.

⁵⁷ SASSÒLI, *cit. supra* note 40, p. 378.

⁵⁸ UN Doc. S/RES/1296 (2000).

⁵⁹ Both the IRRC and the Military Law and the Law of War Review dedicated monographic issues to “urban warfare” in 2016 and 2020, respectively. Moreover, in 2020, the International Institute of Humanitarian Law and the International Committee of the Red Cross (ICRC) jointly organized the Sanremo Round Table on the topic: see VENTURINI and BERUTO (eds.), *New Dimensions and Challenges of Urban Warfare*, Milan, 2021.

sieges on civilians.⁶⁰ From the viewpoint of IHL, cities become “visible”, once they are portrayed more as “populated areas” and “networks of critical infrastructures”, than as “centres of authority”.⁶¹

Whereas attacks on “open towns” and other “undefended localities” are prohibited, “defended localities” might constitute legitimate military objectives: however, it does not follow that cities *in toto* become military objectives simply because some combatants resisting enemy forces remain there.⁶² Since the end of the Second World War, the evolution of the law on the conduct of hostilities has been characterized by a shift in focus from the prohibition of attacks on non-defended towns, and villages, dwellings and buildings to the rule that only military objectives may be attacked.⁶³ In this regard, Article 51(5)(a) of Additional Protocol I prohibits, for its indiscriminate nature, “an attack [...] which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects”.

The distinguishing feature of urban fighting is the proximity of military objectives with civilians and civilian objects: such proximity creates significant challenges for belligerents to fully comply with the cardinal principle of distinction between legitimate military targets and persons protected against direct attacks. A major humanitarian challenge is the damage caused by the use of means and methods of warfare that were designed for use in open battlefields: in the last decade, the ICRC has warned against the use of explosive weapons with a wide impact area in populated areas as one of the main causes of civilian harm in today’s armed conflicts, because of their widespread and reverberating effects.⁶⁴ The ICRC has clearly emphasized that the combination of the following two factors – the concentration of civilians and civilian objects and the wide area effects of the weapons used – gives rise to a significant likelihood of indiscriminate attacks.⁶⁵

⁶⁰ GILLARD, “Sieges, the Law and Protecting Civilians”, Chatham House Briefing, June 2019.

⁶¹ On the shifting status of cities and the different manifestations of urban areas in international law, see NESI, “The Shifting Status of Cities in International Law? A Review, Several Questions and a Straight Answer”, *IYIL*, 2020, p. 15 ff.

⁶² OETER, “Methods and Means of Combat”, in FLECK (ed.), *The Handbook of International Humanitarian Law*, 3rd ed., Oxford, 2013, p. 115 ff., p. 189.

⁶³ See SASSÒLI, “Military Objectives”, *Max Planck Encyclopedia of Public International Law*, 2015, available at: <<https://opil.ouplaw.com/>>, para. 2.

⁶⁴ ICRC, “International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Report prepared for the 31st International Conference of the Red Cross and Red Crescent, 28 November-1 December 2011”, Geneva, October 2011, p. 40; moreover, ICRC, “International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Report prepared for the 32nd International Conference of the Red Cross and Red Crescent, 8-10 December 2015”, Geneva, October 2015, p. 47; see also BORRIE and BREHM, “Enhancing Civilian Protection from Use of Explosive Weapons in Populated Areas: Building a Policy and Research Agenda”, *IRRC*, 2011, p. 4 ff.

⁶⁵ ICRC, *Explosive Weapons with Wide Area Effects: A Deadly Choice in Populated Areas*, Geneva, January 2022, p. 86.

The annual UN Secretary-General's report on the protection of civilians in armed conflicts noted that, "[w]hen explosive weapons were used in populated areas [in 2020], a total of 88 per cent of those killed and injured were civilians, compared with 16 per cent in other areas".⁶⁶ Moreover, many victims of explosive weapons face lifelong disabilities and grave psychological trauma: "the blast, fragmentation and heat generated by explosive weapons and their secondary effects typically cause multiple types of physical injury, often in combination".⁶⁷ Recent studies have also focused on the reverberating effects of the use of explosive weapons, in space and in time, beyond the immediate impact created at the moment and point of detonation: particularly, the devastating consequences on essential infrastructure and services, with water, electricity and sanitation infrastructure often damaged or destroyed. One must consider that the lack of essential services seriously endangers the lives and well-being of civilians and exposes them to outbreaks of disease and possibly epidemics. In addition, the destruction of homes and infrastructure and contamination from explosive remnants of war also impede the return of displaced persons and the recovery of communities.⁶⁸

In 2019, the devastating consequences for the civilian population induced the UN Secretary-General and the ICRC President to formulate a joint appeal "to States and all parties to armed conflict to avoid the use of explosive weapons with a wide impact area in populated areas".⁶⁹ In that statement, they also recommended States "to develop a political declaration, as well as appropriate limitations, common standards and operational policies in conformity with IHL relating to the use of explosive weapons in populated areas". The diplomatic efforts, promoted by a group of like-minded States, led to the elaboration of a political declaration, which reaffirms the prohibitions against indiscriminate and disproportionate attacks and the obligation to take all feasible precautions in attack.⁷⁰

Although there is no explicit prohibition against attacking military objectives located in populated areas using explosive weapons with a wide impact area, the extensive harm to the civilian population deriving from their employment in

⁶⁶ Protection of Civilians in Armed Conflict: Report of the Secretary-General, UN Doc. S/2021/423, 3 May 2021, para. 10.

⁶⁷ ICRC, *Explosive Weapons*, *cit. supra* note 65, p. 24.

⁶⁸ See *inter alia* TALHAMI and ZEITOUN, "The Impact of Explosive Weapons on Urban Services: Direct and Reverberating Effects across Space and Time", IRRIC, 2016, p. 53 ff.; WILLE and BORRIE, *Understanding the Reverberating Effects of Explosive Weapons: A Research Agenda for the Way Forward*, UNIDIR Resources, Geneva, 2016, p. 5. See, in this regard, the preamble of the Protocol on Explosive Remnants of War (Protocol V to the 1980 Convention on Certain Conventional Weapons), 28 November 2003, which recognizes "the serious post-conflict humanitarian problems caused by explosive remnants of war".

⁶⁹ Joint Appeal by the UN Secretary-General and the President of the International Committee of the Red Cross on the Use of Explosive Weapons in Cities, New York, 18 September 2019; see also United Nations, Office for Disarmament Affairs, *Securing Our Common Future: An Agenda for Disarmament*, New York, 2018, p. 35.

⁷⁰ Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas, 17 June 2022, available at: <<https://www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/EWIPA-Political-Declaration-Final-Rev-25052022.pdf>>.

urban centres raised questions with respect to the application and interpretation of the rules governing the conduct of hostilities. It is important for an analysis aimed at assessing the place of cities in IHL to focus on the notion of “populated areas”. The term “densely populated areas” appears in the context of Article 52 of Additional Protocol I on precautions against the effects of attacks, while Article 51 refers to areas where there is a “concentration of civilians or civilian objects”, including cities, towns, and villages. The notions of “populated areas” and “concentrations of civilians” should be understood as synonymous: interestingly, the latter is included also in Protocol III of the Convention on Certain Conventional Weapons,⁷¹ which defines it as “any concentration of civilians, be it permanent or temporary, such as inhabited parts of cities, or inhabited towns or villages, or as in camps or columns of refugees or evacuees, or groups of nomads”.⁷²

In consideration of the fact that explosive weapons with a wide impact area are not indiscriminate *by nature*,⁷³ cities and other “populated areas” are considered by the relevant rules of IHL as an *environment* that may render their use indiscriminate, along with certain methods or means of combat that can be lawfully employed in other circumstances, like in open battlefields.⁷⁴ By way of example, given that indiscriminate attacks include those that use means of warfare “which cannot be directed at a specific military objective”,⁷⁵ the ICRC has observed that “there are inherent difficulties in directing attacks using indirect-fire weapon systems such as artillery and mortars, in particular those employing unguided munitions, against a specific military objective”,⁷⁶ in light of their inaccuracy.

Moreover, the point has been made that further clarification is necessary with respect to the application of the rules on proportionality and on precautions in attack, including the specific content of the concepts on which they rely: “incidental civilian harm”, “military advantage”, and “excessiveness”.⁷⁷ A critical element of the proportionality assessment of collateral damage to civilians and

⁷¹ Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, Geneva, 10 October 1980.

⁷² Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III), Geneva, 10 October 1980.

⁷³ See GISEL, “The Use of Explosive Weapons in Densely Populated Areas and the Prohibition of Indiscriminate Attacks”, in GREPPI (ed.), *Conduct of Hostilities: The Practice, the Law and the Future*, Milan, 2015, p. 103 ff.

⁷⁴ ICRC, “International Humanitarian Law”, 2015, *cit. supra* note 64, p. 51.

⁷⁵ Art. 51(4)(b) of Additional Protocol I.

⁷⁶ ICRC, *Explosive Weapons*, *cit. supra* note 65, p. 91.

⁷⁷ The principle of proportionality is anchored in Art. 51(5)(b) of Additional Protocol I, which prohibits as indiscriminate: “an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated”. See CANNIZZARO, “Proportionality in the Law of Armed Conflict”, in CLAPHAM and GAETA (eds.), *The Oxford Handbook of International Law in Armed Conflict*, Oxford, 2014, p. 332 ff.; ILA Study Group on the Conduct of Hostilities in the 21st Century, “The Conduct of Hostilities and International Humanitarian Law: Challenges of 21st Century Warfare”, *International Law Studies*, 2017, p. 353 ff.

civilian objects as excessive in relation to the concrete and direct military advantage anticipated, is that it must be performed *ex ante* from the perspective of the “reasonable commander”.⁷⁸ What is reasonably foreseeable by a commander in a given case should be informed by past experience, including the ever-growing experience gathered from other urban warfare scenarios, in particular with respect to the reverberating effect of the use of explosive weapons: for instance, “while the average ‘reasonable person’ on the street might not be expected to foresee that destroying electricity facilities would cut off the civilian fresh water supply, the reasonable military commander, who is aware of the interconnectedness of infrastructure, would be expected to foresee this consequence”.⁷⁹ In its report on Ukraine, the OSCE Moscow Mechanism’s Mission of Experts stressed that the (un)availability of precise weapons did not play any role in the respect of the proportionality rule: “[i]f an attacker does not have sufficiently precise weapons to comply with the proportionality rule in case of a given attack, the attack is unlawful”.⁸⁰

Finally, new factors determined by the contemporary urbanization of conflicts continue to invigorate the debate on the legal challenges posed by the use of “human shields”, as a method of warfare prohibited by IHL. In addition to the issue of voluntary human shields directly participating in hostilities,⁸¹ a key issue has been whether the presence of involuntary human shields must be taken into account by an attacker in considering whether the incidental loss or damage is proportionate to the military advantage expected.⁸² Given that a breach of the rule prohibiting the use of human shields does not release the attacker from its obligations to take precautions to protect the civilians affected,⁸³ it was submitted that the proportionality test must be relaxed in such exceptional circumstances. However, this proposition – insofar as involuntary human shields “should somehow carry less weight than other civilians” – was criticized as creating “a slid-

⁷⁸ See ROBINSON and NOHLE, “Proportionality and Precautions in Attack: The Reverberating Effects of Using Explosive Weapons in Populated Areas”, IRRC, 2016, p. 107 ff., p. 121.

⁷⁹ SASSÒLI and CAMERON, “The Protection of Civilian Objects: Current State of the Law and Issues *de Lege Ferenda*”, in RONZITTI and VENTURINI (eds.), *The Law of Air Warfare: Contemporary Issues*, Utrecht, 2006, p. 35 ff., p. 65. It is noteworthy that the importance of considering civilian services and infrastructure in the targeting process has been recognized in a recently published NATO handbook, with the purpose of minimizing long lasting negative effects: NATO, *Protection of Civilians: Allied Command Operations Handbook*, 11 March 2021, p. 25.

⁸⁰ BENEDEK, BÍLKOVÁ and SASSÒLI, “Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes against Humanity Committed in Ukraine since 24 February 2022”, OSCE Moscow Mechanism’s Mission of Experts Report, OSCE Doc. ODIHR.GAL/26/22/Rev.1, 13 April 2022, p. 29.

⁸¹ See ICRC, *cit. supra* note 11, p. 56, on voluntary human shields: “[w]here civilians voluntarily and deliberately position themselves to create a physical obstacle to military operations of a party to the conflict, they could directly cause the threshold of harm required for a qualification as direct participation in hostilities”.

⁸² *The Joint Service Manual of The Law of Armed Conflict*, Joint Service Publication 383, 2004, p. 68, para. 5.22.1.

⁸³ Art. 51(8) of Additional Protocol I.

ing scale of value between humans, usually perpetuating pre-existing structural hierarchies”.⁸⁴

6. CITIES AS “INTERCONNECTED INFRASTRUCTURE OF ESSENTIAL SERVICES”: PROTECTING HOSPITALS AND OBJECTS INDISPENSABLE TO THE SURVIVAL OF THE CIVILIAN POPULATION

The reverberating consequences of the use of explosive weapons in populated areas have been disaggregated into at least three different levels: first, damage and destruction; second, changes in key services caused by the damage and destruction; and finally changes in civilian well-being as a result of the changes in key services caused by the damage and destruction.⁸⁵ This impact-chain is why the humanitarian consequences for civilians of any armed conflict occur on a significantly larger scale in urban areas than in rural ones, given the greater size of the population and its dependency on interconnected critical infrastructure. As emphasized by Norway in the concept note for the Security Council high-level open debate on the topic “war in cities”, that took place in January 2022, “[s]chools, hospitals and other essential infrastructure are attacked and destroyed, depriving civilians of education and health care and services, including vaccines. The supply of food, water, sanitation and electricity is also interrupted”.⁸⁶

In 2021 the UN Security Council unanimously approved Resolution 2573 (2021) on the “protection of objects indispensable to the survival of the civilian population”, which explicitly recognized the importance of protecting essential infrastructure, service provider personnel and consignments used for humanitarian relief operations. This resolution strongly condemns attacks directed against civilian objects, as well as indiscriminate or disproportionate attacks, “resulting in the deprivation of the civilian population of objects indispensable to their survival, as flagrant violations of IHL, deplores the long-term humanitarian consequences of such attacks for the civilian population and demands that all parties to armed conflict immediately put an end to such practices”.⁸⁷

The adoption of Resolution 2573 (2021) should be seen as a step in the direction of developing a contemporary approach regarding the assistance of people in urban areas affected by disruptions to essential services during an armed

⁸⁴ See LAFAZANI, “Human Shields under IHL: a Path towards Excessive Legalization”, *Humanitarian Law & Policy Blog*, 16 November 2021, available at: <<https://blogs.icrc.org/law-and-policy/2021/11/16/human-shields-ihl/>>; in addition, GORDON and PERUGINI, *Human Shields: A History of People in the Line of Fire*, Oakland, 2020, pp. 239-240.

⁸⁵ WILLE and MALARET BALDO, *Menu of Indicators to Measure the Reverberating Effects on Civilians from the Use of Explosive Weapons in Populated Areas*, UNIDIR Resources, Geneva, 2021, p. 3.

⁸⁶ Annex to the letter dated 10 January 2022 from the Permanent Representative of Norway to the United Nations addressed to the Secretary-General: Concept note for the Security Council high-level open debate on the theme “War in cities: protection of civilians in urban settings”, to be held on 25 January 2022, UN Doc. S/2022/23, 11 January 2022, p. 2.

⁸⁷ UN Doc. S/RES/2573 (2021).

conflict, as the ICRC has consistently suggested in recent years.⁸⁸ In addition, previous resolutions had already reiterated the importance of protecting “medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities in armed conflict”, stressing the need for effective investigations “with a view to reinforcing preventive measures, ensuring accountability and addressing the grievances of victims”.⁸⁹ Notwithstanding the special protection afforded to hospitals by an articulated set of IHL rules, attacks against health facilities have dramatically increased in recent years, both in non-international armed conflicts, like in Yemen,⁹⁰ Syria⁹¹ and South Sudan, and in the context of Russia’s invasion of Ukraine.⁹² As of April 2021, the Surveillance System of the World Health Organization had recorded a significant number of attacks on health care in Fragile, Conflict-affected and Vulnerable (FCV) settings: 797 attacks in 2018, 1029 in 2019 and 323 in 2020 across 17 countries and territories.⁹³ In particular, the targeting of hospitals in urban centres should not be seen as a series of sporadic or isolated events, rather their number seems to suggest that they represent a strategy of warfare deliberately aimed at weakening the enemy. Suffice here to recall that, under IHL, civilian hospitals must be respected and protected, but they may not be used to shield military objectives. The protection is lost if “they are used to commit, outside their humanitarian duties, acts harmful to the enemy”.⁹⁴ On various occasions parties to conflict, that were accused of bombing

⁸⁸ ICRC, *Urban Services during Protracted Armed Conflict: A Call for a Better Approach to Assisting Affected People*, Geneva, 2015; moreover, see PULLAN, “The Destruction of Cities: the Vulnerability of Infrastructures in Urban Warfare”, in VENTURINI and BERUTO (eds.), *cit. supra* note 51, p. 49 ff.

⁸⁹ UN Doc. S/RES/2286 (2016).

⁹⁰ Office of the Resident Coordinator and Humanitarian Coordinator for Yemen, “Second attack on Al Thawra Hospital in 10 days threatens health services for hundreds of thousands of people in Taizz City”, UN press release, 18 March 2020.

⁹¹ See *inter alia* Independent International Commission of Inquiry on the Syrian Arab Republic, “Assault on medical care in Syria”, UN Doc. A/HRC/24/CRP.2, 13 September 2013; see the statements by Mark Lowcock, Under-Secretary General for Humanitarian Affairs and Emergency Relief Coordinator and Susannah Sirkin, Director for International Policy and Partnerships, Physicians for Human Rights, at the UN Security Council meeting on the situation in Syria, UN Doc. S/PV.8589, 30 July 2019.

⁹² See the statement of the Executive Director of UNICEF, Ms. Catherine Russell at the UN Security Council meeting on the humanitarian situation in Ukraine, UN Doc. S/PV.8988, 7 March 2022, p. 5: “[w]e remain extremely concerned about attacks on the civilian infrastructure necessary to help children weather the conflict, including schools, hospitals, water and sanitation facilities, and critical energy infrastructure”; in addition, see CHERNOV, “20 Days in Mariupol: the Team that Documented City’s Agony”, Associated Press, 22 March 2022, available at: <<https://apnews.com/article/russia-ukraine-europe-edf7240a9d990e7e3e32f82ca351dede>>.

⁹³ WHO, “Attacks on health care: three-year analysis of SSA data (2018–2020)”, available at: <<https://www.who.int/data/stories/attacks-on-health-care-three-year-analysis-of-ssa-data-2018-2020>>.

⁹⁴ Art. 19 of the Fourth Geneva Convention; Art. 13 of Additional Protocol I; Art. 11(2) of Additional Protocol II; see MIKOS-SKUZA, “Hospitals”, in CLAPHAM, GAETA and SASSÒLI (eds.), *cit. supra* note 50, p. 207 ff., p. 218; BREITEGGER, “The Legal Framework Applicable

healthcare facilities, have indeed justified the attacks on the basis of the existing rules on the discontinuance of special protection.⁹⁵ As these exceptions could be used to further legitimize attacks against medical units, a normative reform was suggested in the sense of introducing an absolute ban:⁹⁶ but this proposal was criticized for the risk of altering the current balance of the entire body of IHL and producing counter-effects upon the treatment of the sick and wounded.⁹⁷

Whereas the protection of medical units dates back to the origins of IHL, the concept of “objects indispensable to the survival of the civilian population” was first introduced in the two Additional Protocols of 1977.⁹⁸ The relevant provisions do not offer a definition: instead, they provide a non-exhaustive list of examples such as “foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works”. The ban on any form of violence against them is considered as belonging to customary international law⁹⁹ and constitutes an expression of the general prohibition against the starvation of civilians as a method of warfare. In 2005, the Eritrea-Ethiopia Claims Commission found that the prohibition of attacks “against drinking water installations and supplies that are indispensable to the survival of the civilian population for the specific purpose of denying them for their sustenance value to the adverse Party had become part of customary international humanitarian law by 1999”.¹⁰⁰ The Commission concluded that Ethiopia had violated this rule by carrying out air strikes on the Harsile water reservoir in February 1999 and June 2000: in its view, the government of Ethiopia had been aware that the reservoir was a vital source of water for the city of Assab.

Although the objects primarily protected under IHL are the food and water supplies of the civilian population, being the basic means of subsistence, this does not exclude that other objects may fall within this category: electric power supply installations often constitute “objects indispensable for the survival of the

to Insecurity and Violence Affecting the Delivery of Health Care in Armed Conflicts and Other Emergencies”, IRRC, 2014, p. 83 ff.

⁹⁵ See, for instance, Press-Conference by Permanent Representative Vassily Nebenzia on “Reports over Alleged Attacks on Healthcare in North-West Syria”, 16 September 2019, available at: <https://russiaun.ru/en/news/press_conference1609>.

⁹⁶ GORDON and PERUGINI, “‘Hospital Shields’ and the Limits of International Law”, EJIL, 2019, p. 439 ff.

⁹⁷ BEER, “Save the Injured – Don’t Kill IHL: Rejecting Absolute Immunity for ‘Shielding Hospitals’”, EJIL, 2019, p. 465 ff.

⁹⁸ CASSESE, “The Geneva Protocols of 1977 on the Humanitarian Law of Armed Conflict and Customary International Law”, UCLA Pacific Basin Law Journal, 1984, p. 55 ff., p. 91.

⁹⁹ See “Rule 54: Attacks against Objects Indispensable to the Survival of the Civilian Population”, in HENCKAERTS and DOSWALD-BECK, *cit. supra* note 51, p. 189.

¹⁰⁰ Eritrea-Ethiopia Claims Commission, Partial Award, *Western Front, Aerial Bombardment and Related Claims – Eritrea’s Claims 1, 3, 5, 9–13, 14, 21, 25, and 26*, Decision of 19 December 2005, in Reports of International Arbitral Awards, vol. XXVI, 2009, p. 291 ff., p. 330, para. 105. See VENTURINI, “International Humanitarian Law and the Conduct of Hostilities in the Case-Law of the Eritrea-Ethiopia Claims Commission”, in DE GUTTRY, POST and VENTURINI (eds.), *The 1998–2000 Eritrea-Ethiopia War and Its Aftermath in International Legal Perspective*, 2nd edn, The Hague, 2021, p. 345 ff., p. 367.

civilian population”, as their elimination would also cause considerable disruption to other elements of the civilian infrastructure.¹⁰¹ Moreover, it must be taken into account that the digital transformation has left civilian infrastructures with entirely novel vulnerabilities and attack surfaces. In recognition of the fact that military cyber capabilities have the potential to severely impact essential societal processes across economic, financial, scientific, cultural, and healthcare domains, it is important to consider the potential impact of cyber warfare directed against smart cities.¹⁰² An emerging field of research has sought to conceptualize data protection in situations of armed conflict: by way of example, it was maintained that “as cyber operations that target objects indispensable for the survival of the civilian population are prohibited, data necessary for the functioning of these especially protected objects and services is protected as well”.¹⁰³

A final comment is again reserved for the representation of the city itself in terms of space: interestingly, in dealing with the disruption of essential services, the ICRC considers the dimension of “urban” as extending beyond the city, to include the network of components supporting those services, which are more often than not located outside the city limits: e.g. those provided by electrical power plants, supply routes, water and wastewater treatment plants.¹⁰⁴

7. SIEGE WARFARE AND THE USE OF STARVATION AS A METHOD OF WARFARE

The year 2022 marked the 30th anniversary of the beginning of the siege of Sarajevo, in which more than 10,000 people died: it was following those events that the question of the legality of siege warfare began to attract new attention. In the *Galić* case, the International Criminal Tribunal for the former Yugoslavia found that the war crime of spreading terror among a civilian population was committed by a campaign of sniping and shelling of civilians which deliberately targeted the routines of everyday city life and thereby intended to put civilians in “extreme fear”.¹⁰⁵ One of the main legal issues arising from the Sarajevo experience was well summarized by the following question: “whether the developments

¹⁰¹ See FLECK, “Methods of Combat”, in ID. (ed.), *The Handbook of International Humanitarian Law*, 4th ed., Oxford, 2021, p. 170 ff., pp. 225-226.

¹⁰² KITCHIN and DODGE, “The (In)Security of Smart Cities: Vulnerabilities, Risks, Mitigation, and Prevention”, *Journal of Urban Technology*, 2017 p. 47 ff.

¹⁰³ GEISS and LAHMANN, “Protection of Data in Armed Conflict”, *International Law Studies*, 2021, p. 556 ff., p. 564; moreover see SCHMITT, “France Speaks out on IHL and Cyber Operations: Part II”, *EJIL: Talk!*, 1 October 2019, available at: <<https://www.ejiltalk.org/france-speaks-out-on-ihl-and-cyberoperations-part-ii/>>.

¹⁰⁴ ICRC, *Urban Services*, *cit. supra* note 88, p. 8.

¹⁰⁵ Trial Chamber I, *Prosecutor v. Stanislav Galić*, Case No. IT9829-T, Judgment of 5 December 2003, p. 137; see SAUL, “Terrorism and International Humanitarian Law”, in ID. (ed.), *Research Handbook on International Law and Terrorism*, 2nd ed., Cheltenham, 2020, p. 192 ff.; BIANCHI and NAQVI, *International Humanitarian Law and Terrorism*, Oxford/Portland, 2011, pp. 222-223.

in the law of armed conflicts have now made it very difficult for a commander to conduct a siege that is both successful and lawful”.¹⁰⁶

In more recent years, as the armed conflict in Syria has entered its second decade, the human suffering and the damage to civil infrastructure on a massive scale have tragically confirmed the effects of the contemporary resurgence of sieges of cities. Already in 2014, the UN Security Council had called upon all parties to immediately lift the sieges of populated areas, by explicitly naming the various locations “the Old City of Homs (Homs), Nubl and Zahra (Aleppo), Madamiyet Elsham (Rural Damascus), Yarmouk (Damascus), Eastern Ghouta (Rural Damascus), Darayya (Rural Damascus)”.¹⁰⁷ On various occasions, the Council reaffirmed that “sieges directed against civilian populations in Syria are a violation of international humanitarian law”, calling for “the immediate lifting of all sieges”, and demanding that “all parties allow the delivery of humanitarian assistance, including medical assistance, cease depriving civilians of food and medicine indispensable to their survival, and enable the rapid, safe and unhindered evacuation of all civilians who wish to leave”.¹⁰⁸ In deploring “the dire humanitarian consequences of the hostilities by the Russian Federation against Ukraine”, the UN General Assembly stressed that “the sieges of cities in Ukraine, in particular the city of Mariupol, further aggravate the humanitarian situation for the civilian population and hamper evacuation efforts, and therefore demands to put an end to these sieges”.¹⁰⁹ On the basis of open-source information, the OSCE Mission of Experts reported in April 2022 that high-resolution satellite images showed, in addition to damaged factory buildings, “burning and destroyed residential buildings and other civilian facilities”¹¹⁰ in Mariupol.

The shared starting point of the existing vast amount of literature on the topic is that sieges are not *per se* an explicitly prohibited method of warfare under IHL,¹¹¹ “as long as their purpose is to achieve a military objective and not to starve the civilian population”.¹¹² Given that the term is not defined under international law, the various definitions proposed over time seem to show a growing trend towards focusing on the urban dimension of the phenomenon: whereas for Dinstein, siege warfare is “encircling an enemy military concentration, a strategic fortress or any other location defended by the enemy, cutting it off from chan-

¹⁰⁶ RIORDAN, “Shelling, Sniping and Starvation: The Law of Armed Conflict and the Lessons of the Siege of Sarajevo”, *Victoria University of Wellington Law Review*, 2010, p. 149 ff., p. 150.

¹⁰⁷ UN Doc. S/RES/2139 (2014), para. 5.

¹⁰⁸ UN Doc. S/RES/2401 (2018), para. 10. Moreover, see “The Siege and Recapture of Eastern Ghouta: conference room paper of the Independent International Commission of Inquiry on the Syrian Arab Republic”, UN Doc. A/HRC/38/CRP.3, 20 June 2018.

¹⁰⁹ UN Doc. A/RES/ES-11/1, 2 March 2022, para. 8.

¹¹⁰ BENEDEK, BÍLKOVÁ and SASSÖLI, *cit.*, *supra* note 80, p. 32.

¹¹¹ See Art. 27 of the 1907 Hague Regulations and Art. 17 of the 1949 Fourth Geneva Convention: both implicitly treat sieges as a lawful method of warfare.

¹¹² HENCKAERTS and DOSWALD-BECK, *cit. supra* note 51, p. 188, Rule 53.

nels of support or supply”,¹¹³ for Karska it is “an operational strategy to facilitate capture of a fortified place such as a city, in such a way as to isolate it from relief in the form of supplies or additional defensive forces”,¹¹⁴ while others describe it as “a method of warfare where an urban area may not be easily accessible, or is heavily defended, which requires the attacking force to conduct a sustainable military operation to achieve control over the urban area”.¹¹⁵ In the report on Ukraine, the OSCE Mission of Experts defined sieges as “a tactic to encircle an enemy’s armed forces, in order to prevent their movement or cut them off from support and supply channels”, with the aim of forcing “the enemy to surrender, including by an attempt to capture the besieged area through hostilities”.¹¹⁶

Having highlighted that the essence of siege warfare is “to capture a location through the starvation of its inhabitants”, Dinstein has made clear that “a siege laid to a defended town inhabited by civilians must be differentiated from one encircling a military fortress”.¹¹⁷ The difference lies in the prohibition against the use of starvation of the civilian population as a method of warfare, contained in Article 54 of Additional Protocol I and in Article 14 of Additional Protocol II. One must also consider that a recent amendment to the Statute of the International Criminal Court has incorporated the war crime of “intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies”, not only in international armed conflicts but also in non-international armed conflicts.¹¹⁸ In 2021, the UN General Assembly once again reaffirmed the prohibition of “starvation of civilians as a method of combat” in its resolution on the right to food.¹¹⁹

Such developments, together with the scale of the recent resurgence in sieges, have reinvigorated the debate on the scope and the content of the prohibition of “starvation of civilians”. It would be impossible to summarize here the variety of views that have been expressed in recent years; still, the majority position considers that the prohibition “as a method of warfare” is limited to situations where a belligerent deliberately starves civilians, based on the notion of “purpose”.¹²⁰ Such view essentially relies on the explanation offered by the ICRC Commentary

¹¹³ See DINSTEIN, *The Conduct of Hostilities under the Law of International Armed Conflict*, 3rd ed., Cambridge, 2016, p. 253; ID., “Siege Warfare and the Starvation of Civilians”, in DELISSEN and TANJA (eds.), *Humanitarian Law of Armed Conflict: Challenges Ahead: Essays in Honour of Frits Kalshoven*, Dordrecht, 1991, p. 145 ff.

¹¹⁴ KRASKA, “Siege”, Max Planck Encyclopedia of Public International Law, 2009, available at: <<https://opil.ouplaw.com/>>, para. 1.

¹¹⁵ VAN DEN BOOGAARD and VERMEER, “Precautions in Attack and Urban and Siege Warfare”, *YIHL*, vol. 20 (2017), 2019, p. 163 ff., p. 165.

¹¹⁶ BENEDEK, BÍLKOVÁ and SASSÓLI, *cit. supra* note 80, p. 31.

¹¹⁷ DINSTEIN, *The Conduct of Hostilities under the Law of International Armed Conflict*, Cambridge, 2004, p. 135.

¹¹⁸ Resolution on Amendments to Article 8 of the Rome Statute of the International Criminal Court, ICC-ASP/18/Res.5, 6 December 2019.

¹¹⁹ UN Doc. A/RES/76/166, 7 January 2022, preamble.

¹²⁰ See *inter alia* AKANDE and GILLARD, “Conflict-Induced Food Insecurity and the War Crime of Starvation of Civilians as a Method of Warfare: The Underlying Rules of International Humanitarian Law”, *JICJ*, 2019, p. 753 ff.

to Article 54 of Additional Protocol I: starvation as a method of warfare would mean “a weapon to annihilate or weaken the population”,¹²¹ i.e. “[t]o use it as a method of warfare would be to provoke it deliberately, causing the population to suffer hunger, particularly by depriving it of its sources of food or of supplies”.¹²²

By emphasizing the urban nature of contemporary sieges, some commentators have nonetheless expressed their concern with respect to a narrow interpretation of this prohibition. In the view of some of them, this could favour a permissible approach, leading to sieges of cities being considered as lawful, as long as their purpose is to achieve a military objective and not to starve the civilian population: in other terms – it was observed – it would be in practice very difficult to prove that the purpose of a siege is the starvation of civilians. For that reason, it has been argued that “incidental” starvation is prohibited in most circumstances through a combined reading of Article 54, paragraph 1 of Additional Protocol I with the subsequent paragraph 2, protecting the objects indispensable to the survival of the civilian population.¹²³ In addition, the point has been made that the principle of proportionality could be relevant, by considering a siege as an attack.¹²⁴ Others have relied on a prohibition against indiscriminate methods of warfare, to claim that a “city-wide block on commodities [...] is unlawful not just because the starvation of civilians is a result, and one achieved through a method of warfare that is by its nature indiscriminate, but additionally because the method of warfare chosen is incapable of bringing about the military objective of starving enemy forces”.¹²⁵ A further line of inquiry has also challenged a restrictive interpretation of the corresponding war crime of starvation – that focuses on the concepts of “intent” and “method” – with the aim of including within its contours “actions of belligerents who engage deliberately in the deprivation of objects indispensable to civilian survival even if they do so without the goal of harming civilians”.¹²⁶ Interestingly, the OSCE Mission of Experts on Ukraine ob-

¹²¹ SANDOZ et al. (eds.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Geneva, 1987, p. 653, para. 2090.

¹²² *Ibid.*, para. 2089.

¹²³ Cf. WATTS, “Under Siege: International Humanitarian Law and Security Council Practice concerning Urban Siege Operations”, Counterterrorism and Humanitarian Engagement Project, Harvard Law School Project on Law and Security, May 2014, p. 11: “imposing conditions of physical isolation – which, as stated previously, is perhaps the *sine qua non* of siege – is almost entirely prohibited with respect to life-sustaining objects for civilians during urban siege under AP I”.

¹²⁴ GAGGIOLI, “Are Sieges Prohibited under Contemporary IHL?”, EJIL: Talk!, 30 January 2019, available at: <<https://www.ejiltalk.org/joint-blog-series-on-international-law-and-armed-conflict-are-sieges-prohibited-under-contemporary-ihl/>>; NUS, “Humanizing Siege Warfare: Applying the Principle of Proportionality to Sieges”, IRRIC, 2020, p. 683 ff.

¹²⁵ See LATTIMER, “Can Incidental Starvation of Civilians Be Lawful under IHL?”, EJIL: Talk!, 26 March 2019, available at: <www.ejiltalk.org/can-incident-starvation-of-civilians-be-lawful-under-ihl/>.

¹²⁶ See DANNENBAUM, “Siege Starvation: A War Crime of Societal Torture”, Chicago Journal of International Law, 2022, p. 368 ff.; more recently, ID., “Legal Frameworks for Assessing the Use of Starvation in Ukraine”, Just Security, 22 April 2022, available at:

served that “a massive destruction of objects necessary for the survival of civilian population or a protracted siege of a town/city accompanied by the refusal to allow for the evacuation of civilian population through safe humanitarian corridors and to provide for or make possible safe delivery of humanitarian assistance to this population”¹²⁷ may serve as indications of the resort to a deliberate strategy of starvation of the civilian population.

UN human rights fact-finding bodies have been engaged in the discussion on the question of “starvation of civilians”: in 2020, the Commission on human rights in South Sudan concluded that it “has reasonable grounds to believe that, between January 2017 and November 2018, Government forces of South Sudan intentionally deprived the Fertit and Luo communities living under opposition control of critical resources, thereby violating the rule which protects civilians from starvation”.¹²⁸ In its report of September 2019, the Group of Eminent Experts on Yemen dealt with sieges, including that of Ta’izz city by the Houthis-Saleh fighters, in the period between August 2015-April 2016. The importance of the report lies, *inter alia*, in its focus on the IHL rules on humanitarian relief:¹²⁹ by referring to Article 18 of Additional Protocol II, the Group of Experts noted that “parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, provided the relief is impartial and humanitarian in character and subject to the parties’ right of control. The withholding of consent to humanitarian access that leads to starvation is considered arbitrary, hence unlawful”.¹³⁰ Article 18 indeed provides that “relief actions [...] shall be undertaken subject to the consent of the High Contracting Party concerned”: in another section of the report, the Experts significantly observed that “[c]onsent may not be withheld for arbitrary reasons, and restrictions on humanitarian activities may only be justified in case of imperative military necessity and on a temporary basis”.¹³¹

Finally, there might be circumstances of urban and siege warfare in which the most effective way to spare the civilian population from the effects of the hostilities is through evacuations: indeed, the establishment of “humanitarian corridors” was a major point of discussion during the otherwise difficult negotiations between Ukraine and Russia, during the first weeks of the invasion by the

<<https://www.justsecurity.org/81209/legal-frameworks-for-assessing-the-use-of-starvation-in-ukraine/>>.

¹²⁷ BENEDEK, BÍLKOVÁ and SASSÓLI, *cit. supra* note 80, p. 74.

¹²⁸ “‘There is nothing left for us’: starvation as a method of warfare in South Sudan: Conference room paper of the Commission on Human Rights in South Sudan”, UN Doc. A/HRC/45/CRP.3, 5 October 2020, para. 144.

¹²⁹ See, in general, LATTANZI, “Humanitarian Assistance”, in CLAPHAM, GAETA and SASSÓLI (eds.), *cit. supra* note 50, p. 231 ff.

¹³⁰ Situation of human rights in Yemen, including violations and abuses since September 2014: Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen, UN Doc. A/HRC/42/CRP.1, 3 September 2019, para. 745.

¹³¹ *Ibid.*, para. 511.

Russian forces in March 2022.¹³² The delegations agreed “to possible temporary ceasefires”, but only “in places where humanitarian corridors were being set up and for the duration of civilian evacuations”.¹³³

The possibility of “local agreements for the removal from besieged or encircled areas, of wounded, sick, infirm, and aged persons, children and maternity cases” is provided by Article 17 of the Fourth Geneva Convention. As a way for evacuating the civilian population, “humanitarian corridors” are defined by the UN Office for the Coordination of Humanitarian Affairs (OCHA) as “[s]pecific routes and logistical methods agreed upon by all relevant parties to allow the safe passage of humanitarian goods and/or people from one point to another in an area of active fighting”.¹³⁴ The ICRC committed itself to lead the safe passage of civilians, through a “humanitarian corridor”, out of the besieged port city of Mariupol in southern Ukraine, “provided all the parties agree to the exact terms, including the route, the start time, and the duration”.¹³⁵ From the viewpoint of IHL, these have been qualified as temporary demilitarized zones, falling under the protection of Article 60 of Additional Protocol I and the corresponding rule of customary international law.¹³⁶ Therefore, not only civilians taking part in an evacuation enjoy general protection against dangers arising from military operations, under Article 51(1) of Additional Protocol I, but the parties remain under an obligation not to attack a demilitarized zone. After the first month of the armed conflict, Ukraine declared that almost 200,000 civilians were evacuated from frontline areas via humanitarian corridors.¹³⁷ they joined the impressive number of Ukrainians that were forced to flee their homes seeking safety, protection and assistance. During the same period, more than four million refugees from Ukraine crossed borders into neighbouring countries, and many more have been forced to move inside the country.¹³⁸

¹³² “Ukraine says talks with Russia agreed on humanitarian corridors”, Reuters, 3 March 2022, available at: <<https://www.reuters.com/world/europe/ukraine-says-talks-with-russia-agreed-humanitarian-corridors-2022-03-03/>>.

¹³³ “Ukraine: Russia agrees need to create humanitarian corridors”, BBC News, 3 March 2022, available at: <<https://www.bbc.com/news/world-europe-60611470>>.

¹³⁴ OCHA, “Glossary of Terms: Pauses During Conflict”, available at: <<https://www.unocha.org/sites/unocha/files/dms/Documents/AccessMechanisms.pdf>>.

¹³⁵ ICRC, “Ukraine: ICRC preparing to facilitate safe passage of civilians from Mariupol”, 31 March 2022, available at: <<https://www.icrc.org/en/document/ukraine-icrc-preparing-facilitate-safe-passage-civilians-mariupol>>.

¹³⁶ “Rule 36. Demilitarized Zones”, in HENCKAERTS and DOSWALD-BECK, *cit. supra* note 51, p. 120. See CHAN, “The International Law of Protected Spaces and the Collapse of the Humanitarian Corridors in Ukraine”, EJIL: Talk!, 11 March 2022, available at: <<https://www.ejiltalk.org/the-international-law-of-protected-spaces-and-the-collapse-of-the-humanitarian-corridors-in-ukraine/>>; ROITHMAIER, “Between Relief and War Crimes: ‘Humanitarian Corridors’ in the Russia-Ukraine War”, Völkerrechtsblog, 16 March 2022, available at: <<https://voelkerrechtsblog.org/between-relief-and-war-crimes/>>.

¹³⁷ “Ukraine has evacuated 190,000 civilians from battle zones, says deputy PM”, Reuters, 19 March 2022, available at: <<https://www.reuters.com/world/europe/ukraine-has-evacuated-190000-civilians-battle-zones-says-deputy-pm-2022-03-19/>>.

¹³⁸ UNHCR, “UN High Commissioner for Refugees calls for immediate end to Ukraine war, which has uprooted over 10 million people”, 31 March 2022, available at: <<https://www.unhcr.org/news/press/2022/03/22-ukraine-war-refugees.html>>.

8. CONCLUSION

Undoubtedly, the increase in hostilities conducted in urban areas is putting pressure on well-established IHL norms. Parties to conflict need to recognize that they cannot fight in urban and other populated areas in the way that they would in open battlefields. The debate on the use of explosive weapons with wide area effects in populated areas has shown the importance of considering not only the immediate devastating effects on civilians but also the reverberating effects, i.e. those “that are not directly and immediately caused by the attack, but are nevertheless the product thereof”.¹³⁹ The representation of cities not only as “populated areas” but also as “interconnected infrastructure of essential services” has helped to explain that damage and destruction affect civilians in a number of ways, over the short and long term. In this regard, urban areas constitute an “object” of protection as well as an “environment” which challenges the application of key principles of IHL, like those of proportionality and precaution. The debate on the legal implications of urban and siege warfare has been lively and the Italian scholars have offered a valuable contribution. The above analysis has shown that the diversity of positions depends on how the rules themselves are interpreted: “[t]o resolve these issues careful analysis is required, which factors in the fast-developing capacity of parties to predict the effects of specific military operations and weapons in urban areas”.¹⁴⁰

Recent armed conflicts have tragically made cities “more visible” from the viewpoint of IHL, exposing them to the application of its norms and principles. By way of conclusion, one might wonder whether cities also engage with IHL in a proactive way, including through city-to-city connections, in analogy with other branches of international law, like climate change and human rights law. Already in 1954, in a speech at the ICRC headquarters in Geneva, the Mayor of Florence, Giorgio La Pira not only affirmed “the right of cities to exist” and to be preserved from the effect of hostilities and nuclear destruction, but he also theorized a role for cities and mayors in peacebuilding.¹⁴¹ The subsequent year, he managed to gather a significant number of mayors of capital cities representing the different geographical areas of the world. Amidst the ideological rift of the Cold War, La Pira took a variety of initiatives to promote the leadership of cities in humanitarian initiatives and for the cause of peace, particularly during

[unhcr.org/news/press/2022/3/6245d8574/un-high-commissioner-refugees-calls-immediate-end-ukraine-war-uprooted.html](https://www.unhcr.org/news/press/2022/3/6245d8574/un-high-commissioner-refugees-calls-immediate-end-ukraine-war-uprooted.html)>.

¹³⁹ See SCHMITT, “Wired Warfare: Computer Network Attack and Jus in Bello”, IRRC, 2002, p. 365 ff., p. 392.

¹⁴⁰ DROEGE and DURHAM, “Civilian Protection in Armed Conflict”, in GEISS and MELZER (eds.), *The Oxford Handbook of the International Law of Global Security*, Oxford, 2021, p. 362 ff., p. 373.

¹⁴¹ See LA PIRA, “Il valore delle città”, in DE SIERVO et al. (eds.), *Giorgio La Pira Sindaco*, Firenze, 1988, vol. I, p. 381 ff.

the period 1967-1974 in which he served as President of the World Federation of United Cities.¹⁴²

Today, it is rightly observed that “local governments across the world refer to global norms and practices, be it with respect to macro-level questions like nuclear disarmament or to the more immediate questions of preventing terrorism and other forms of violence in their cities”.¹⁴³ As urban settlements remain the probable targets of a nuclear weapon, it is not by chance that the international network “Mayors for Peace” has been an active supporter of the global campaign promoting the Treaty on the Prohibition of Nuclear Weapons,¹⁴⁴ in consideration of the “catastrophic humanitarian consequences” that would result from any use of atomic bombs. A further area of engagement with IHL could be seen in the role of cities as humanitarian actors that provide assistance to areas affected by prolonged warfare, as well as responding to mass arrivals of persons who have been forced to flee areas of armed conflict.

¹⁴² See recently DE GIUSEPPE, *La diplomazia delle città: Giorgio La Pira e la Federazione mondiale delle città unite*, Firenze, 2022.

¹⁴³ AUST and NIJMAN, *cit. supra* note 9, p. 11.

¹⁴⁴ Treaty on the Prohibition of Nuclear Weapons, 7 July 2017.