ORIGINAL SCIENTIFIC PAPER

DOI: 10.59245/ps.33.1.2
UDK: 355.415.8
Received: December 2023

DIJANA GRACIN*, IVICA KINDER**

Status and Possible Further Development of the Prohibition of Starvation of Civilian Population in Armed Conflicts

Abstract

The main objective of the research is to determine whether the legal rules of international law of armed conflict and international criminal law regarding the prohibition of starvation of civilians as a method of warfare are appropriate to the increasingly widespread practice of starvation in armed conflicts and what the main challenges are. The authors analyze the content and scope of relevant rules, including those that indirectly refer to the prohibition of starvation – for the protection of vulnerable groups, siege, blockade, evacuation, humanitarian relief operations, etc. They take a dynamic and critical approach to this issue. They dynamically analyze the evolution of the prohibition of starvation of civilians under international law from World War II to the present, drawing on relevant examples from international jurisprudence, the work of international bodies and the opinions of legal authors. The authors apply a critical approach to address the need for greater moral stigmatization of starving civilians in armed conflicts. As a part of the critical approach, they see the need for consistent use of the term "starvation", especially when opening new criminal proceedings against the order issuers and perpetrators. They point to the need for patient research and documentation in each case to gather evidence to the best possible extent. Regarding the existing international legal framework, they see the possibility of creating additional legal rules by introducing a distinction between the basic and qualified forms of a criminal offence.

Keywords*: starvation, siege, blockade, humanitarian aid, ICTY, Rome Statute*

* Asst. Prof. Dijana Gracin, PhD, Vice-Dean for Science, Development and Quality Management at Dr. Franjo Tuđman Defence and Security University

** Ivica Kinder, PhD, Research Associate at Dr. Franjo Tuđman Defence and Security University

1. INTRODUCTION

Given that starvation of soldiers is not considered illegal, it is primarily regarded as a prohibited method of warfare with regard to the civilian population in this study. In the absence of a precise definition of starvation in international law sources, we shall define it as follows: "to kill with hunger", "to deprive of nourishment", or "to destroy by or cause to suffer from deprivation" (Merriam-Webster, 2023). At the same time, a distinction must be drawn between starvation as a common but not always intentional result of an armed conflict on one side and starvation as a deliberate method of warfare on the other. Intentional starvation has been practised since ancient times, with the Spartans employing it as a tactic against the Athenians and the Romans using it against Carthage. In a similar vein, Stalin's Soviet regime starved the Ukrainian people, and the Germans subjected the Jews in Poland to starvation (as evidenced by the existence of ghettos in Lodz, Warsaw, and Kraków). Likewise, the Western allies starved Japan in World War II, while the United Kingdom employed the same tactics against its adversaries in Malaya. Finally, Pol Pot caused the starvation of his own people in Cambodia, along with other instances of starvation occurring throughout the twentieth century. This practice has recently been taking place in Syria, the Ethiopian province of Tigray, and the Russians are repeating it in Ukraine, among other places.

Additionally, it is critical to differentiate starvation as a strategic approach that pertains to a specific broader region or area beyond the scope of armed conflict from starvation as a tactical and operational warfare method, typically associated with a more confined area such as a city or other settlement that the aggressor intends to subdue through blockade or siege, among others. A different scenario that could arise during an armed conflict is the starvation of the occupied territory's inhabitants. In certain circumstances, specific regimes may resort to starvation as a means of repression against a portion of the population within their own borders. While this does not pertain to armed conflict, it does constitute a violation of human rights and, under specific circumstances, may prompt humanitarian intervention. This paper examines starvation as a military strategy, specifically focusing on its application beyond the regime of occupation and beyond the tactical and operational levels. It does not address the treatment of prisoners of war. However, even in circumstances such as the one under consideration, it is not impossible for a strategic objective of starvation to exist within the broader framework of an armed conflict. This could include an ethnic cleansing objective, among others.

The methods employed to induce starvation have mainly remained consistent throughout history, primarily involving the deliberate destruction of food and water reserves, the devastation of crops to hinder agricultural production, and the strategic encirclement or blockade of the enemy to isolate them and impede the provision of sustenance. Furthermore, the sides involved in the conflict engage in acts of cattle theft, livestock killing, assaults on food producers, as well as targeting individuals involved in providing humanitarian assistance, among other actions. Amidst all of this, it is crucial to consistently inquire about what is explicitly forbidden, what falls under the *ius cogens* category, and what can potentially be evaluated based on the balance between military necessity and the obligation to safeguard civilians. One should not disregard the military necessity, which refers to the "utmost importance of engaging in a conflict with the sole objective of achieving victory" (Andrassy, Bakotić, Seršić & Vukas, 2006:31). However, it is vital to understand the humanitarian principles that dictate that no military necessity should take precedence. It is crucial to differentiate between deliberate

actions taken during a conflict and unintended consequences that arise as a byproduct of the fighting. Overall, it is vital to provide a rational framework for humanizing war. This includes increasing the attackers' understanding that, while pursuing military objectives, they must adhere to legal methods of warfare, even if it results in their own casualties and losses.

For decades, the international law of armed conflict has prohibited the starvation of civilians as a method of warfare. Many of these rules have since become part of customary international law. Various international criminal law legal regulations have recently been developed with the goal of punishing criminals and perpetrators of banned crimes. The International Committee of the Red Cross (ICRC) believes that the prohibition on civilian starvation "is a rule from which no derogation may be made" (see more in ICRC Commentaries on the Additional Protocols, 1987:1456). Consequently, there are arguments that it does not provide exclusions based on (imperative) military necessity.

This paper will analyze the evolution and content of rules of international law of armed conflict and international criminal law since the end of World War II. The paper explores the perspectives and arguments put forth by different legal scholars concerning the prohibition in question. We will employ the dynamic approach to present and analyze the existing body of international treaties and international customary law, including the legal documents for the work of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Court (ICC). Additionally, the work of some other international bodies will be presented and analyzed. The objective of the research is to critically examine what precisely is prohibited, i.e. punishable, whether the existing rules are adequate concerning the widespread practice of starvation and what the key challenges in their implementation are. Finally, to conclude whether the current international legal framework should be upgraded (and how), as well as whether specific additional measures should be put in place on national levels, including within the military organizations.

2. INTERNATIONAL LEGAL FRAMEWORK AND OPINIONS OF LEGAL WRITERS

Legal progress toward prohibiting civilian starvation during armed conflicts did not occur until the latter half of the 20th century. For example, it is worth noting that the renowned American Lieber Code of 1863, enacted under the administration of President Lincoln, explicitly permitted starvation. Article 17 of the code stated, "it is lawful to starve the hostile belligerent, whether armed or unarmed" (United States Adjutant General's Office, 1863). In the Nuremberg proceedings that followed World War II, two German generals were found not guilty of charges related to starvation. Both General Lothar Rendulic and General Wilhelm von Leeb were exonerated for their involvement in the intentional execution of "scorched earth" tactics in Lapland and the starvation of civilians throughout the siege of Leningrad, respectively. The court ruled that the implementation of starvation was not subject to doubt in those particular instances (United Nations War Crimes Commission, Law Reports of Trials of War Criminals, 1949:84,96).

During the 1949 drafting of the Geneva Conventions, the United States and Great Britain opposed efforts by other nations to prohibit civilian starvation. Therefore, only a few provisions (Articles 17 and 23) that indirectly pertained to starvation as a method of warfare were incorporated into the final text of the Geneva Convention relative to the Protection of

Civilian Persons in Time of War from 1949 (henceforth: The Fourth Geneva Convention) (ICRC, Geneva Conventions and Additional Protocols, 1949/1977).

Article 17 of the document discusses the concept of "removal from besieged and encircled areas", which refers to the process of "passage" to such areas. Simultaneously, the focus was placed on urging the conflicting parties to reach local agreements that would facilitate the implementation of evacuations and crossings. Nevertheless, Dinstein highlights that the evacuation outlined in Article 17 is not obligatory. Dinstein (2022) argues that the Fourth Convention does not mandate the parties to the conflict to enter into "local agreements" but rather "strongly recommends" them to do so. The subject pertains to the removal of "wounded, sick, infirm, and aged persons, children and maternity cases". We are discussing the evacuation of vulnerable individuals who would greatly benefit from improved care settings and avoid suffering caused by the lack of essential survival items. Given the humanitarian objective of evacuating at-risk individuals, irrespective of whether evacuation is mandated or not, we assert that the decision to potentially prohibit evacuation significantly informs our evaluation of the enemy's intent to carry out ethnic cleansing in a particular region, whether or not they employ tactics such as starving the civilian population. For instance, *the Independent International Commission of Inquiry on the Syrian Arab Republic* has confirmed the existence of a prevalent practice of preventing medical evacuations, food deliveries, and the provision of medicines during sieges in the non-international armed conflict in Syria.

According to Article 23 of the Convention, the parties involved are obligated to permit the transfer of specific cargoes, materials, and objects that are "intended only for civilians", even if they are being sent to an opposing party in the Convention. This pertains, among other matters, to "consignments of essential foodstuff". Furthermore, while discussing passages to areas under siege or blockade, there is mention of "ministers representing various religious affiliations, healthcare professionals, and medical supplies." However, when considering the viewpoint of the party responsible for granting passage, the Convention requires specific assurances. These assurances include ensuring that shipments will not be redirected from their intended destination, that the control measures put in place will be effective, and that the enemy will not gain any military or economic advantage from the passage. This is the reason why the Convention "may make permission conditional on the distribution to the persons benefited thereby being made under the local supervision of the Protecting Powers."

The explicit international legal prohibition of starving civilian populations as a method of warfare was established in the Additional Protocol to the Geneva Conventions of August 12, 1949, for the Protection of Victims of International Armed Conflicts of 1977 (Protocol I), specifically through the provisions outlined in Article 54 (ICRC, Protocol I, 1977). Article 14 of the Supplementary Protocol on the Protection of Victims of Non-International Armed Conflicts (ICRC, Protocol II, 1977) contains similar requirements to several of these. The explicit prohibition of using starvation as a method of warfare, as outlined in the Additional Protocols from 1977, was largely motivated by the repercussions of armed conflicts in Nigeria in the late 1960s and in Bangladesh in the first half of the 1970s. Within the context of "protection of objects indispensable to the survival of the civilian population," both Protocols explicitly prohibit, in the first place, the use of "starvation of civilians as a method of warfare." Moreover, it is explicitly prohibited to engage in acts of aggression, destruction, elimination, or incapacitation of essential resources vital for the sustenance of the non-military population, including but not limited to food supplies, agricultural regions, crops, livestock, drinking water

facilities, water sources, and irrigation systems. Regarding the aforementioned sorts of actions, we assess that the choice of expression was deliberate in order to encompass all potential actions carried out by attackers targeting protected goods. Given that the legal standards being referenced do not include phrases such as "if possible," "if deems necessary," or "except in case of imperative military necessity," it can be inferred that the restriction does not allow the attacker to justify their actions based on military necessity (Andrassy & al., 2006:132).

In addition to the mentioned prohibitions, such as the safeguarding of goods, which are provisions shared by Protocol I and Protocol II, Article 54 of Protocol I further specifies the subjective intention of the attackers: "…for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive." In this context, the focus on the attacker's recognition of "their sustenance value to the civilian population or to the adverse Party" is evident. Thus, if the attacker possesses such knowledge, their behaviour would indicate a purpose to deliberately withhold the mentioned products from either the civilian population or the opposing side. The primary impetus for action would thus supersede the immediate purpose, be it the deprivation of citizens or the promotion of their emigration (referred to as "ethnic cleansing") or any other factor. Hence, the crucial factor lies in the attacker's awareness of the worth of the commodities and, driven by this awareness, their deliberate desire to engage in actions that ultimately inflict harm on the civilian population. Given the lack of specific criteria for the type of damage required, we conclude that death is not a necessary consequence for violating the prohibition. Instead, mental and bodily distress, along with feelings of fear and uncertainty, are deemed acceptable. Nevertheless, varying viewpoints exist regarding this issue that will be discussed further in this paper.

Establishing the attacker's aim, which falls under the realm of subjective categorization, poses a challenge in terms of proof, as few individuals would be inclined to acknowledge it openly. Establishing purpose should be closely tied to the broader context of the event, specifically the range of circumstances associated with the execution of a military operation. In assessing the presence of intent, it is crucial to consider the attacker's actions in fulfilling their primary duty of differentiating between military and civilian targets – including efforts to minimize harm to the civilian population. If the attacker did not make any such efforts, it can be inferred that their intention was to cause starvation among the civilian population deliberately. For instance, if one party involved in the battle carries out a "scorched earth" operation on the adversary's land, it will face significant challenges in demonstrating its fulfilment of the requirements for the well-being of the civilian population. Similarly, the attacker's intentions might be inferred based on their activities regarding relief supplies. If the attacker fails to supply sustenance to the civilian populace, obstructs aid efforts, or denies the evacuation of civilians during a shortage of food supplies, it can be inferred that their objective is to deliberately subject the civilian population to starvation or even engage in "ethnic cleansing" of a particular region. Conversely, any evidence demonstrating a lack of knowledge of the circumstances faced by the civilian population or proving the attacker's lack of intention would result in their exculpation. However, the question remains as to how persuasive such evidence would be, taking into account the customary actions that an attacker, in accordance with the principles of military practice, should carry out in response to offensive operations, particularly the gathering of intelligence about the battlefield and a meticulously organized military decision-making process. In other words, after all the necessary actions outlined in military doctrine are carried out, the attacker should possess comprehensive knowledge

of the conditions and requirements of the civilian population, leaving no uncertainties. The military decision-making process in Croatia is exemplified by the General Rule on Military Decision-Making in the Croatian Armed Forces (a classified document issued by the Republic of Croatia - Ministry of Defense - General Staff of the Croatian Armed Forces in Zagreb in 1999 and not publicly accessible).

Regarding non-international armed conflicts, Article 14 of Protocol II is relevant. Based on its phrasing, the article does not impose any conditions on the attacker's knowledge of the value of the goods to be provided. Consequently, it may be inferred that the presence of critical goods being attacked, destroyed, taken, or made unusable would serve as compelling evidence of a violation of the ban. Furthermore, it can be established that these goods were indispensable for the life of the civilian population. According to D'Alessandra & Gillet, the phrasing of Article 14 supports the idea that starvation as a method of warfare is forbidden, regardless of whether the attacker has a subjective intention to use it (D'Alessandra & Gillet, 2019:25). However, they argue that the crucial factor in determining the prohibition of using starvation as a method of warfare is not whether the civilian population experienced suffering or death (D'Alessandra & Gillet, 2019:18). However, Dannenbaum argues that the illegality of starving the civilian population lies in the violation of their condition and the most severe outcome, which is death (Dannenbaum, 2002:403). We are of the opinion that insisting on a literal interpretation of Article 14 is not justifiable, as it would imply endorsing different criteria for prohibiting starvation in international and non-international armed conflicts. In every instance of starvation, it is necessary to assess whether the civilian population experienced genuine physical and mental suffering, such as compromised health and existential distress caused by scarcity of goods, or if there were also fatal outcomes. The ban on starvation alone, without considering the impact on the physical and emotional well-being of the civilian population, may be seen as a matter of responsibility for the harm inflicted on vital resources rather than a criminal law matter.

To accurately evaluate the substance and extent of the aforementioned provisions outlined in Protocol I and Protocol II regarding the prohibition to "to attack, destroy, remove or render useless" of goods "indispensable to the survival of the civilian population", it is important to clarify that the list of goods provided is not comprehensive, but rather serves as examples. Nevertheless, several legal scholars argue that this list might encompass attire as well as provisions for shelter and defence, such as tents and blankets, which are as vital for the sustenance of non-combatants (Pictet, 2020). We perceive such an interpretation as well-meaning, however overly expansive. Specifically, the protection of the civilian population's existence is outlined in Article 54 of Protocol I and Article 14 of Protocol II, solely within the framework of the prohibition of starvation. Therefore, all the above items belong to the category of food and potable water, and none of them exceed this classification. While attire, tents, blankets, and other items are important for survival, they do not directly correlate with starvation. We strongly advocate for the imperative of establishing worldwide legal safeguards for clothing, tents, blankets, and other such items. However, we firmly assert that this should be clearly achieved through international treaties, as is partially already in place. Dinstein (2022:289) argues that "drinking water installations" should encompass water reservoirs, water sources, wells, and pumps. Shue and Wippman argue that it is justifiable to incorporate electric current generators in water pumping or purification systems, as these generators are essential for the functioning of drinking water facilities (Shue and Wippman, 2002:573).

As per Article 54, Paragraph 3 of Protocol I, the restrictions on attacks and other acts against the stated protected goods do not apply to those goods that are utilized by an adverse party:

"as sustenance solely for the members of its armed forces; or

if not as sustenance, then in direct support of military action, provided, however, that in no event shall actions against these objects be taken which may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement."

The above provisions demonstrate the purpose of further affirming that these bans are implemented only for the advantage of the civilian population. Consequently, assaults and other activities targeting the stated resources, which are only meant for the enemy armed forces or resources directly assisting military operations, are not forbidden. There is a belief that the presence of the items in the possession of the opposing combatants leaves no doubt that these goods are intended for them (Bothe, Partsch & Solf, 1982:340). Nevertheless, it is imperative for the attacker to refrain from damaging the supplies held by the enemy combatants, provided that these supplies are *de facto* designated for the sustenance of prisoners of war, the civilian population in the occupied area, or individuals who are serving or accompanying the armed forces in a civilian capacity (Bothe, Partsch & Solf, 1982:341). If an area contains both soldiers and civilians, it is crucial that the goods in question remain unaffected. This is because the combatants would also benefit from protecting civilians through such provisions. Otherwise, the purpose of safeguarding civilians would be rendered meaningless (refer to ICRC Commentaries on the Additional Protocols, 1987:1458 for further details).

According to Kalshoven (2007:229), drinking water installations used only to provide water to a military location can be demolished. If the objective of an attack is to impede the progress of enemy forces rather than hinder the production of food for civilians, it is permissible to bomb the area where food is cultivated (Kalshoven, 2007:229). Some authors deem that it may be necessary to destroy an irrigation canal that functions as a defensive barrier, a water tower that acts as an observation point, and even a cornfield that is used to conceal armed forces (Bothe, Partsch, & Solf, 1982:341). Furthermore, it is important to note that the railroad, despite its role in transporting essential food supplies for the civilian population, might nevertheless be targeted for destruction due to its military significance (D'Alessandra & Gillet, 2019: 12). With regards to the food production area, specifically the railway line, we firmly believe that even if its destruction were to result in starvation of the population, such an attack would still be forbidden according to Article 54, Paragraph 1 of Protocol I. Correspondingly, we would like to emphasize here the relevance of Article 14 of Protocol II as well.

Regarding the notion of justifiably demolishing the water tower that serves as an observation post, we approach this proposition with caution. When considering whether destroying a water tower functioning as an observation post would be acceptable, it is firstly crucial to acknowledge the inherent nature of observation as a non-kinetic activity. Secondly, it would be prudent to evaluate the contextual factors of the specific battleground, such as the topographical layout and the quantitative distribution of forces. For example, when analyzing the situation in Vukovar during the Homeland War in Croatia, one must consider and comprehend its geographical location and the topography of the entire area, which resulted in a shallow defence where often the first line of defence was also the last line of defence (Marijan,

2013:12). Due to the attacker's significant manpower and combat equipment (particularly their armoured units on the plains), which greatly outnumbered the defenders, the defenders were in an extremely disadvantageous military situation. In such context, theoretically speaking, the defenders would be potentially able to improve their situation even by timely observing the movements of the attacker's forces. However, the water tower in Vukovar endured significant devastation for completely different non-kinetic "use" – because of the Croatian flag being persistently hoisted on its top by Croatian defenders (sic!).

As per Article 54, paragraph 4 of Protocol I, targeting protected goods as a form of reprisal is prohibited. Additionally, according to Paragraph 5, "in recognition of the vital requirements of any Party to the conflict in the defense of its national territory against invasion, derogation from the prohibitions contained in Paragraph 2 may be made by a Party to the conflict within such territory under its own control where required by imperative military necessity". Thus, Article 54, Paragraph 5 of Protocol I permits a departure from the restrictions outlined in Paragraph 2, but solely for a party to the conflict defending its own territory against invasion and only within the portion of the area that it governs. Simultaneously, the party in question must be driven by "imperative military necessity". Essentially, it pertains to the legal validity of employing "scorched earth" tactics, as was utilized during the mass retreat of armed forces in the Second World War. In order for the civilian population to be at risk, it is necessary for the belligerent conducting action to have control over the territory in question. Hence, it is prohibited to engage in this activity within the adversary's territory and even within one's own territory that is under the adversary's jurisdiction.

As previously observed in relation to Articles 17 and 23 of the Fourth Geneva Convention, international law not only explicitly forbids the act of starving civilians but also includes additional provisions that indirectly safeguard civilians' access to food, water, medical care, and other essential resources required for survival. Certain rules pertain to both the conduct of combat and the occupation status of an area, while others are specific to only one of these situations. In this study, our main focus is on the laws regarding the prohibition of starving the civilian population during combat operations carried out by attackers in an unconquered region, meaning an area that is not yet occupied.

The aforementioned implicit provisions can also be found in Article 70 of Protocol I and Article 18 of Protocol II. These articles, in accordance with the rules of the Fourth Geneva Convention, govern the distribution of aid in situations of armed conflict, namely during periods of occupation. Article 70 of Protocol I, namely in Section II titled "Relief in favor of the civilian population", addresses the provision of "relief actions" for civilians residing in an area controlled by one of the conflicting parties but not occupied (ICRC, Protocol I, 1977). When there is not enough supply of certain resources for a population, "relief actions which are humanitarian and impartial in character and conducted without any adverse distinction shall be undertaken, subject to the agreement of the Parties concerned in such relief actions" (ICRC, Protocol I, 1977).

It is important to emphasize that Article 70 specifically pertains to the types of products that are eligible for aid measures. These goods are listed in Article 69, which primarily focuses on the occupied areas. In addition to consumables, it encompasses medications, clothing, bedding, emergency termination tools, and other materials crucial for the population's existence. It also includes items necessary for religious rites. Based on the wording of Article 70, paragraph 2, it can be inferred that the party granting passage is not given the true

freedom to choose whether or not to do so but rather is obligated to do so. Furthermore, it is anticipated to enable a rapid and seamless transition. Simultaneously, Article 70, paragraph 2, acknowledges the party's perspective by granting them the authority to establish the necessary technical requirements, such as inspections, for granting passage. While doing so, it has the ability to impose a condition on the permission, stipulating that the dispensation of assistance must be conducted under the oversight of the protective power present at the location of the incident. Nevertheless, the party providing relief is prohibited from redirecting aid shipments from their intended destination or causing unnecessary delays in their delivery (ICRC, Protocol I, 1977).

Article 18 of Protocol II, furthermore, discusses the concept of "relief actions": "If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned." (ICRC) Protocol II, 1977).

The referenced clauses in Article 54 of Protocol I pertain to the explicit prohibition of using "starvation of civilians as a method of warfare" and the safeguarding of "protection of objects indispensable to the survival of the civilian population". Additionally, these provisions address the actions and transportation of aid to the civilian population. It is important to consider these provisions in relation to the act of siege (Dinstein, 2022:294). In the context of an armed conflict, encirclement occurs when the aggressor surrounds the defending troops in a specific location, such as a fortress or settlement, and simultaneously launches attacks on that site. The goal is to hinder the defenders' access to supply channels. The attacker aims to seize the target place or territory by disrupting the supply, subjecting the defender to a state of scarcity regarding numerous commodities, including food and water.

Hence, the attacker orchestrating the siege prohibits the transportation of products to the besieged area, as well as the passage of individuals who could potentially assist the defender. An important outcome of the siege is the widespread hunger experienced by individuals in the nearby vicinity. The attacker attempts to weaken and hasten the collapse of the defence by depriving them of sustenance, hurting both their physical capabilities and their morale, which refers to the defenders' willpower. Attacks by assailants can have a significant impact on civilians, particularly when their objective is to capture a densely populated area (Dinstein, 2022:294). Nevertheless, considering the viewpoint of the besieged civilian population, it is plausible that they chose not to evacuate the area for various reasons. These include their emotional bond with family members engaged in combat, apprehension that the fighters may face extortion once they depart, lack of confidence in the attackers' ability to ensure safe passage, and the desire to prevent the *de facto* "ethnic cleansing" of a region, among others. Dannenbaum argues that the civilian population cannot be held responsible for leaving a location that is under siege. However, in cases where the defenders prevent their own civilians from leaving the siege, Dannenbaum advocates for both the attackers and defenders to share the responsibility for the starvation of the civilian population in an armed conflict (Dannenbaum, 2022:414).

This raises the issue of whether it is permissible for civilians to engage in such behaviour, specifically, how such behaviour impacts future requests for humanitarian aid, particularly due to the potential advantages that combatants may gain from it. Attacks on humanitarian

assistance supplies commonly evoke significant apprehension among attackers. Dinstein argues that if the civilian population refuses the opportunity to leave a besieged area safely, the prohibition on starvation should no longer be enforced. However, he acknowledges that in situations where evacuation is permitted, there is a risk of abuses, such as attempts to permanently remove the civilian population from their homes (referred to as "ethnic cleansing") (Dinstein, 2022:297).

The concept of blockade is a distinct institution within the realm of international maritime law during times of conflict. A blockade is an act of preventing maritime traffic from accessing a port, a specific area of the coast, or the mouth of a river that is controlled by the enemy, regardless of the territory it is located in (Andrassy & al., 2006:196). The blockade is a legally defined action in international law, and it must meet specific requirements such as being effective, declared, and notified. Furthermore, it is essential that the blockade is observed by all parties involved (Andrassy & al., 2006:198). The objective of the blockade is to impede the entry of any vessels into the restricted zone, irrespective of the nature of their cargo, with the potential consequence of the vessel and its cargo being seized (Perazić, 1986:291). Simultaneously, it is imperative to provide the unhindered passage of aid shipments, encompassing vital provisions like food and medicine, to the civilian population residing in the occupied region. These individuals are currently facing a severe shortage of basic goods necessary for their survival (Andrassy & al., 2006:197). This complies with the regulations outlined in the Fourth Geneva Convention (namely Articles 23, 59, and 61) and Protocol I (specifically Articles 69 and 70), which pertain to the conditions of occupation as stated in Articles 59 and 61, and Articles 69 and 70, respectively. One might also envision a scenario in which an attacker on land besieges a position adjacent to or in close proximity to the sea, and to achieve this objective, they augment their land-based operations with maritime actions.

Nevertheless, advancements in warfare technology, particularly in weaponry and transportation, have made it feasible to conduct efficient surveillance of the sea and coast from considerable distances. Consequently, the conventional concept and significance of a naval blockade have significantly diminished. The significance of this is emphasized by Andrassy et al. (2006:199). It is important to note that the term "blockade" in this context does not refer to the maritime law of war concept known as a "stone blockade," which involves laying physical barriers like stones or sunken ships to impede navigation (Andrassy & al., 2006:197). Nevertheless, such behaviour can ultimately result in depriving the coastal people of essential supplies.

In the event of a naval blockade, the impact of famine, particularly on the civilian population, can be substantial. Unlike a land siege, which typically affects a relatively small region, a blockade at sea can have consequences that extend to a broader coastal area and the inland regions adjacent to the coast. An example of such a blockade is the one imposed on the German coasts during and after the First World War. Nevertheless, the participants of the diplomatic conference for the creation of Protocol I did not have the intention to modify the current regulations of international warfare regarding naval blockades, specifically in relation to safeguarding the civilian population from the effects of hostilities (Part IV. Civilian population, Section I. General protection from the consequences of hostilities). Article 54 did not explicitly deem the use of blockade as a technique of warfare to be illegal, even when it had negative effects on the civilian population.

The San Remo Manual (Manual on International Law Applicable to Armed Conflicts at Sea, 1994) introduced a compromise stating that a blockade is forbidden if its sole intention is to cause starvation or deprive the civilian population of essential goods necessary for survival. Additionally, the principle of proportionality dictates that a blockade is also prohibited if the harm inflicted on the civilian population is expected to be excessive in relation to the specific military advantage gained from the blockade. Dinstein deems the second criterion untenable, highlighting that the norm of proportionality alone pertains to attacks and that a blockade, as a strategy of warfare, cannot be equated with an attack. Put simply, he contends that the authors of the San Remo Manual have adopted an overly expansive interpretation of the term "attack". Specifically, as stipulated in Article 49 of Protocol I, attacks refer to "acts of violence against the adversary, whether in offence or in defence". Instead of implementing an unjustifiable ban on the blockade, it is advisable to mitigate the detrimental effects of "famine caused by the blockade" by permitting the provision of humanitarian assistance in cases where the civilian population in the blocked area lacks any alternative means of accessing vital food supplies, i.e., through the provision of goods (Dinstein, 2022:301). We strongly support the viewpoint that categorizing the blockade as an attack is not acceptable, as there are situations where the blockade is implemented independently and is not part of a broader attack that involves both physical and non-physical actions (including the blockade). Simultaneously, we are promoting a meticulous evaluation of the specific circumstances of each case, recognizing that simply equating an attack with a blockade would necessitate the application of the principle of non-selectivity. This would essentially invalidate the blockade as a recognized institution of international customary law during times of war.

As already said, the issue of the legal foundation for employing siege or starvation as a method of warfare was not previously discussed. However, it is important to note that the civilian population suffered the ramifications, including potentially lethal ones, to a greater extent than the fighters. This specifically pertains to particularly susceptible groups of citizens, including children, the elderly, pregnant women, and so on. Hence, it is customary for the civilian populace to make efforts to flee from the vicinity of the attacker. By adopting this approach, the defenders would have an advantageous position as they would not be required to distribute essential resources for survival among the civilian population. Nevertheless, the attacker may not find such a situation advantageous. In the past, customary law even permitted the attacker, as a last resort, to compel civilians to retreat. This was done to prevent additional strain on the defending forces and expedite their surrender. During the Nuremberg trial, it was established that General von Leeb was responsible for giving an order to the German artillery to target Russian civilians attempting to leave the besieged city of Leningrad. The ruling concluded that this order was not against the law, meaning that "we might wish the law were otherwise, but we must administer it as we find it" (United Nations War Crimes Commission, Law Reports of Trials of War Criminals, 1949:84).

Article 54 of Protocol I introduced a new legal framework that distinguishes between two types of sieges: one involving a defended settlement where civilians and possibly refugees reside and another involving a military location or fortress occupied solely by combatants. Therefore, in the scenario of a military site or stronghold, if the defending forces utilize the items specified in Article 54 only for the purpose of provisioning their combatants, the attacker is permitted to annihilate all provisions methodically. Conversely, in the case of a fortified community that includes civilians, and if the siege directly impacts them, the aggressor is required to refrain from using starvation as a tactic of warfare. This means refraining from

attacking, destroying, removing, or rendering protected items worthless. Simultaneously, the legal protection of inventories of products required by the civilian population remains intact, regardless of their utilization by the military forces of the defenders. In order for these stockpiles to forfeit legal immunity, they must be only utilized by military personnel.

Currently, it is widely accepted that the ban on starving civilians – as stated in both Protocols from 1977 – has now attained the status of customary international law. Simultaneously, it is impossible to determine the exact moment when this occurred. According to D'Alessandra & Gillet, the common practice of condemning the starvation of civilians in armed conflicts indicates the presence of a customary law prohibition on starvation, regardless of whether the conflict is international or non-international (D'Alessandra & Gillet, 2019:2). This is demonstrated by the presence of over 150 states parties to Protocol II, as well as the inclusion of the prohibition of starving civilian populations in various military manuals for both international and non-international armed conflicts. Additionally, many states have incorporated this prohibition into their domestic legislation (D'Alessandra & Gillet, 2019:4). Similarly, the ICRC, through its research on state practices, acknowledged some acts and actions that are accompanied by *opinio juris*. These include the development of national manuals to guide the behaviour of armed forces in armed conflicts, as well as the enactment of national regulations that criminalize starvation. In addition, there are several states that are not signatories to Protocol II. They have incorporated the prohibition of starving civilians into their armed forces manuals or through their domestic criminal laws without differentiating between international and non-international armed conflicts. Starting in 1993, a series of UN resolutions were passed that strongly criticized the widespread practice of deliberately starving civilians during sieges and held individuals accountable for their actions. These resolutions were largely influenced by the wars that took place in the former Socialist Federal Republic of Yugoslavia.

3. INTERNATIONAL JUDICIARY

The establishment of the ICTY involved extensive preparations, including the drafting of the Statute of the ICTY. These preparations heavily relied on the content and recommendations provided in the Final Report of the Bassiouni Commission (United Nations Security Council, Final Report, Document No S/1994/674, 1994). The Report discussed the legal requirements for armed conflicts in the former Yugoslavia. It stated that "… the character and complexity of the armed conflicts concerned, combined with the web of agreements on humanitarian law that the parties have concluded among themselves, justifies the Commission's approach in applying the law applicable in international armed conflicts to the entirety of the armed conflicts in the territory of the former Yugoslavia" (United Nations Security Council Final Report, Document No S/1994/674, 1994:para. 44). On the other hand, the Report primarily addressed breaches of international law during military operations within the former SFRY territory. This included a specific focus on attacks against protected sites, as well as the utilization of illegal weaponry and methods of warfare. Regarding the issue of starvation, the report – citing the siege of Sarajevo as a case in point – stated that it was challenging to establish a definitive accusation of starvation as a prohibited method of warfare (United Nations Security Council Final Report, Document No S/1994/674, 1994). The Report attributes

this phenomenon to the inclination of all parties involved to control the distribution of food, water, and electricity "for publicity purposes". Additionally, merging military personnel and civilians in a particular region further exacerbated the situation. It is noteworthy that no fatalities were reported due to starvation, dehydration, or exposure to extreme cold. The Report concludes that the behaviour of the parties involved in the conflict was concerning, but there was disagreement over the criminal illegality of their actions (United Nations Security Council, Final Report, Document No S/1994/674, 1994).

We contend that by placing undue emphasis on the absence of fatalities, there is a *de facto* disregard for the tangible and psychological anguish endured by individuals who were deprived of sustenance and hydration as a consequence of the attackers' actions. Specifically, we assert that international law forbids starvation, irrespective of potential graver outcomes such as mortality, sickness, or lasting harm to well-being. In the event of any consequences, we maintain that they should result in an extra, more arduous legal classification. The approach taken in the mentioned Report impeded the norm and practice of the ICTY, so it missed the chance to enhance general prevention *pro futuro*. The Report provides valuable insights into the prohibited practice of using starvation as a method of warfare. It includes actions that result in the freezing of the civilian population and emphasizes the illegality of obstructing humanitarian aid convoys (United Nations Security Council, Final Report, Document No S/1994/674:67-71, 1994). In general, the act of starvation was widely criticized by the public at that period, particularly in regard to the mistreatment of humanitarian supplies by the parties involved in the conflict, such as UNHCR and various non-governmental organizations. During the ICTY hearings, there were only a limited number of instances when the actions of the parties involved in the conflict were legally classified as criminal behaviour regarding the deliberate starvation of the civilian population. These specific instances will be further examined in the following discussion.

Regarding the information outlined in the Report, it is worth noting that the Statute of the ICTY does not clearly classify the starvation of the civilian population as a distinct criminal offence in either Article 3, which covers violations of rules or customs of war, or Article 5, which addresses crimes against humanity. In the case of the ICTY against Radislav Krstić (case number: IT-98-33-T), the actions of impeding the arrival of humanitarian convoys in the Bosniak enclave in Srebrenica, specifically by blocking humanitarian corridors, and the deliberate destruction of water supplies during the Serbian forces' capture of the city, were generally categorized under Article 3 of the Statute. This article encompasses offences such as murder and persecution, which in this case involved cruel and inhumane treatment. It was established that in early July 1995, a number of individuals perished as a result of a severe lack of food, specifically following the presentation of the Final Report of the Bassiouni Commission (ICTY-Trial Chamber, 2001:para. 28 and 566). The ICTY case against Zdravko Tolimir (case number: IT-05-88/2-T) determined that the Serbian forces compelled the involuntary removal of the civilian population by means of repeated assaults, starvation, and intimidation. The Bosniak residents' decision to go on busses was a direct result of the measures stated earlier. Consequently, these individuals were left with no alternative but to evacuate the enclave (ICTY-Trial Chamber, 2012:para. 830). The case against Stanislav Galić (case number: IT-98-29-T) shed light on the situation during the siege of Sarajevo. It revealed that Bosniak soldiers and civilians were under siege together, while the Serbian side allowed humanitarian aid convoys to enter the city. There were also attempts to smuggle weapons and ammunition into the city, even when the convoys were escorted by the UNHCR. Additionally,

it was observed that Bosniak fighters sometimes prevented their civilians from leaving the siege despite the possibility of doing so. This was done to maintain morale among their ranks (ICTY-Trial Chamber/Judge Nieto-Navia, 2003: para. 7-8). An exceptional instance of behaviour, observed during the ICTY proceedings against Dragomir Milošević (case number: IT-98-29/1-T) pertained to the deliberate shooting of unarmed civilians who were engaged in gathering provisions or waiting in lines for food and water. Additionally, the snipers targeted water tanks. Those works were classified as a violation of the rules or customs of war, namely under Article 3 of the Statute. This classification was made by the ICTY-Trial Chamber in 2007, as referenced in paragraphs 208 and 910.

In 1998, a significant advancement in international criminal justice occurred with the adoption of the Statute of the ICC, often known as the Rome Statute. This treaty served as the foundation for the establishment of the ICC, which became effective on July 1, 2002. The Republic of Croatia enacted the Act on the Ratification of the Rome Statute of the International Criminal Court (Official Gazette - International Treaties: No. 5/2001) and subsequently enacted the Act on the Application of the Statute of the International Criminal Court and Prosecution for Criminal Offenses Against International War and Humanitarian Law (Official Gazette: number 175/2003, 29/2004, 55/2011, 125/2011). For further information on the responsibilities of governments in relation to collaboration with the ICC, please refer to the publication of Škorić and Fabijanić Gagro of 2008. The Court has declared the act of intentionally causing starvation as a violation of international humanitarian law in both international and non-international armed conflicts. This declaration was further reinforced by amendments made in 2019, which expanded the scope of this prohibition to include conflicts between state armed forces and other organized armed groups, as well as conflicts between different organized armed groups. With a view to the mentioned amendments on the prohibition of using starvation as a method of warfare, regardless of the type of conflict, we can look at UN Security Council Resolution No. 2417 from 2018. Furthermore, following the implementation of these amendments, the UN General Assembly reiterated its condemnation of the use of starvation as a method of warfare by Resolution No. 74/149, which addresses the right to food. According to Article 8 of the Rome Statute, which falls under the "War Crimes" section, the Court "shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes". From the standpoint of preventing the starvation of civilians, the term "war crimes" in the Statute also encompasses "other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law …". One of the "other serious violations" includes the criminal act 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 as provided for under the Geneva Conventions" (Act on the Ratification of the Rome Statute of the International Criminal Court).

We construe the mentioned clause as pertaining to conduct that took place within the framework of an armed conflict and was connected to said conflict, with the offender being cognizant of the factual circumstances, particularly the conditions surrounding the presence of an armed conflict. The offender deliberately employed starvation as a method of warfare, aiming to deny citizens essential resources required for their survival, ultimately achieving his goal of causing them to starve. Throughout the entire duration, he remained cognizant that when the occurrences he orchestrated transpired, the populace would be bereft of essential resources crucial for their sustenance. According to the specified provision of the Rome

Statute, it is clear that starvation is deemed unlawful when individuals are deprived "of objects indispensable to their survival". However, it should be noted that the specific reference to subsistence provisions like food and water is not clearly stated as outlined in Article 54 of Protocol I. However, due to the use of the term "starvation", we deem that the Rome Statute is definitely about food and water, just like Article 54 of Protocol I and Article 14 of Protocol II. Additionally, as outlined in the same criminal offence, the intentional obstruction of relief supplies aligns with the concept of "wilfully impeding relief supplies as provided for under the Geneva Conventions" mentioned in Article 23, paragraph 1 of the Fourth Geneva Convention. And since the crime under the Rome Statute also includes "wilfully impeding relief supplies as provided for under the Geneva Conventions," we are inclined to conclude that the use of the term "relief supplies" to which access was intentionally obstructed actually regards the provision Article 23, paragraph 1 of the Fourth Geneva Convention. That provision, in addition to essential foodstuffs, also refers to consignments of medical and hospital stores, objects necessary for religious worship, as well as clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.

During the ICC proceedings against Omar Hassan Al-Bashir, concerning the situation in Sudan (a non-international armed conflict), the accusation pertained to the methods of "destruction other than direct killings" and "causing of serious bodily and mental harm". Actual methods of implementing these approaches encompassed "destruction of their means of survival in their homeland", "systematic displacement from their homes into inhospitable terrain where some died as a result of thirst, starvation and disease", and "denial and hindrance of medical and other humanitarian assistance". The act was legally classified as genocide, namely crimes against humanity, with a direct connection to starvation. However, starvation itself was not explicitly mentioned as a crime (ICC: Second Decision, 2010). In the ICC v. Patrice-Edouard Ngaïssona case, which pertains to the situation in the Central African Republic (a non-international armed conflict as well), the accused was charged with the deliberate mistreatment of the Muslim population. This mistreatment resulted in dire living conditions, limited access to food and healthcare, and ultimately led to the deaths of numerous individuals, predominantly children. The act was legally classified as a crime against humanity and a war crime due to the forced displacement of the civilian population (Global Compliance, 2023:99).

4. POTENTIAL AVENUES FOR THE ADVANCEMENT OF INTERNATIONAL LAW AGAINST THE USE OF STARVATION AS A METHOD OF WARFARE

The current state of development of international law on armed conflicts, as seen by the practices of the ICTY and ICC, displays a growing intolerance towards the "culture of impunity" with regard to the ban on starving civilian populations. Furthermore, it demonstrates a proclivity for obliterating the distinctions in the methods employed in international and non-international armed conflicts. Nevertheless, divergent interpretations exist regarding the requirements of Protocols I and II, as well as about the nature of the act mandated by the Rome Statute. Some argue that the occurrence of fatal consequences is a necessary requirement. In the realm of substantive legal standards, we argue that it is necessary to differentiate between the fundamental, basic form and the specialized variations of the offence. We assert that the act of deliberately causing starvation, which has been prohibited in warfare for many years, should be recognized as a basic offence. If a citizen falls ill, specifically experiencing a

permanent decline in their overall ability due to prolonged lack of food, and particularly if it leads to death, we propose that this should be classified as a qualified form of the criminal offence of starvation, in order to impose more severe penalties on the individuals responsible and those who directly carried out the act.

Considering the common occurrence of intentionally starving civilians during armed conflicts, based on the existing body of international legal decisions, it is also beneficial to specifically label this criminal act as "starvation of the civilian population" rather than categorizing it broadly as crimes against humanity or violations of the laws and customs of war. We deem this would enhance the public's disapproval of such unlawful conduct, intensifying its moral stigmatization. To do this, it is necessary to demonstrate tenacity in gathering evidence in particular instances, particularly given the difficulty of substantiating the subjective elements of the work's existence and ensuring its systematic exposure to the global audience. The objective is to gather substantial evidence to support the charge in order to prevent the reinforcement and validation of the paradigm through the specific identification of the illegal actions of starvation. Some legal writers argue that the ICC now has a greater chance to intervene due to the unlawful actions of the Russian Federation during its aggression against Ukraine (Digney, 2022:3).

States have the ability to enhance the enforcement and realization of established international legal standards by utilizing their own internal legal and judicial systems. Additionally, they can also establish new criminal laws according to their own discretion. Currently, there is no indication of amending or concluding new international agreements. However, we believe that the efforts made by individual countries and their suitable initiatives can make a contribution towards this goal. For instance, certain nations like Norway and Sweden independently conduct inquiries into crimes associated with the act of starvation in specific military conflicts, such as those in Syria and the Russian aggression against Ukraine (for instance, the case of the Russian siege of Mariupol). Despite the fact that neither the Russian Federation nor Ukraine are signatories to the Rome Statute, Ukraine agreed to the restricted authority of the ICC to prosecute crimes committed within its borders. This agreement was reached in 2014 through a Declaration that relied on Article 12, Paragraph 3 of the Rome Statute.

5. FINAL REMARKS

Armed conflicts often result in widespread food scarcity and famine. The plight of the civilian population, particularly those who are vulnerable, consistently emerges as a key humanitarian concern in all armed conflicts. Hence, international treaties and customary law have long included provisions that establish a basis for the parties involved in a conflict while also imposing specific obligations to alleviate the living conditions of the civilian population during an armed conflict. Typically, these provisions allow conflicting parties to engage in discussions – potentially with the assistance of international organizations – to establish specific methods for delivering humanitarian aid while also addressing the security concerns of the attackers. The prohibition of starving civilian populations and the application of this prohibition should be understood within the framework of the delicate balance between military necessity, which refers to achieving military objectives, and the imperative to humanize military actions. This balance is a fundamental principle in international law governing armed conflicts.

International law has long explicitly prohibited the use of starvation as a method of warfare, which means deliberately causing the civilian population to suffer from a lack of food. Direct action against essential products vital for the survival of civilians – such as food and water – is explicitly forbidden. Nevertheless, it is important to recognize that legal writers occasionally mitigate imposed restrictions based on military requirements or even broaden them based on humanitarian factors. Jurisprudence, encompassing both international and national contexts, plays a crucial role in shaping the substance and extent of certain legal principles. However, despite having the chance to do so, the Prosecutor's Office of the ICTY did not initiate any cases regarding the violation of the prohibition of starving the civilian population. As a result, it was only minimally addressed in relation to the widely recognized factual situation in armed conflicts within the former SFRY territory. Specifically, the Statute of the ICTY did not explicitly define the act of deliberately causing starvation among civilian populations as an independent criminal offence. Such differentiation of the criminal act based on its consequences, such as inflicting suffering, permanent harm to health, or death, has not yet been implemented in the Rome Statute. This distinction applies to both international and non-international armed conflicts.

Although specific rules of international criminal law have emerged, it is inherently unlikely that these alone will effectively stop the occurrence of starvation in armed conflicts. Effectively enforcing the burden of responsibility is essential as a primary means of addressing illicit practices. International courts and tribunals are not the only entities that can contribute substantially. International investigative commissions, such as fact-finding missions formed by organizations like the UN, also play a crucial role. Specifically, there is a requirement for meticulous investigation and record-keeping, such as the collection of proof, to directly substantiate the initiation of certain legal proceedings against individual offenders. Simultaneously, we advocate the importance of thoroughly examining all pertinent factors of particular military operations – such as the terrain, the military circumstances, the attackers' objectives, the civilian population's needs, etc. This examination should not undermine the imperative nature of legal standards while also considering the military needs. We contend that cases prepared in this manner can serve as a valuable impetus for preventing the prohibition of civilian population starvation, as well as for advancing international law – particularly international criminal law – by introducing basic and qualified forms of criminal offences. Furthermore, these cases can also encourage the appropriate development of national regulations and guidelines governing the behaviour of military forces in armed conflicts.

LITERATURE

1. Andrassy, J., Bakotić, B., Seršić, M. & Vukas, B. (2006). *Međunarodno pravo 3*, Zagreb. Školska knjiga.
2. Bothe, M., Partsch, K. J. & Solf, W. A. (1982). *New Rules for Victims of Armed Conflicts – Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949*, Haag/Boston/London.
3. Kalshoven, F. (2007). *Reflections on the Law of War: Collected Essays*, Haag/Boston/London.
4. D'Alessandra, F. & Gillett, M. (2019). *The War Crime of Starvation in Non-International Armed Conflict*. Oxford. Retrieved November 28, 2023, from https:/www. bsg.ox.ac.uk/sites/default/files/2019-11/BSG-WP-2019-031.pdf

5. Dannenbaum, T. (2022). *Siege Starvation: A War Crime of Societal Torture*, Chicago Journal of International Law, (22–2), 371–443.
6. Digney, L. (2022). *The Rome Statute and Hunger as a Weapon of War – The Journey Towards Ending Impunity for Starvation Tactics*. Retrieved November 3, 2023, from https://www.iiea.com/blog/the-rome-statute-and-hunger-as-a-weapon-of-war-the-journey-towards-ending-impunity-for-starvation-tactics
7. Dinstein, Y. (2022). *The Conduct of Hostilities under the Law of International Armed Conflict*, Fourth Edition, Cambridge, 295–296.
8. Final Report -in United Nations Security Council, document No: S/1994/674, of 27 May 1994. Retrieved September 3, 2023, from https://www.icty.org/x/file/About/OTP/un_commission_of_experts_report1994_en.pdf
9. *Independent International Commission of Inquiry on the Syrian Arab Republic.* Retrieved September 24, 2023, from PolicyPaperSieges_29May2018.pdf (ohchr.org)
10. Marijan, D. (2013). *Obrana i pad Vukovara*, Zagreb. Hrvatski institut za povijest.
11. Merriam-Webster. *Dictionary. Retrieved November 30, 2023, from* https://www.merriam-webster.com/dictionary/starve
12. Perazić, G. Đ. (1986). *Međunarodno ratno pravo*, drugo dopunjeno izdanje, Beograd.
13. Picket, J. (2020). *Protocol Additional of the Geneva Convention of 12 August 1949 and relating to Protection of Victims of International Armed Conflict (Protocol I), 8 June 1977* – Commentary of 1987: Article 54 – Protection of objects indispensable to the survival of the civilian population", International Committee of the Red Cross International Humanitarian Law Databases. Retrieved September 3, 2023, from https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-54/commentary/1987?activeTab=undefined
14. *San Remo Manual on International Law Applicable to Armed Conflicts at Sea* (1994). Retrieved November 24, 2023, from https://www.icrc.org/en/doc/resources/documents/article/other/57jmsu.htm
15. Shue, H. & Wippman, D. (2002). *Limiting Attacks on Dual-Use Facilities Performing Indispensable Civilian Functions*, Cornell International Law Journal, (35-3).
16. Škorić, M. & Fabijanić, Gagro, S. (2008). *Suradnja država s Međunarodnim kaznenim sudom*, Zbornik Pravnog fakulteta Sveučilišta u Rijeci. (29-2), 887–915.

LEGAL SOURCES:

1. Geneva Conventions of 1949, Additional Protocols and their Commentaries. Retrieved September 24, 2023, from https://ihl-databases.icrc.org/en/ihl-treaties/treaties-and-states-parties
2. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Retrieved November 29, 2023, from https://ihl-databases.icrc.org/en/ihl-treaties/api-1977?activeTab=default
3. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977. Retrieved September 24, 2023, from https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977?activeTab=default

4. *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (1987). International Committee of the Red Cross. Retrieved September 24, 2023, from https://icrc.org/en/publication/0421-commentary-additional-protocols-8-june-1977-geneva-conventions-12-august-1949
5. *Instructions for the Government of Armies of the United States in the Field*, 24 April 1863. United States Adjutant General's Office. Retrieved September 12, 2023, from https://ihl-databases.icrc.org/es/ihl-treaties/liebercode-1863?activeTab=historical
6. Opće pravilo o vojnom odlučivanju u OS RH (1999), Zagreb. Ministarstvo obrane – Glavni stožer OS RH (classified and not accesssible to the public).
7. United Nations War Crimes Commission, *Law Reports of Trials of War Criminals* (1949). London. Retrieved September 12, 2023, from https://tile.loc.gov/storage-services/service/ll/llmlp/Law-Reports_Vol-12/Law-Reports_Vol-12.pdf
8. Zakon o potvrđivanju Rimskog statuta Međunarodnoga kaznenog suda, Narodne novine – međunarodni ugovori, br. 5/2001.
9. Zakon o primjeni statuta međunarodnog kaznenog suda i progonu za kaznena djela protiv međunarodnog ratnog i humanitarnog prava, Narodne novine, br. 175/2003, 29/2004, 55/2011, 125/2011).
10. *United Nations Security Council*, Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992) (document number: S/1994/674, dated 27 May 1994). Retrieved November 29, 2023, from https://www.icty.org/x/file/About/OTP/un_commission_of_experts_report1994_en.pdf
11. United Nations Security Council Resolution S/RES/2417 (2018). Retrieved November 29, 2023, from https://digitallibrary.un.org/record/1627380
12. United Nations General Assembly Resolution A/RES/74/149. Retrieved November 29, 2023, from https://digitallibrary.un.org/record/3848695

JURISPRUDENCE

1. ICTY Trial Chamber Judgement (Case No. IT-98-33-T), 2.8.2001 Retrieved September 3, 2023 from https://www.icty.org/x/cases/krstic/tjug/en/krs-tj010802e.pdf
2. ICTY Trial Chamber Judgement (Case No. IT-05-88/2-T), 12.12.2012. Retrieved September 3, 2023, from https://www.icty.org/x/cases/tolimir/tjug/en/121212.pdf
3. ICTY Trial Chamber Judgement (Case No. IT-98-29-T), 5.12.2003. Retrieved September 3, 2023, from https://www.icty.org/x/cases/galic/tjug/en/gal-tj031205e.pdf
4. Separate and partially dissenting opinion of judge Nieto-Navia. Retrieved September 3, 2023, from https://www.icty.org/x/cases/galic/tjug/en/gal-so031205e.pdf
5. ICTY Trial Chamber Judgement (Case No. IT-98-29/1-T), 12.12.2007. Retrieved September 3, 2023, from https:// www.icty.org/x/cases/dragomir_milosevic/tjug/en/071212.pdf
6. ICC Public Redacted Version of "Warrant of Arrest for Patrice-Edouard Ngaïssona", Global Compliance, Starvation Jurisprudence Digest – Starvation Analysis in Commissions, Inquiries and Fact-Finding Missions, Courts and Tribunals (updated 31 January 2023), pp. 99-100. Retrieved November 24, 2023, from https://starvationaccountability.org/wp-content/uploads/2019/07/Starvation-Jurisprudence-Digest-January-2023.pdf

Sažetak

Dijana Gracin, Ivica Kinder

Stanje i mogući daljnji razvoj zabrane izgladnjivanja civilnog stanovništva u oružanim sukobima

Glavni cilj istraživanja jest utvrditi jesu li pravna pravila međunarodnog prava oružanih sukoba i međunarodnog kaznenog prava u pogledu zabrane izgladnjivanja civilnog stanovništva kao metode ratovanja primjerena sve raširenijoj praksi izgladnjivanja u oružanim sukobima te koji su u svemu tome ključni izazovi. Autori analiziraju sadržaj i dosege relevantnih pravnih pravila, uključujući i ona koja se neizravno tiču zabrane izgladnjivanja civilnog stanovništva – o zaštiti ranjivih kategorija osoba, opsadi, blokadi, evakuaciji, akcijama i pošiljkama humanitarne pomoći i dr. U obradi teme napose primjenjuju dinamički i kritički pristup. Dinamički analiziraju evoluciju međunarodnopravne zabrane izgladnjivanja civilnog stanovništva, poglavito od Drugog svjetskog rata do danas, uključujući relevantne primjere iz međunarodne judikature i rada međunarodnih tijela, kao i mišljenja pravnih pisaca. Kritički pristup primjenjuju kako bi upozorili ponajprije na potrebu za snažnijom moralnom stigmatizacijom izgladnjivanja civilnog stanovništva u oružanim sukobima. U okviru kritičkog pristupa vide potrebu za dosljednim korištenjem termina „izgladnjivanje“, prije svega u otvaranju novih kaznenih predmeta protiv nalogodavaca i počinitelja kaznenih djela. U svezi sa subjektivnim elementima bića kaznenih djela propisanih Rimskim statutom upućuju na potrebu strpljivog istraživanja i dokumentiranja konkretnih slučajeva radi što kvalitetnijeg prikupljanja dokaza. U odnosu na postojeći međunarodnopravni okvir, vide potencijal za kreiranje dodatnih pravnih pravila u Rimskom statutu (potom i u nacionalnim zakonodavstvima), i to uvođenjem distinkcije između osnovnog i kvalificiranih oblika kaznenog djela. Cjelovito sagledavanje problematike zabrane izgladnjivanja civilnog stanovništva smatraju korisnim i za pravilnu primjenu u vojnim priručnicima, odnosno u procesu vojnog donošenja odluka.

Ključne riječi: izgladnjivanje, opsada, blokada, humanitarna pomoć, MKSJ, Rimski statut.