

ÅBO AKADEMI UNIVERSITY – Faculty of Social Sciences, Business and Economics, and Law

Abstract for Master's Thesis

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Title: Starvation as a Method of Warfare: A Case Study of Russian Actions in the War in Ukraine

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Abstract:

This Master's thesis examines the prohibition of the use of starvation of civilians as a method of warfare under International Humanitarian Law (IHL), focusing on potential violations by Russia during the war in Ukraine in 2022.

The devastating destruction and impact on civilians during the war in Ukraine has been well documented, giving rise to allegations of Russia deliberately targeting the civilian population and aggravating food insecurity in the country, in violation of IHL. Allegations of Russian forces attacking food production and distribution centers and medical facilities and impeding humanitarian relief operations fit the description of the use of starvation as a method of warfare, which begs the question of what exactly constitutes a violation of the prohibition.

The war highlights the causality between hunger and conflict, and the growing discourse regarding states' obligations to minimize civilian suffering and food insecurity in conflict ridden areas. Although the prohibition of the use of starvation as a method of warfare is universally accepted as a part of customary law, it has never been prosecuted, leaving the question of how the prohibition should be interpreted relatively open.

This thesis examines the relevant legal sources of IHL, including the Geneva Conventions and their Additional Protocols, customary international humanitarian law, and additional sources, to understand the scope of the prohibition and how it should be interpreted, followed by a legal analysis of alleged Russian actions during the war in Ukraine and whether they could have amounted to a violation of the prohibition under IHL.

Through an analysis of the legal sources regulating the use of starvation as a method of warfare in IHL, reports, and media coverage, the thesis argues that Russia may have violated the prohibition of the use of starvation as a method of warfare under IHL during the conflict in Ukraine.

Keywords: Starvation, civilian, humanitarian law, objects indispensable to the civilian population, Humanitarian relief

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MASTER'S THESIS IN INTERNATIONAL LAW AND HUMAN RIGHTS

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of Russian Actions in the War in Ukraine

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Abbreviations

API	Additional Protocol I to the Geneva Conventions
APII	Additional Protocol II to the Geneva Conventions
GCI	The First Geneva Convention of 1949
GCVI	The Fourth Geneva Convention of 1949
IAC	International Armed Conflict
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
NIAC	Non-international Armed Conflict
OSCE	Organization for Security and Cooperation in Europe
UN	United Nations
WFP	World Food Programme

1. Introduction

1.1. Introduction

Global hunger reached record levels in 2022. Climate shocks, conflicts, the COVID-19 pandemic and rising costs of commodities were all main drivers behind increased hunger levels that, despite years of progress, once again began increasing since 2015.¹ The number of acutely food-insecure people has skyrocketed from 135 million in 2019 to 345 million in 2022, according to the World Food Programme (WFP), with between 702 and 828 million individuals being affected by hunger in 2021.²

Conflict, in conjunction with other events, remains one of the main causes of hunger today. Scarcity of resources leads to hunger and desperation, which in turn can lead to conflict, which only exacerbates the situation. Conflict and hunger are intricately linked, or at least can be the cause and the effect of the other.³ Conflict can drive hunger in multiple ways, e.g., economic recession, disrupting essential services, increasing inflation, and more directly by destroying and looting crops and food stocks and blocking deliveries of necessities.⁴ Conflicts all over the world, e.g., in Yemen, South Sudan, Mali and now Ukraine are exacerbating acute hunger levels, with little hope for progress without peace.⁵ Regional conflicts can also have widespread consequences on global hunger levels, something that has become abundantly clear most recently in the context of the war in Ukraine. Multiple countries, especially in the MENA region, and aid organizations such as the WFP are dependent on both Ukrainian and Russian goods such as wheat and sunflower oil. With the war bringing exports from both countries to a halt, people in certain regions are consequently being driven further into hunger.⁶

¹ FAO, IFAD, UNICEF, WFP and WHO 'The State of Food Security and Nutrition in the World 2022. Repurposing food and agricultural policies to make healthy diets more affordable' (December 2022) Rome, FAO. Xiv.

² Ibid. 10.

³ Salvatore Zappalà, *Conflict Related Hunger 'Starvation Crimes' and UN Security Council Resolution 2417 (2018)* (2019), 890.

⁴ Dapo Akande and Emanuela-Chiara 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*, (Journal of International Criminal Justice 17, 2019), 754.

⁵ WFP 'Hunger Hotspots', (2022).

⁶ Caitlin Welsh 'The Impact of Russia's Invasion of Ukraine in the Middle East and North Africa (Center for Strategies & International Studies (CSIS), 2022) 1 and WFP *War in Ukraine drives global food crisis* (June 2022).

The causality between conflict and hunger is thus multifaceted yet clear. The link is not only causal though, as hunger is at times deliberately caused amid conflict. The use of starvation as a method of warfare is according to many as old as conflict itself, and despite the blatant immorality of the method, parties to conflict have used food and starvation as a method of warfare throughout history.⁷ Using starvation as a method of warfare can take many forms and is not clearly defined in any legal sources of International Humanitarian Law (IHL).⁸ Methods can include deliberately causing starvation by destroying crops, besieging cities, blocking exports and imports, denying access to humanitarian aid or displacing populations. The method can thus vary in major ways, but the intent remains to cause hunger among the civilian population. The war in Ukraine has naturally brought food security and the causality between conflict and hunger to the forefront of international political discourse. The effects on populations not only in Ukraine but across the world have highlighted both the intended and collateral risks and implications conflict has on food security.

The war in Ukraine is the most recent example of where food and hunger have become prominent themes in the discourse surrounding a conflict. The war between Ukraine and Russia officially began the 24th of February 2022 when Russian forces invaded Ukrainian territory. This immediately sparked a full-scale war between the two states. Ukraine called it an act of aggression whereas Russia argued that it was forced into what it called a special military operation. The two sides have had differing accounts of the war, both in what lead up to it, and also the events that have occurred during the war. Allegations of Russia using starvation as a method of warfare and deliberately starving the Ukrainian population during the war have been widespread, again raising the question of using starvation as a method of warfare to popular discourse.

Using starvation as a method of warfare has naturally drawn criticism and questions of morality before and has prompted action from the international community and within the realm of international law. The 1977 Additional Protocols to the Geneva Conventions marked the first steps to condemning the use of starvation as a weapon in International Humanitarian Law

⁷ Leanne Digney *The Rome Statute and Hunger as a Weapon of War - The Journey Towards Ending Impunity for Starvation Tactics*, (The Institute of International & European Affairs, 2022).

⁸ Salvatore Zappalà, *Conflict Related Hunger 'Starvation Crimes' and UN Security Council Resolution 2417 (2018)* (2019), 893.

(IHL).⁹ Since then, further steps have been taken, most notably with the 2018 UN Security Council unanimously adopting Resolution 2417 which in short underlines that causing starvation in conflict could constitute to a war crime. Resolution 2417 was the first of its kind, truly acknowledging and highlighting the causality between starvation and conflict and emphasizing states' obligations to take precautions and abstain from causing starvation among civilians.¹⁰ The adoption of the Resolution was seen by many as a milestone in recognizing hunger as an intricate and immoral part of warfare and the development to finally abolishing the method.

To the objective observer, it may seem obvious that food is being weaponized in Ukraine and starvation is used as a method of warfare in one way or another, but this does not necessarily translate into the realm of international law. Regardless of the progress made through the recognition of Resolution 2417, international law and more specifically IHL can at times be relatively vague, bleak, and powerless in its practice, but also in its theory. This is also true in the case of using starvation as a method of warfare.¹¹ Therefore, especially considering recent events and the adoption of Resolution 2417, it is increasingly important to study what IHL in fact stipulates regarding the use starvation as a method of warfare, what judicial and state practice establish and finally whether the legal framework leaves any gaps or disparities.

Because of the war's widespread effects on global food security and the relatively concise form of the conflict, as a clear international armed conflict between two sovereign states (the definition of international armed conflicts will be discussed further in the following chapters), it is a fitting case to study, to find clarity in what the use of starvation as a method of warfare means and what in fact can amount to a violation of the prohibition according to IHL today.¹²

⁹ Leanne Digney *The Rome Statute and Hunger as a Weapon of War - The Journey Towards Ending Impunity for Starvation Tactics*, (The Institute of International & European Affairs, 2022).

¹⁰ Salvatore Zappalà, *Conflict Related Hunger 'Starvation Crimes' and UN Security Council Resolution 2417 (2018)* (2019), 881.

¹¹ *Ibid.* 892.

¹² Benedek, Wolfgang, Bílková, Veronika and Sassòli, Marco, Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights '*Report on violations of international humanitarian and human rights law, war crimes and crimes against humanity committed in Ukraine since 24 February 2022*' (Warsaw, 12 April 2022) ODIHR.GAL/26/22/Rev.1

1.2. Research Question and Delimitations

This thesis will examine what international law and more precisely, what International Humanitarian Law and state practice establish regarding the use of starvation as a method of warfare, using the case of Russian actions during the war in Ukraine as an example. Alleged and proven events and actions, mostly by Russian forces, will be examined in conjunction with the relevant sources of IHL. The examination will attempt to answer what the prohibition of the use of starvation of civilians as a method of warfare entails, what can amount to a potential violation, and finally whether Russian actions (whether alleged or proven) could potentially constitute such a violation. The research question is thus whether Russia's actions during the war in Ukraine could amount to the unlawful use of starvation of civilians as a method of warfare under IHL. More specifically, this entails examining how the prohibition of the use of starvation of civilians as a method of warfare is interpreted in IHL, and further examining different methods of causing starvation, mainly destroying objects indispensable to the civilian population and impeding relief operations. The legal analysis of the prohibition will consider the degree of civilian suffering and the notion of intent behind actions of armed forces, to further understand the scope of the regulations. For the specific case study this includes answering whether the starvation of civilians could be argued to have been the specific aim of alleged Russian actions in Ukraine, and whether these actions and their effect on the civilian population could be argued to have been disproportionate, indiscriminate, or unnecessary in nature.

The thesis will focus solely on Russian actions that have occurred in Ukraine and its territory after the 24th of February 2022. As mentioned above, the war in Ukraine has widespread effects on global food security, that some argue to be intentionally caused by Russia,¹³ and these effects are important to consider and examine when discussing the correlation between hunger and conflict as a whole. For the sake of the present research question though, it is more relevant to focus on the specific question of using starvation of civilians as a method of warfare in an armed conflict and the obligations thereto, instead of the widespread effect the conflict has on hunger across the world. For the research question, the thesis will not examine whether the widespread effects of the war and the actions therein could be regarded as using starvation as

¹³ Al Jazeera 'How did the Russia-Ukraine war trigger a global food crisis?' (June 2022).

a method of warfare towards third parties, but solely focus on Russian actions in Ukraine, and directed at Ukraine and its population, even though the widespread effects are an important part of the conflict and should be noted.

1.3. Materials and Method

To answer the research question, the thesis will examine examples of Russian actions in Ukraine that could potentially fit the description of using starvation of civilians as a method of warfare, in conjunction with the legal framework and sources of IHL. The thesis will at times draw comparisons to former examples of conflicts where it has been documented that starvation has been used as a method of warfare, to understand how the prohibition of starvation has been interpreted in previous cases. The sources used for the examined events and actions during the conflict will be articles from media and reports from organizations, such as Human Rights Watch and the Organization for Security and Cooperation in Europe (OSCE). The thesis will specifically examine allegations of Russian troops destroying Ukrainian crops and other objects essential to the civilian population, besieging areas and cities and blocking access to humanitarian relief operations, and whether these actions could have amounted to the unlawful use of starvation as a method of warfare in the eyes of IHL. Such actions are selected as they are directly related to food stuffs and food security, thus having a direct link to the prohibition of using starvation as a method of warfare.

The thesis utilizes articles from mainstream media, with most of the used articles and reports coming from western media outlets, along with reports from independent and United Nations (UN) organizations. The thesis is a legal analysis and will not function as an assessment of facts and evidence of the examined allegations of actions and events, as the Russian case study and the examined actions are merely used as examples to examine the prohibition of using starvation as a method of warfare within the framework of IHL. For this purpose, examining the overall trend of Russian actions, using excerpts and individual examples from media sources will suffice, without taking a firm stance on the validity of the allegations.

The legal sources that will be analyzed in relation to the events and actions will be the most relevant to the prohibition of the use of starvation as a method of warfare. These will include traditional treaty law, mainly the 1949 Geneva Conventions and the 1977 Additional Protocol

I, customary international humanitarian law, and additional sources such as UN Security Council Resolution 2417, the Rome Statute and practice of the ICC.

2. Allegations of Use of Starvation of Civilians as a Method of Warfare During the War in Ukraine

Russia's full-scale invasion of Ukraine the 24th of February 2022 came as a shock to the world. Despite rising tensions between the two states, few could imagine a full-scale invasion and international conflict erupting. This became a harsh reality very quickly, and more details regarding actions and potential violations of IHL, especially by Russian forces, emerged at a rapid rate. Allegations of a variety of atrocities and violations of IHL were quick to follow, many of which were hard to argue against, as proof was blatant. These allegations include attacks on civilians, massacres, destroying civilian objects and infrastructure, burning crops, killing livestock, looting grain and other food stuffs etc.¹⁴ It is particularly the latter actions that this thesis will focus on. That is, allegations of Russian forces' actions, that seem to have the intent of causing hunger in Ukraine and could thus amount to the use of starvation as a method of warfare in violation of IHL.

Using starvation as a method of warfare can take many shapes and forms and is not clearly defined in exact detail in any legal sources of international law.¹⁵ A military force could orchestrate a hunger crisis or starvation using a multitude of different methods. It could be depriving civilians of indispensable objects and necessities by e.g., the intentional burning and destroying of crops and farms, killing of livestock, besieging cities and regions, blocking food imports or humanitarian relief operations, destroying crucial infrastructure for civilians etc.¹⁶ These are only a few examples, and this thesis will dive further into different methods later while examining the legal sources and conducting the legal analysis and case study.

¹⁴ Politico *The Starvation of a Nation: Putin Uses Hunger as a Weapon in Ukraine* (1 April 2022).

¹⁵ Salvatore Zappalà, *Conflict Related Hunger 'Starvation Crimes' and UN Security Council Resolution 2417 (2018)* (2019), 893.

¹⁶ Simone Hutter 'Starvation as a weapon: Domestic Policies of Deliberate Starvation as a Means to an End under International Law' (International Law Series Vol. 46 2015) 164 and Akande and Gillard, *Conflict-induced Food Insecurity and the War Crime of Starvation of Civilians as a Method of Warfare*, (2019), (n4) 754

For the sake of the case study at hand, Russian actions during the war in Ukraine, it is relevant to start off with examining what allegations have been made against Russia and focus on allegations and actions that could fit the description of using starvation as a method of warfare. This means analyzing actions by Russia relating to the examples mentioned above, that could in one way or another disproportionately impact civilians, food supplies and hunger in Ukraine. This thesis will not attempt to go into detail on what allegations have been proven beyond doubt or investigate, collect, or assess evidence to these claims. This thesis will only utilize serious allegations of Russian forces' actions useful for the theoretical question at hand; whether Russia has violated IHL by using starvation as a method of warfare in Ukraine. Both parties to the conflict have very differing accounts on the occurrences of the war. This is natural, as both parties attempt to win over sympathies of other states and the public. This thesis will not attempt to scrutinize or assess which party to the conflict is right or go deep into detail on the events that have happened during the war. Close examinations of evidence regarding allegations of Russian actions will thus not be conducted, but the allegations will rather be used as examples in the analysis of IHL. Events are not stated as absolutes but both alleged and evidence-based events will be discussed, against the backdrop of IHL and the legal sources that will be used. The question that will be answered in this thesis is what amounts to using hunger as a method of warfare and stipulates a violation of IHL, and whether alleged Russian actions in the war in Ukraine reach this threshold. This question will be answered in theory and will thus not be examined in detail, nor will a stance be taken on whether these actions in fact have occurred exactly as presented in the material and sources used. Rather, this thesis uses the alleged events as examples for examination of the research question at hand.

Allegations of Russia using hunger as a method of warfare during the war in Ukraine have not been scarce. In April 2022, David Beasley, the head of the UN World Food Program, stated that Russian forces are using food as a weapon of war in Ukraine and people are being starved to death, for example in the besieged city of Mariupol.¹⁷ There have been multiple reports from Ukraine claiming Russian forces have strategically and intentionally set out to destroy the Ukrainian food and agriculture sector, by confiscating and shipping away tons of grain, destroying wheat fields, crops and killing livestock throughout the invasion.¹⁸ Reports have emerged of Russian forces deliberately shelling farmlands and placing mines in crops outside

¹⁷ Leanne Digney *The Rome Statute and Hunger as a Weapon of War - The Journey Towards Ending Impunity for Starvation Tactics*, (The Institute of International & European Affairs, 2022).

¹⁸ CBS News 'How Russia is Using Hunger as a Weapon in Ukraine' (May 2022).

of fighting areas, seemingly to hurt the agricultural sector and food security of Ukraine and its population.¹⁹ Reports of Russia specifically targeting and attacking grocery stores, market places and humanitarian service centers and food distribution areas used by civilians in areas outside of Kyiv and the cities of Chernihiv and Kharkiv, only to name a few examples.²⁰

Furthermore, Russia has taken control over Ukrainian ports, blocking any imports or exports of Ukrainian goods or necessities.²¹ This has had a major impact on global food security as Ukraine is one of the world's largest exporters of wheat and other goods, but naturally also impacts the food security in Ukraine, both directly and indirectly, as indispensable objects for the Ukrainian agricultural sector were blocked from being imported along with any foreign goods and foods.

During the spring of 2022, Russia also laid siege over multiple cities, depriving not only the Ukrainian agricultural sector of crucial materials for its production, but also civilians and the Ukrainian population of food and other necessities.²² Ukrainian authorities and non-governmental organizations accused Russia of e.g. besieging the city of Mariupol, blocking any kind of movement in and out of the city, thus causing a major humanitarian crisis, as civilians and combatants alike started running out of food and other necessities.²³ Negotiations of opening a humanitarian corridor for aid organizations were had and momentarily opened, but for an extended period of time, Russia was accused for not executing its made promises of granting access for humanitarian assistance to civilians in need, an even obstructing humanitarian relief operations by e.g. shelling safe routes outside of fighting hotspots.²⁴

These are only a few of the examples of alleged Russian actions that could amount to the unlawful use of starvation as a method of warfare according to IHL, but also the most relevant ones, and will be analyzed in the context of IHL. The broad array of allegations, many of which were accompanied by convincing evidence through satellite imagery and on-the-ground

¹⁹ Politico *The Starvation of a Nation: Putin Uses Hunger as a Weapon in Ukraine* (1 April 2022) and France24 The Observers 'Russian Attacks on Farms and Silos 'deliberately trying to destroy the Ukrainian economy'' (6 May 2022).

²⁰ France24 The Observers 'Fears of Food Shortages After Russian Attacks on Grocery Stores in Ukraine' (21 March 2022) and Independent 'Russian Forces 'shoot and kill 10 people queuing for bread' in Chernihiv, US claims' (16 March 2022).

²¹ France24 'Russian Blockade of Ukraine's Ports Puts Global Food Supply at Risk' (12 May 2022).

²² Politico *The Starvation of a Nation: Putin Uses Hunger as a Weapon in Ukraine* (1 April 2022).

²³ Ibid. And the Guardian 'Russia Accused of Shelling Mariupol Humanitarian Corridor' (26 April 2022).

²⁴ Ibid and Reuters 'Ukraine Blames Russia After Mariupol Humanitarian Corridor Fails' (24 April 2022).

reports, demonstrated a theme in Russian actions and strategy during the first year of the war in Ukraine.

3. Starvation of Civilians as a Method of Warfare in International Humanitarian Law

3.1. Introduction

To answer whether Russian actions could have amounted to the use of starvation as a method of warfare and thus a violation of IHL, it is relevant to examine two things in terms of legal sources. Firstly, it is important to examine which sources prohibit and define the use of starvation as a method of warfare, as these lay out the entire basis of the legal context. Secondly it is also relevant to see which of these legal instruments Russia is bound by in international law. Although this thesis focuses on the actions that amount to using starvation as a method of warfare rather than focusing on actual accountability and repercussions of potential Russian violations, it is relevant to understand what treaties Russia is bound by and what that means in terms of the legal analysis.

As mentioned earlier, the primary legal instruments regarding the use of hunger as a method of warfare are the 1949 Geneva Conventions and the 1977 Additional Protocols and customary international law. Additional sources that can aid in the legal analysis and understanding of the use of starvation as a method of warfare from a legal perspective are the Rome Statute of the International Criminal Court (ICC) and the UN Security Council Resolution 2417. The sources are very different as treaty law; the Geneva Conventions and their Additional Protocols function as the backbone of IHL, whereas the role of e.g., customary law and Security Council resolutions are different from traditional treaties but can (at times) be deemed binding and very important to examine none the less. It is especially important to examine a broad variety of legal sources when attempting to examine and determine specific actions that have not been defined in detail, in this case the use starvation as a method of warfare.

Both Russia and Ukraine are parties to the four Geneva Conventions of 1949 and the 1977 Additional Protocol I.²⁵ Russia is not a party to the Additional Protocol III, but this is not of great importance to the case study at hand, whether Russia has used starvation as a method of warfare in Ukraine, as the Additional Protocol III only presents an additional protective emblem for the Red Cross/Crescent movement, the “third Protocol emblem”.²⁶

The thesis will also examine the practice of the International Criminal Court, despite the fact that neither Ukraine nor Russia are parties to the Rome Statute.²⁷ International Criminal Law and the practice of the ICC can regardless prove useful when analyzing regulations of IHL and their scope, as they can exhibit trends and developments towards customary law and clarification in interpretation of IHL rules. One could argue that the Statute of the ICC is a part of treaty law in IHL, as criminalized conduct and thus violations of IHL are viewed as a necessity for the definition and development of war crimes defined by the Rome Statute.²⁸

3.2. Understanding the Context of the War in Ukraine: An International Armed Conflict

Before further analyzing the relevant legal sources of IHL, it is crucial to also understand the context we are examining from a legal perspective, as this further determines which legal sources in fact are relevant in the case study of Russian actions in Ukraine. Considering this, two conditions need to be established, whether or not the conflict in Ukraine categorizes as an international armed conflict (IAC) or a non-international armed conflict (NIAC) and additionally, whether or not Russia can be seen as occupying Ukrainian territories. These are two relevant questions as the depending on the context and situation, different rules and sources of IHL could apply.

²⁵ OSCE *Report on violations of IL, IHRL and IHL in Ukraine since February 2022*, (April 2022) (n 12) 5 section C.

²⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), (adopted 8 December 2005, entered into force 14 January 2007).

²⁷ International Criminal Court ‘*Situation in Ukraine*’ ICC-01/22 (2022).

²⁸ OSCE *Report on violations of IL, IHRL and IHL in Ukraine since February 2022*, (April 2022) (n 12) 6.

A common challenge in IHL is the classification and categorization of conflicts.²⁹ The traditional divide is made up between IACs and NIACs, of which the latter has evolved into its own legal realm through the development of the Additional Protocols of the Geneva Conventions. Modern conflicts are though increasingly difficult to classify in clear cut terms. Questions, mainly regarding NIACs, have arisen as the composition of belligerent parties varies more than ever, domestic conflicts are heavily influenced by third party states, thus blurring the lines between IACs and NIACs, and the line between conflict and isolated events is also increasingly blurred.

Despite this growing conversation around modern day conflicts and their categorization within IHL, the war in Ukraine is quite different to most other current conflicts in the world, as it quite clearly fills the qualifications of an IAC within the definition of IHL. The Common Article 2 of the first Geneva Convention (GCI) states that the convention applies to “all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.”³⁰ Even though Russia has not openly used the term war regarding Ukraine (except for a few slip-ups), but rather calls it a special military operation, it is clear that the case in Ukraine stipulates a war in its full capacity, something Ukraine has also recognized.³¹ As Common Article 2 of GCI establishes, whether Russia recognizes the conflict in Ukraine as a war or not is also irrelevant to the application of the Geneva Conventions. This notion is also supported by the Commentary of 1958 to the fourth Geneva Convention (GCIV) Article 2, which states that “There is no need for a formal declaration of war, or for recognition of the existence of a state of war, as preliminaries to the application of the Convention. The occurrence of de facto hostilities is sufficient.”³² Neither does Article 2 expressly require that hostilities take place on territories of both parties to the conflict, which means that despite no active hostilities necessarily taking place on Russian territory, the conflict still fulfills the requirements of being an IAC.

²⁹ Hutter (n 16) 176.

³⁰ International Committee of the Red Cross (ICRC), *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention)*, 12 August 1949, 75 UNTS 31. Art 2.

³¹ Business Insider ‘*Putin Said He Wants The War in Ukraine to End, Acknowledging For The First Time It’s More than Just a Military Operation*’ (23 December 2022).

³² International Committee of the Red Cross (ICRC) ‘*Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*’ 75 UNTS 287 (adopted 12 August 1949, entered into force 21 October 1950) art. 2.

It can be important to make the distinction between an IAC and a NIAC when doing a legal analysis, as the status of the conflict has deep implications to which sources and regulations applies, although this distinction has become of less importance in recent years as most regulations apply to both IACs and NIACs and most prohibitions are included in sources relating to both categories.³³ But as the war in Ukraine undoubtedly falls under the dominion of Common Article 2 of the Geneva Conventions, there is no need to go into detail between the different applications of the two types of conflict and the potentially different applications of the use of starvation as a method of warfare. It should also be noted that even if the war in Ukraine did not amount to an IAC, Article 14 in Additional Protocol II, which relates to non-international armed conflicts does also prohibit the starvation of civilians as a method of warfare in NIACs.³⁴ But as the war in Ukraine constitutes an IAC, it is API that is of relevance, and not articles relating specifically to NIACS, such as Article 14 of APII.

3.3. Overview of the Key Legal Instruments

Using starvation as a method of warfare can take many forms and is not defined in detail in any legal sources of IHL. This also means that there are several relevant regulations in IHL to examine when analyzing Russian actions in Ukraine. While the most relevant regulation in IHL is naturally the exact prohibition of starvation of civilians as a method of warfare, set out in Article 54 of the Additional Protocol I (API) to the Geneva Conventions of 1949, it is not the sole regulation that will be examined.³⁵ As previously listed, some of the most relevant sources in addition to Article 54 of the 1977 API, are the Geneva Conventions and API articles regulating humanitarian relief operations, customary international humanitarian law, with the Rome Statute and UN Security Council Resolution 2417 functioning as additional sources. The question is thus not merely whether Russia has breached article 54 of the Additional Protocol I, even though this is the most relevant question, but also how the auxiliary sources of IHL

³³ Rogier Bartels and Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, ICRC/Cambridge University Press, Geneva/Cambridge (2005) in the *International Review of the Red Cross* Vol. 91 Nr 873 (2009) 40.

³⁴ International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 1125 UNTS 609, (adopted 8 June 1977, entered into force 7 December 1978) art 14.

³⁵ Additional Protocol I to the Geneva Conventions of 1949 and Relating to the Protection of Victims in International Armed Conflicts (API 1977) (adopted 8 June 1977, entered into force 7 December 1978) art 54.

regulate using starvation as a method of warfare and whether Russia has potentially violated any such regulations.

Article 54 API establishes the general prohibition of using starvation of civilians as a method of warfare, but the prohibition can be categorized under IHL into two separate categories. The first is destroying objects indispensable to the survival of the civilian population, regulated by the Article 54 API.³⁶ Destroying objects indispensable to the civilian population can take multiple forms but can be categorized to fall under the same law under IHL. The second way of using starvation as a method of warfare is by blockade, siege, or obstructing access to humanitarian relief operations, which is regulated separately in IHL, although in relation to the general Article 54 prohibition of causing starvation as a method of warfare.³⁷ The laws regulating humanitarian relief operations, as it is a prevalent and recognized method of causing starvation among civilians, will thus also be examined in detail.

Other rules of IHL relevant to the question of using starvation as a method of warfare are the principles of distinction, proportionality, and necessity, as these fundamental principles of IHL aid in the functional analysis of whether a violation of a prohibition has occurred.³⁸ Prohibitions and articles in IHL do often leave room for discretion and leeway for argumentation, but principles such as discretion and proportionality come in and can either support such interpretations or set limits to their extent. The aforementioned sources and their regulations will be discussed in the following sub-chapters, followed by further analysis of whether Russian actions in Ukraine could amount to the unlawful use of starvation as a method of warfare under IHL.

³⁶ René Provost ‘*Starvation as a Weapon: Legal Implications of the United Nations Food Blockade Against Iraq and Kuwait*’ (January 1, 1992). *Columbia Journal of Transnational Law*, Vol. 30 489 and Hutter (n 16) 163.

³⁷ *Ibid.* 589 and Hutter (n 16) 163–164.

³⁸ Akande and Gillard (2019) (n 4) 756–757.

3.4. Article 54 of the Additional Protocol I to the Geneva Conventions

3.4.1. Destroying Objects Indispensable to the Civilian Population

The main source regulating the use of starvation of civilians as a method of warfare is Article 54 API to the Geneva Conventions of 1949. The article expressly prohibits the action itself, as the first paragraph states that “Starvation of civilians as a method of warfare is prohibited.”³⁹ Naturally, it is the main source addressing the use of starvation as a method of warfare and the most prominent source to consider when examining whether Russian actions in the war in Ukraine could amount to a violation of IHL. It should also be noted that Russia is a party to the Additional Protocol I and is thus bound by its regulations, including Article 54.⁴⁰

The first paragraph of Article 54 is a general prohibition of using starvation as a method of warfare, and is quite elementary in its wording, but it does not explicitly determine what actions the prohibition would entail. In paragraph 2 the Article goes on to state that:

2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, 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.⁴¹

Paragraph 2 offers actions that could cause starvation that would thus be unlawful in the eyes of the article and IHL. Examples of such acts include destroying or removing “objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas, crops, and livestock etc.”⁴² Paragraph 3 of Article 54 introduces limitations to paragraph 2, stating that:

3. The prohibitions in paragraph 2 shall not apply to such of the objects covered by it as are used by an adverse Party:

³⁹ Additional Protocol I (1977) (n 35) art. 54.1.

⁴⁰ ICRC, International Humanitarian Law Database.

⁴¹ Additional Protocol I (1977) (n 35) art. 54.2.

⁴² Ibid.

- (a) as sustenance solely for the members of its armed forces; or
- (b) 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.⁴³

Paragraph 3 thus establishes that the prohibitions in paragraph 2 are not applicable to objects used 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. Paragraph 3 does though state that even in cases of attacks directed at objects used in support of military action, should no actions be taken if they could be expected to leave the civilian population with such inadequate food to cause starvation.⁴⁴ Paragraph 3 does therefore set limitations to the discretion of parties to a conflict to take action against military objects, if there is a chance that such action could cause starvation among civilians. To what degree this limitation should be interpreted is of course a different matter, as Article 54 does not provide further clarification.

The main questions regarding Article 54 and the prohibition of using starvation as a method of warfare are thus what amounts to destroying civilian objects, what classifies as objects indispensable to the survival of civilian population, and finally, and perhaps most importantly, what is the scope of the prohibition. That is, must starvation of civilians be the specific aim of actions, for them to amount to the unlawful use of starvation as a method of warfare, or is the effect and result of starvation sufficient. In the following sections, these questions and what Article 54 itself provides in terms of interpretation will be examined, before finally analyzing these questions further in the legal analysis of Russian actions in Ukraine.

3.4.2. Objects Indispensable to the Survival of the Civilian Population

Through examining Article 54 closer, one will find that despite what seems to quite a clear prohibition against starvation of civilians, the wording in the article is also quite inconclusive. First and foremost, the prohibition in Article 54 API relies heavily on the prohibition to attack, destroy, remove or render *objects indispensable to the survival of the civilian population*, giving examples of such objects, such as foodstuffs, agricultural areas for food production, crops, livestock, drinking water etc.⁴⁵ The examples are quite clear-cut and logical, but the

⁴³ Additional Protocol I (1977) (n 35) art. 54.3.

⁴⁴ Ibid.

⁴⁵ Additional Protocol I (1977) (n 35) art. 54.2.

article clearly also leaves room for a wider interpretation, as the above stated examples are exactly that, examples.⁴⁶ The article is thus not limited to these objects either, as the words “such as” in the article suggest.⁴⁷ Some even argue that the provision could refer to medicines and medical equipment, as the provision speaks about objects indispensable to the survival of the civilian population.⁴⁸ Such objects are naturally not only limited to food and water but includes other necessities as well.

This argument suggests that starvation should be interpreted widely, as including deprivation of elements beyond food and nourishment.⁴⁹ From a simply theoretical standpoint, when examining the prohibition of starvation as a method of warfare, this is noteworthy, as it widens the prohibition’s scope drastically. In cases where targeted objects are directly linked to food, as in food supplies, crops, elements of food production etc., as is the case with allegations of Russian actions in Ukraine, this is not as crucial. The scope of indispensable objects is thus not the most important question for the present case study, but it should none the less be noted that the prohibition of starvation in general could be interpreted to include a broader scope than only elements directly linked to food.

It should also be noted that any degree of deprivation of objects indispensable for the survival of civilians, regardless of how that phrase is interpreted, does not automatically amount to starvation of civilians. Starvation should be read as a very high degree of deprivation, where survival is at risk.⁵⁰ This does though not require that death should occur, but rather that the heightened risk exists, but more on this in the following chapter, where the scope of the prohibition will be further examined.⁵¹

⁴⁶ Akande and Gillard (2019) (n 4) 759.

⁴⁷ Jean-Marie Henckaerts and Louise Doswald-Beck ‘*Customary International Humanitarian Law Volume I: Rules*’ (3rd edn, International Committee of the Red Cross and Cambridge University Press, 2005) 193.

⁴⁸ See Akande and Gillard (2019) (n 4) 760 and Henckaerts and Doswald-Beck ‘*Customary IHL*’ (2005) (n 49) 193.

⁴⁹ Akande and Gillard (2019) (n 4) 760.

⁵⁰ *Ibid.*

⁵¹ Provost (n 36) 603 and Akande and Gillard (2019) (n 4) 760.

3.4.3. Scope of the Article 54 Prohibition – Must Starvation of Civilians be the Aim?

The most complex question of interpretation that article 54 API leaves relatively open is what actions are deemed permissible and when. When do actions go from permissible actions with military necessity and cross the line to becoming the unlawful starvation of civilians? Must the purpose of these actions distinctly be the starvation of civilians, or is it the effect and result these actions, regardless of the goal, that weighs more?⁵² This question is more complex than that of what objects the prohibition entails and is also more relevant to the case study at hand. As mentioned, the allegations of Russian actions are clearly linked directly to food supplies and food security, but the question of whether Russia's actions could be argued to have been legitimate through military necessity is more complex. Could one argue that Russia's actions were in fact not unlawful because the starvation of civilians was not necessarily the specific aim, but rather that civilian suffering and starvation is just collateral damage of the ongoing conflict? To answer this question, one obviously needs to analyze the selected Russian actions closer, which will be done in the analysis chapter, but one also needs to understand how the scope of Article 54 is understood and interpreted. Is the prohibition of starvation of civilians as a method of warfare in Article 54 interpreted to apply only to actions where starvation is the specific aim of the action, or does it also apply to situations where starvation is an effect of these actions.⁵³

At first glance, Article 54 only prohibits the *use of starvation of civilians as a method of warfare*, which could be read with a narrow interpretation.⁵⁴ The wording of the use of starvation as a method of warfare could indicate that the starvation of civilians must be the aim of these methods.⁵⁵ This would in turn suggest that military actions that happen to cause starvation but were not taken with that specific aim in mind, could be exempt from the scope the prohibition and thus be deemed lawful, at least within the scope of Article 54 API. This interpretation is supported by the language in paragraph 2, where different forms of violations, e.g. destroying indispensable objects such as grain silos, are defined as being taken “for the *specific purpose* of denying them for their sustenance value to the civilian population or to the

⁵² Akande and Gillard (2019) (n 4) 761.

⁵³ See Akande and Gillard (2019) (n 4) 761.

⁵⁴ Additional Protocol I (1977) (n 35) art. 54 and see Akande and Gillard (2019) (n 4) 761.

⁵⁵ Hutter (2015) (n 16) 186.

adverse Party” (emphasis added).⁵⁶ Paragraph 2 thus seems to suggest that destroying objects indispensable for the survival of the civilian population is only prohibited for the *specific purpose* of causing starvation.⁵⁷ This narrow interpretation suggests that it is the purpose, not the effects of actions that matter more when assessing potential violations.⁵⁸ Some legal scholars argue that the preliminary work and commentaries that led up to the drafting of API and Article 54 support this narrow interpretation as they also establish that only deliberate starvation of civilians is prohibited.⁵⁹

Despite there being arguments for a narrow interpretation of Article 54, as often be the case with articles in international law, more than one interpretation exists. Some legal scholars do in fact argue that the Article does include instances where actions that lead to starvation of civilians could be deemed unlawful, despite not having the starvation as the specific purpose of these actions.⁶⁰ This wider interpretation is in fact also supported in paragraph 2 of Article 54, just as the narrower interpretation. Paragraph 2 continues by adding that destroying objects indispensable to the survival of civilians, for the specific purpose of denying them their sustenance value to the civilian population or to the adverse Party is prohibited, “*whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.*” (emphasis added).⁶¹ This final part of Paragraph 2 clearly indicates that not only are such actions prohibited with the specific motive of starving civilians, as the first part suggests, but also *for any other motive*. This may seem contradictory, as the first section gives the impression that only actions with the *specific purpose* are prohibited, whereas the latter part states that such actions are prohibited, *whatever the motive*. But, adding the latter part to the wording of Article 54 would be redundant if it was not added to serve a certain purpose, and this purpose could be interpreted as broadening the scope of the prohibition.⁶² Furthermore, a distinction needs to be made between *purpose* and *motive* when interpreting Article 54.2. To remedy the complex question of motive and specific aim of actions under the prohibition, the drafters focused on the *purpose* of actions, which is the “purpose of denying objects of their

⁵⁶ Additional Protocol I (1977) (n 35) art. 54.2.

⁵⁷ See Provost (1992) (n 36) 603 and Hutter (2015) (n 16) 186.

⁵⁸ Ibid. and Akande and Gillard (2019) (n 4) 761.

⁵⁹ Akande and Gillard (2019) (n 4) 761.

⁶⁰ Provost (1992) (n 36) 605 and Akande and Gillard (2019) (n 4) 762.

⁶¹ Additional Protocol I (1977) (n 35) art. 54.2.

⁶² Hutter (2015) (n 16) 199-203 and Akande and Gillard (2019) (n 4) 753.

sustenance value”, no matter what the underlying *motive* of such actions would be, whether it be to cause starvation or not.⁶³

One could argue that paragraph 3 of Article 54 further supports a wider interpretation of the prohibition of using starvation as a method of warfare. The first section of paragraph 3 emphasises that the prohibition should only apply to situations where civilians are involved, stating that the prohibition in paragraph 2 does not apply if objects are used by the adverse party as “sustenance solely for the members of its armed forces” or “if not as sustenance, then in direct support of military action”.⁶⁴ Thus, actions that target indispensable objects such as food supplies that are solely used by an adverse party’s armed forces or in direct support of its military action are deemed permissible. However, paragraph 3 does limit the scope of such actions and the exceptions to the prohibition, finally stating 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” (emphasis added).⁶⁵

Despite paragraph 3 clearly being drafted to provide exceptions to the prohibition laid out in paragraph 2, the ending of paragraph 3 also clearly limits the scope of these exceptions. The ending of paragraph 3 does prohibit actions, even when aimed specifically at legitimate military targets, if they are *expected* to cause starvation among civilians. This is significant, as it implies that actions that cause starvation, despite not having the starvation of civilians as their specific motive, may violate the prohibition, if starvation of civilians could be expected. In any case though, for any action to amount to the unlawful attacking of objects indispensable to the survival of the civilian population within the scope of the prohibition of Article 54 API, they need to be taken “for the *specific purpose of denying them for their sustenance value* to the civilian population or to the adverse Party” (emphasis added).⁶⁶ With this in mind, it is thus not the potential aim of starvation that is the most prominent question when it comes to the interpretation of the scope of the prohibition to attack objects indispensable to the civilian population, but rather the purpose of such attacks.⁶⁷

⁶³ Additional Protocol I (1977) (n 35) art. 54.2. and U.N. Doc. CDDH/215/Rev. 1, 15 Official Records, *supra* note 237, at 279 (Report of Committee III, Second Session). See generally Charles A. Allen ‘*Civilian Starvation and Relief During Armed Conflict: The Modern Humanitarian Law*’ (Georgia Journal of International and Comparative Law vol. 19 1989 nr. 1) 60-63 and Hutter (2015) (n 16) 200-201.

⁶⁴ Additional Protocol I (1977) (n 35) art. 54.3.

⁶⁵ Additional Protocol I (1977) (n 35) art. 54.2. and see Hutter (2015) (n 16) 193 for commentary.

⁶⁶ Additional Protocol I (1977) (n 35) art. 54.2.

⁶⁷ See generally Allen (1989) (n 63) 60-63 and Hutter (2015) (n 16) 200-201.

In fact, some scholars argue that any method of warfare must be discriminate, that is, make a distinction between combatants and civilians.⁶⁸ In terms of using starvation as a method of warfare, it can be understood that the starvation of combatants is not expressly prohibited in Article 54, but any indiscriminate attacks, that simultaneously cause starvation among civilians are prohibited in light of the principle of distinction.⁶⁹ Similarly, the prohibition should be examined through the lens of the principle of proportionality. Thus, even when utilizing a narrow interpretation of the prohibition of Article 54 API, where actions specifically targeting military objects would be deemed permissible and outside of the scope of the prohibition, should the effects on the civilian population not be disproportionate. This means that the expected suffering or starvation of the civilian population must not be excessive in comparison to the military advantage and gain of the actions.⁷⁰ Where this line of proportionality is drawn is a far more complex question to answer and needs to be examined on a case-by-case basis, but the principle of proportionality and the effects on the civilian population should none the less always be considered.

Nevertheless, the ending of paragraph 3 should not be read as an absolute prohibition of actions that may cause starvation, as it only refers to actions that *may be expected to* leave the civilian population with inadequate food and cause starvation. Just as much as the wording in paragraph 3 sets limitations to the exceptions to the prohibition, based on military necessity, it also limits the prohibition to actions that may be *expected* to cause starvation. Thus, actions that cause starvation, but where it could be argued that the starvation of civilians was not an expected effect or could not have been foreseen, could be deemed lawful. This naturally brings with it a quite grey area where every case and action need to be closely examined to be able to give a clear-cut answer whether a violation has occurred. One could even argue that the wording in this way invites abuse, as states, in this case Russia, could argue that starvation was never the specific aim or purpose of attacks, and that its armed forces could not have foreseen the effects they would have on the civilian population. Any such claims would naturally have to be supported, but with the difficulties that come with providing evidence and accurate assessment of facts in conflict situations, such arguments may prove difficult to argue against as well.

⁶⁸ Provost (1992) (n 36) 618 and Akande and Gillard (2019) (n 4) 766.

⁶⁹ Provost (1992) (n 36) 618 and Akande and Gillard (2019) (n 4) 766-767

⁷⁰ Ibid.

Overall, Article 54 is quite inconsistent in its wording around the prohibition's extent. Paragraphs 2 and 3 both suggest that a narrow interpretation could be utilized, where only actions with the specific aim of starving civilians may be unlawful. At the same time, both paragraphs also suggest that a wider interpretation is valid, where actions that can be expected to cause starvation among civilians may violate the prohibition.⁷¹ It is unclear whether paragraph 3 is meant to only set exceptions to paragraph 2, and even more unclear how these exceptions should be interpreted.⁷² The one consistent factor within Article 54 is that for any action to amount to the unlawful attacking of objects indispensable to the survival of the civilian population, the action needs to be taken for the specific purpose of denying the object of its sustenance value to the civilian population. This factor applies regardless of whether the object can be argued to hold a military capacity or not.

One interpretation could be that paragraph 3, which sets the exceptions where actions are permissible if they are directed towards military targets, makes actions otherwise prohibited by paragraph 2 permissible. Another interpretation is that actions described in paragraph 3, actions specifically aimed at military targets, are completely outside the scope of the prohibition of paragraph 2. A third interpretation could be that the ending of paragraph 3 even broadens the scope of the prohibition laid out in paragraph 2, by stating that actions that are expected to lead to starvation, regardless if that is the aim of the actions, could be deemed unlawful.⁷³ Akande and Gillard for example state that it is hard to argue against the notion of any of these interpretations, as all are supported in the wording, so one could say that paragraph 3 in fact does all three.

The fact that Article 54 and its wording is not very consistent is not overly surprising, considering the sensitivity of the subject and the long deliberations between states that went into the drafting of the article.⁷⁴ It could though be argued that all three aforementioned interpretations of Article 54 form a general prohibition. In cases of destroying objects indispensable for the survival of the civilian population, e.g. crops or food storages, such actions can be deemed prohibited and unlawful if causing starvation among civilians *could have been foreseen*, even if the starvation of civilians was *not the specific purpose* of the

⁷¹ Hutter (2015) (n 16) 192–194.

⁷² Akande and Gillard (2019) (n 4) 763-764.

⁷³ Ibid.

⁷⁴ See generally Allen (1989) (n 63) 60-66 and Akande and Gillard (2019) (n 4) 763.

belligerent party.⁷⁵ Simultaneously, as far as the prohibition's scope is concerned, this wider interpretation can only be assumed in cases that paragraphs 2 and 3 touch upon, that is, attacking, destroying, removing, or rendering useless objects indispensable to the survival of the civilian population. Because it is only paragraphs 2 and 3 that provide a potentially wider interpretation of Article 54, and they only apply to actions targeting indispensable objects, a wider interpretation may perhaps not be utilized in cases of other potential forms of using starvation as a method of warfare, such as blocking humanitarian relief operations. The wording of Article 54 API alone does not decide what exactly using starvation as a method of warfare entails in the entire realm of IHL. It is only one article, albeit the most relevant one, among a wide range of sources that should be taken into account. The previous analysis also merely analyses the wording of Article 54 itself. To truly be able to examine the scope of the prohibition, and whether Russia has violated it in Ukraine, other sources and principles of IHL, such as customary law and the proportionality and distinction of attacks, need to be considered in lieu of the Article 54 of API.⁷⁶

In conclusion it can be argued that the general prohibition of using starvation as a method of warfare in Article 54 requires that the starvation of civilians needs to be the specific purpose of actions that have caused the starvation.⁷⁷ The Article does though include more specific regulations in paragraph 3. It can be understood that in cases of attacks on objects indispensable for the survival of the civilian population, starvation of civilians does not need to be the specific aim of the actions, but what is relevant is whether the starvation could be an expected effect, and thus amounting to a violation of the prohibition.⁷⁸ Further, it can be argued that Article 54 does not prohibit the starvation of combatants, but this also requires such actions must be conducted in a discriminate and proportionate manner, as not to excessively affect civilians.⁷⁹

The following section will examine additional sources of IHL to better understand the full scope of the prohibition of using starvation as a method of warfare. As mentioned, the destroying of objects indispensable to the survival of the civilian population and the prohibition of starvation in Article 54 is not the only source of IHL relating to the use of starvation as a method of warfare. Another major potential contributor to starvation in conflict is the blocking

⁷⁵ Akande and Gillard (2019) (n 4) 765.

⁷⁶ Provost (1992) (n 36) 618 and Akande and Gillard (2019) (n 4) 766.

⁷⁷ Akande and Gillard (2019) (n 4) 768.

⁷⁸ Ibid.

⁷⁹ Hutter (2015) (n 16) 193 and Akande and Gillard (2019) (n 4) 768.

or failure to facilitate humanitarian relief operations to civilians in need. The IHL sources regulating relief operations will be examined in the following chapter.

3.5. Starvation of Civilians as a Method of Warfare: Access to Humanitarian Relief Operations

3.5.1. Introduction

Blocking access to humanitarian relief is one of the most common tactics and forms of causing starvation among civilians in modern day conflicts.⁸⁰ It is also one of the main accusations directed towards Russia in Ukraine, as multiple entities have accused Russian forces of blocking humanitarian aid channels and thus causing starvation among civilians and combatants alike. As mentioned earlier, causing starvation among civilians by way of blocking access to humanitarian relief can be viewed as the second way to use starvation as a method of warfare, and is separately regulated in IHL. As discussed in the previous section, the prohibition of using starvation of civilians as a method of warfare is primarily regulated in Article 54 of API through the prohibition of destroying objects indispensable to the civilian population, but laws regarding humanitarian relief could almost be regarded as its own realm within the Geneva Conventions and IHL. That being said, the prominent articles regulating access to humanitarian relief should be examined in lieu of the general prohibition of starvation of civilians, as the two are highly connected, which is also acknowledged in the legal sources themselves.⁸¹

As blocking access to humanitarian relief is a major component in causing starvation among civilians in modern day conflicts, this chapter will examine the relevant laws of IHL, notably Article 23 of the fourth Geneva Convention and Article 70 of the first Additional Protocol, and how they related to the prohibition of causing starvation among civilians as a method of warfare.

⁸⁰ Hutter (2015) (n 16) 235.

⁸¹ Henckaerts and Doswald-Beck '*Customary IHL*' (2005) (n 47) Rule 55 193-199.

3.5.2. Article 23 of the Fourth Geneva Convention

Allowing access to humanitarian assistance is an important, yet complex part of IHL and is distinctly regulated in the Geneva Conventions and their additional protocols. Article 23 of the Geneva Convention IV (GCVI) was drafted to regulate maritime blockades but is also understood to apply to sieges and land warfare and is in many ways the original source regulating humanitarian relief operations during conflict.⁸² The article reads:

Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.⁸³

It is widely accepted that belligerent parties to an international armed conflict should grant civilians in need access to humanitarian relief, but this is not absolutely stated in Article 23.⁸⁴ Article 23 goes on to state that “The obligation of a High Contracting Party to allow the free passage of the consignments indicated in the preceding paragraph is subject to the condition that this Party is satisfied that there are no serious reasons for fearing...” that any consignments are delivered in bad faith and are diverted, not properly controlled, or used by enemy forces to their advantage.⁸⁵ The latter part is distinctly understood to establish the requirement of the state’s consent, but also leaves a quite broad margin of discretion for the state to withhold this consent. Article 23 of the GCVI is the original source to have regulated humanitarian relief, but the article naturally left some gaps, especially when it comes to withholding consent to humanitarian relief operations. These gaps have since been amended (to a degree) by the Additional Protocols to the Geneva Conventions.

3.5.3. Article 59 of the Fourth Geneva Convention

Article 59 of the GCIV regulates collective relief action in occupied territories. Situations of occupation are viewed as distinct situations in conflicts and thus set forth a specific type of

⁸² Jean Pictet, *The Geneva Conventions of 12 August 1949: Commentary GCIV*, (Geneva: ICRC 1958) 181 and Hutter (2015) (n 16) 237.

⁸³ Convention (IV) Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV 1949) (Geneva, adopted 12 August 1949, entered into force 21 October 1950) art 23.

⁸⁴ Henckaerts and Doswald-Beck ‘*Customary IHL*’ (2005) (n 47) Rule 55 194.

⁸⁵ Geneva Convention IV (1949) (n 83) art 23.

regulations within IHL, so it is only natural that the original GCVI would have separately regulated humanitarian relief operations during occupation in a distinct article, instead of only leaning on Article 23 of GCVI. Article 59 reads:

If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal.⁸⁶

Article 59 is extraordinary in the sense that it does not require consent to relief operations from the occupying party. Nowhere in the wording of the Article does it provide discretion for an occupying state to deny access to relief operations when a civilian population is inadequately supplied with objects indispensable for their survival, in contrast to Article 23 for example. Instead, Article 59 clearly establishes that in such cases, the occupying power, when offered, shall consent to and facilitate relief schemes “by all means at its disposal.”⁸⁷ None of the following sections in Article 59 leave room for discretion either, meaning that in cases of occupation, where the civilian population is inadequately supplied, the occupying power is obliged to permit and facilitate the free passage of humanitarian relief.⁸⁸ In practice of course, consent and granted access is essential for humanitarian relief to be provided, as no humanitarian organizations can access civilian populations and operate without express consent from the party concerned.⁸⁹ Undertaking humanitarian operations without the consent of an occupying power or state in control of a territory would naturally present major risks for any attempts and would put the providers and supplies at risk, as well as the civilian population the operations would target. From a legal perspective, Article 59 is none the less significant in that it demands occupying powers to consent to and grant access to humanitarian relief operations, as it leaves no room to withhold consent.⁹⁰

The first two sections of Article 59 establish that no occupying party can withhold consent to offers of humanitarian relief operations, whereas the third section in the Article establishes that not only is consent required, but the occupying power also needs to facilitate and implement

⁸⁶ Convention (IV) Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV 1949) (Geneva, adopted 12 August 1949, entered into force 21 October 1950) art 59.

⁸⁷ Geneva Convention IV (1949) (n 86) art 59.

⁸⁸ Dapo Akande and Emanuela-Chiara Gillard ‘*Arbitrary Withholding of Consent to Humanitarian Relief Operations in Armed Conflict*’ (U.S. Naval War College, International Law Studies vol. 92 No.483, 2016 pp. 483-511) 490.

⁸⁹ Henckaerts and Doswald-Beck ‘*Customary IHL*’ (2005) (n 47) 197.

⁹⁰ See Akande and Gillard (2016) (n 88) 488.

the relief operations.⁹¹ The third sections states that "All Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection".⁹² In practice this means that not only is the occupying party always obliged to consent to relief operations, but it also has to provide protection and ensure the safety of such operations, through for example designated and ensured humanitarian channels, for humanitarian relief operations to actually access the civilian population.

3.5.4. Article 70 of Additional Protocol I

Article 70 of Additional Protocol I of 1977 was (among others) drafted as a supplementary article to Articles 23 and 59 of the Fourth Geneva Convention. It establishes that impartial humanitarian relief actions shall be undertaken in cases where the civilian population is not adequately provided with the supplies essential to their survival, in territories under the control of a party to the conflict, other than occupied territories, that are already regulated by Article 59 of the Fourth Geneva Convention.⁹³ Article 70 further expanded the regulations of article 23, by stating that parties to a conflict "shall allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel provided".⁹⁴ In short, Article 70 of API expanded the regulations of Article 23 by providing further obligations relating to the protection and facilitation of relief operations. In contrast to Article 59 of GCVI that regulates situations of occupation, Article 70 API does still leave states with the right to withhold consent to relief operations, just as Article 23 did, albeit narrowing states' discretion to do this.⁹⁵

It should also be noted that Article 70 of API and other laws regulating humanitarian relief are applicable at a lower threshold than only when a civilian population is suffering from starvation. Article 70 API stipulates that as soon as the civilian population is inadequately provided with supplies essential for its survival, relief operations shall be undertaken.⁹⁶ The rules come into force when the civilian population 'is not adequately provided' with certain essential items, which means the threshold is lower than that of actual starvation, which makes

⁹¹ Geneva Convention IV (1949) (n 86) art 59 and see Akande and Gillard (2019) (n 4) 770.

⁹² Geneva Convention IV (1949) (n 86) art 59.

⁹³ Additional Protocol I to the Geneva Conventions of 1949 and Relating to the Protection of Victims in International Armed Conflicts (API 1977) (adopted 8 June 1977, entered into force 7 December 1978) art 70 and see Henckaerts and Doswald-Beck '*Customary IHL*' (2005) (n 49) 110, 194.

⁹⁴ Additional Protocol I (1977) (n 93) art 70.

⁹⁵ Akande and Gillard (2016) (n 88) 489.

⁹⁶ Additional Protocol I (1977) (n 93) art 70 and Hutter (2015) (n 16) 239.

it a key component in the legal protection of civilians against conflict induced starvation.⁹⁷ However, when it comes to Article 70 API, the laws are “subject to the agreement of the Parties concerned in such relief actions”.⁹⁸ In practice this means that consent of the states that are parties to the conflict is still required. Parties to the conflict cannot arbitrarily withhold consent though, which will be discussed further in the following chapter.

3.5.5. Consent to Humanitarian Relief Operations

Consent is required for humanitarian relief operations to take place in a conflict.⁹⁹ A state’s right to withhold consent is by no means absolute though, and the following chapter will briefly go through the different stipulations regarding consent and the right to withhold it. These questions will be discussed and examined further in the analysis chapter, when allegations of Russian actions causing starvation among civilians in Ukraine will be examined more closely against the backdrop of the main sources.

Consent to humanitarian relief operations can be arbitrarily withheld by a party to the conflict in a few different ways. Firstly, withholding consent in violation of a party’s obligations under IHL is arbitrary, that is, if the state is not legally allowed to withhold consent in the first place.¹⁰⁰ For example, if an occupying power refuses offers to provide humanitarian relief to the civilian population in need in the occupied territory, this would be arbitrary as Article 59 of GCVI, that regulates that situations of occupation, explicitly does not leave room for states to lawfully withhold consent.¹⁰¹ Secondly, consent is withheld arbitrarily if the decision is not deemed proportionate or necessary and thus violates the key principles of proportionality and necessity of IHL, even if the state has the right to withhold consent.¹⁰² In all conflict situations other than occupation, states do hold the right to withhold consent, but they cannot do so arbitrarily.¹⁰³ In fact, the only situation where a state may legitimately withhold consent to relief operations is when the civilian population is not in need, and when the conditions to Article 70 API are not met, that is, when the offered relief operations are not solely humanitarian, impartial or non-

⁹⁷ Additional Protocol I (1977) (n 93) art 70 and see Akande and Gillard (2019) (n 4) 770.

⁹⁸ Additional Protocol I (1977) (n 93) art 70.

⁹⁹ Ibid.

¹⁰⁰ Akande and Gillard (2019) (n 4) 770.

¹⁰¹ Geneva Convention IV (1949) (n 86) art 59.

¹⁰² Akande and Gillard (2019) (n 4) 770.

¹⁰³ Akande and Gillard (2016) (n 88) 487.

discriminatory.¹⁰⁴ In all other cases, withholding of consent would be considered arbitrary. Additionally, all provisions relating to humanitarian relief operations, such as Article 70 API, should always be read in conjunction of Article 54 API and the general prohibition of using starvation of civilians as a method of warfare.¹⁰⁵

As mentioned, Article 70 API, that applies to all other conflict situations outside that of occupation, expanded the regulations of Article 23 of GCVI, but did yet leave room for states to withhold consent to relief operations. Article 70 API reads that relief operations are “subject to the agreement of the Parties concerned in such relief actions”, which expressly establishes that consent is still required in cases that are not occupation.¹⁰⁶ But, as mentioned, the withholding can be deemed arbitrary if it is deemed disproportionate or unnecessary, in accordance with the principles of IHL. This means that even though a state would withhold consent for a lawful reason, e.g., the fear that relief operations are not impartial and humanitarian in character, this could be ruled arbitrary if the result of withholding consent would be unnecessary or disproportionate.¹⁰⁷ Thus, if it can be expected that civilians would suffer disproportionately as a result of withholding of consent, the otherwise legitimate withholding would become unlawful.¹⁰⁸ This lays down limitations to what degree states may withhold consent, for example regarding time, duration and what goods are affected.¹⁰⁹ The legitimate reasoning to withhold consent must thus be deemed necessary and proportionate in all cases.

In conclusion, states do enjoy the right to withhold consent to humanitarian relief operations in all conflict situations, with the exception of situations of occupation, which is regulated by Article 59 of GCVI. Consent can though never be withheld arbitrarily. What is crucial is then the examination of the level of civilian need and suffering, in cases where consent is withheld. If the civilian population is in need, the only legitimate reasoning to withhold consent would be the legitimate fear that relief operations are not humanitarian or impartial in character. The

¹⁰⁴ Michael Bothe and Karl Josef Partsch and Waldemar A. Solf ‘*New Rules for Victims of Armed Conflicts: Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949*’ (1982) 435 and Hutter (2015) (n 16) 240-241.

¹⁰⁵ Sandoz, Y., Swinarski, C., & Zimmermann, B. (Eds.) ‘*Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*’ (Geneva: International Committee of the Red Cross, Martinus Nijhoff Publications 1987) para. 2808 and Provost (1992) (n 36) 612 and Hutter (2015) (n 16) 240.

¹⁰⁶ Additional Protocol I (1977) (n 93) art 70.

¹⁰⁷ Ibid. and Hutter (2015) (n 16) 190.

¹⁰⁸ Hutter (2015) (n 16) 190

¹⁰⁹ Akande and Gillard (2019) (n 4) 770.

severity of civilian suffering is all the more important, as it may deem withholding of consent unlawful even in cases of fears of impartiality. If the suffering of civilians can be regarded as unnecessary or disproportionate, in comparison to the aim, then withholding consent can be deemed arbitrary and thus in violation of IHL. These questions will be further examined against allegations of Russian actions in Ukraine in the analysis chapter, but first the next chapter will go through the remaining sources regulating the use of starvation as a method of warfare, starting with customary international law.

3.6. Customary Law and Principles of IHL

The previous chapters examine the relevant and applicable treaties and laws of IHL that prohibit the use of starvation as a method of warfare, the destroying of objects indispensable to the survival of the civilian population and by blocking access of humanitarian relief operations. It is also relevant to examine what status these laws hold in the realm of IHL, i.e., whether the prohibition of using starvation as a method of warfare can be deemed as a part of international customary law, which will be briefly discussed in this chapter.

First and foremost, customary law is defined by the International Court of Justice as “a general practice accepted as law”.¹¹⁰ For this general practice to come to be customary law, it is widely accepted that two elements are required; state practice and the establishment that such practice is allowed, prohibited, or required as a matter of law.¹¹¹ What kind of state practice is required, or the wide array of national and international laws that together amount to customary law is a question in and of itself, which will not be examined in this study. Such thorough examinations and comprehensive studies have been made before, most notably the International Committee of the Red Cross’ (ICRC) Customary International Humanitarian Law study by Jean-Marie Henckaerts and Louise Doswald-Beck (2005).¹¹² This chapter will merely go through the relevant rules and prohibitions regarding the use of starvation as a method of warfare and granting access to humanitarian relief, and whether they have been deemed to amount to

¹¹⁰ Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) Article 38(1)(b).

¹¹¹ Henckaerts and Doswald-Beck ‘*Customary IHL*’ (2005) (n 47) xxxviii.

¹¹² *Ibid.*

customary law or not. I will also mention other relevant principles of customary IHL, that are useful for the case study at hand.

Most of the relevant laws of IHL relating to the use of starvation as a method of warfare, mainly Articles 54 of API and articles 23 and 59 of the Fourth Geneva Convention and Article 70 of the API, regulating access to humanitarian relief, are accepted as a part of customary law.¹¹³ The prohibition of the use of starvation as a method of warfare has been widely accepted since its coding in the Additional Protocols in 1977, and is supported by state practice, multiple national military manuals and not least by the Statute of the International Criminal Court that establishes the method as a war crime.¹¹⁴ Henckaerts and Doswald-Beck further state in their comprehensive study on customary IHL that also the prohibition of attacking, destroying, removing, or rendering of objects indispensable to the survival of the civilian population is a norm of customary international humanitarian law.¹¹⁵ The prohibition is naturally corollary to that of using starvation as a method of warfare, as both are codified in Article 54 of API as mentioned above, but it should still be noted that both prohibitions are regarded norms of customary law in their own right.¹¹⁶

The obligation to allow and facilitate unimpeded passage of humanitarian relief for civilians in need is also established as a norm of customary law.¹¹⁷ The norm is supported by Article 23 and 59 of GCVI and finally broadened by Article 70 of API and is widely accepted in state practice and national military manuals, including by states not part to API as well.¹¹⁸ According to Henckaerts and Doswald-Beck, the requirement of consent is also established in customary law.¹¹⁹ They note that most practice does not explicitly mention the requirement of consent but that consent obviously is needed in practice for humanitarian operations to be able to take place.¹²⁰ According to the robust study, also the obligation to give consent is established as customary law, in cases where “it is established that a civilian population is threatened with starvation and a humanitarian organisation which provides relief on an impartial and non-

¹¹³ Henckaerts and Doswald-Beck ‘*Customary IHL*’ (2005) (n 47) Rule 54-55 186-200 and Akande and Gillard (2016) (n 88) 486.

¹¹⁴ Henckaerts and Doswald-Beck ‘*Customary IHL*’ (2005) (n 47) Rule 54-55 186 and Hutter (2015) (n 16) 186.

¹¹⁵ *Ibid.* 189.

¹¹⁶ Hutter (2015) (n 16) 237.

¹¹⁷ Henckaerts and Doswald-Beck ‘*Customary IHL*’ (2005) (n 47) 193-194.

¹¹⁸ *Ibid.*

¹¹⁹ Henckaerts and Doswald-Beck ‘*Customary IHL*’ (2005) (n 47) 196.

¹²⁰ *Ibid.*

discriminatory basis is able to remedy the situation”.¹²¹ The study further states that impeding humanitarian relief operations is against customary IHL, as state practice, national laws and the Statute of the ICC all establish that such impediment is prohibited.¹²²

Not only are the explicit prohibition of using starvation as a method of warfare and the obligation to ensure access to humanitarian relief regarded as international customary law, but also additional principles of customary law apply. Firstly, the Article 51 of API and customary law prohibition of indiscriminate attacks is relevant to the case study at hand, as IHL does not prohibit the starvation of combatants, and the research question at hand explicitly discusses the starvation of *civilians* as a method of warfare.¹²³ This naturally entails that the prohibition of indiscriminate attacks is relevant as well. Another key principle of customary IHL is that of proportionality. Proportionality of attacks, coded in Articles 51 and 57 of API establishes that attacks, that may be expected to cause loss of civilian life or injury to civilians or damage to civilian objects, and are excessive in relation to the anticipated military advantage, are prohibited.¹²⁴ The principle of proportionality may be key in examining whether a violation of IHL has occurred, as the principle may be a deciding factor in cases where the starvation of civilians may not have been the specific aim of a belligerent party’s actions but where starvation and suffering of civilians has none the less been the effect.

Additionally, customary IHL states that all belligerent parties to a conflict should take all feasible precautions and take constant care to spare the civilian population.¹²⁵ This principle also means that “each party to the conflict must take all feasible precautions in the choice of means and methods of warfare with a view to avoiding, and in any event to minimising, incidental loss of civilian life, injury to civilians and damage to civilian objects”.¹²⁶ Customary IHL further establishes that each party to the conflict must do everything feasible to assess whether the attack 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.¹²⁷

¹²¹ Henckaerts and Doswald-Beck ‘*Customary IHL*’ (2005) (n 47) 197.

¹²² Henckaerts and Doswald-Beck ‘*Customary IHL*’ (2005) (n 47) 193-194.

¹²³ Additional Protocol I (1977) (n 93) art 51 and Henckaerts and Doswald-Beck ‘*Customary IHL*’ (2005) (n 47) 37.

¹²⁴ Henckaerts and Doswald-Beck ‘*Customary IHL*’ (2005) (n 47) Rule 14, 46.

¹²⁵ Henckaerts and Doswald-Beck ‘*Customary IHL*’ (2005) (n 47) Rule 15, 51.

¹²⁶ *Ibid.*

¹²⁷ Henckaerts and Doswald-Beck ‘*Customary IHL*’ (2005) (n 47) Rule 18, 58.

In the realm of international law, customary law is a legitimate source, as stated in the Statute of the ICJ, and has the main role of filling in gaps left by the main source that is treaty law.¹²⁸ This applies to the case study of using starvation as a method of warfare and Russian actions in Ukraine as well. As has been discussed in the overview of the main legal sources regarding starvation of civilians, some gaps in the treaties exist, namely when it comes to Article 54 of API and the requirement of the aim of the actions and that of arbitrary consent to humanitarian operations in Article 70 of API. These are examples of where the principles of IHL and customary law come in to fill in the gaps.¹²⁹ Furthermore, customary law is generally, internationally accepted custom, which means that it applies to all states, not only states that are parties to a certain treaty. This also means that even if Russia was not a party to the Geneva Conventions or API, it would still be bound by the laws prohibiting using starvation as a method of warfare, as they are a part of customary law.

Traditional treaty law: the Geneva Conventions and their Additional Protocols, and customary international law are the main sources to examine in a legal analysis, but additional legal sources can aid in the interpretation of the main sources, not to mention in the development of customary law. Such additional sources, mainly the Rome Statute of the International Criminal Court and the UN Security Council Resolution 2417 will be examined in the following chapters.

3.7. The Rome Statute of the International Criminal Court

Neither Russia nor Ukraine have ratified the Rome Statute, the treaty of the International Criminal Court (ICC) and the Rome Statute of the ICC does naturally not apply to states that have not ratified it and have thus not recognized the jurisdiction of the ICC. The Statute is a relevant source of IHL to examine none the less, as the ever-changing Rome Statute can function as a cursor of how actions are regarded, and whether they can be deemed violations, as the treaty is reflective of developments of IHL and customary law.¹³⁰ In short, the statute can

¹²⁸ Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) Article 38(1)(b).

¹²⁹ Henckaerts and Doswald-Beck '*Customary IHL*' (2005) (n 47) xxxvi.

¹³⁰ Hortensia D. T. Gutierrez Posse '*The relationship between international humanitarian law and the international criminal tribunals*' (International Review of the Red Cross Vol. 88 Nr. 861, March 2006) 80

aid in understanding the gravity of actions and guide and give weight to certain interpretations of laws. If a certain course of action, say starvation of civilians, is regarded to be a war crime in the Rome Statute, then that is a clear indication of the gravity of the crime. In this way the Rome Statute also contributes to forming of customary IHL. So, despite Russia not being a party to the Rome Statute or under the jurisdiction of the ICC, it can still be helpful to examine what the Statute stipulates regarding starvation of civilians, to better understand what the prohibition entails and how it should be interpreted.

Intentionally starving a population is a war crime according to the Rome Statute of the ICC.¹³¹ Article 8 of the Statute, which lists violations of international law that amount to war crimes, states:

Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;¹³²

The wording of the article is slightly different from the treaty law sources it derives from but includes the most important aspects of the prohibitions.¹³³ Firstly, the article establishes the actual action and aim of using starvation of civilians as a method of warfare as a war crime. Secondly, it touches upon the depriving of objects indispensable to the survival of civilians. Thirdly, and perhaps most significantly, the article mentions “wilfully impeding relief supplies”, as a way of using starvation as a method of warfare.¹³⁴ As discussed in the previous chapters, the unlawful or arbitrary withholding of consent to or failure to facilitate unimpeded humanitarian relief operations is a violation of IHL and is very much a way of using starvation as a method of warfare, but the wording is slightly different in the Rome Statute. The Rome Statute also mentions these two different ways of causing starvation among civilians in the same article, thus solidifying both courses of action as grave violations of IHL and further linking access to relief operations to the use of starvation as a method of warfare.

¹³¹ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) Art. 8(2)(b)(xxv) and see Henckaerts and Doswald-Beck ‘*Customary IHL*’ (2005) (n 47) 186.

¹³² Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) Art. 8(2)(b)(xxv).

¹³³ Akande and Gillard (2019) (n 4) 772-773.

¹³⁴ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) Art. 8(2)(b)(xxv) and Akande and Gillard (2019) (n 4) 772.

As mentioned, neither Russia nor Ukraine are parties to the Rome Statute but examining the regulations in the Statute regarding starvation as a method of warfare can aid in the interpretation of the relevant treaties of IHL. The primary sources used in the upcoming analysis of Russian actions in Ukraine will naturally be traditional treaty law; the Geneva Conventions and customary IHL, but additional sources such as the Rome Statute and even UN Security Council Resolutions such as Resolution 2417 can provide depth and guidance in interpretation. Resolution 2417, what it states, and its role in IHL will be examined next.

3.8. Security Council Resolution 2417

Resolution 2417 underlines that the use of starvation of civilians as a method of warfare may constitute a war crime – irrespective of the conflict classification, that is whether the conflict is regarded an IAC or a NIAC. The Resolution is the first of its kind in the sense that it highlights the linkage between conflict and hunger in international law and truly demonstrates a will of the international community to act on the matter.¹³⁵ Security Council Resolutions rarely add more legal substance to international humanitarian law though, as their main purpose is emphasizing and strengthening already existing regulations or bringing forth a certain perspective or interpretation of a rule. This applies to Resolution 2417 as well, as it mostly reiterates pre-existing regulations regarding starvation as a method of warfare. None the less, it is beneficial to examine Resolution 2417 and what it states regarding using starvation as a method of warfare, as this can provide clarity into prominent interpretations and state practice or intent in the matter. Resolution 2417 states that:

5. Strongly condemns the use of starvation of civilians as a method of warfare in a number of conflict situations and prohibited by international humanitarian law;
6. Strongly condemns the unlawful denial of humanitarian access and depriving civilians of objects indispensable to their survival,...¹³⁶

As mentioned, in substance, the Resolution does fall short of bringing much more clarity to what it means to use hunger as a method of warfare or to cause starvation. This is not to say

¹³⁵ Salvatore Zappalà, *Conflict Related Hunger 'Starvation Crimes' and UN Security Council Resolution 2417 (2018)* (2019), 890.

¹³⁶ United Nations Security Council (UNSC) Res. 2417 (24 May 2018) UN Doc S/RES/2417, 3.

the Resolution is without purpose, as it strongly reiterates minimum requirements in IHL and IHRL regarding states' obligations to protect civilians or grant access to humanitarian aid. As sometimes can be the case with Security Council Resolutions in International Law, they might not bring more substance or clarity to undefined matters, but rather work to emphasize and remind member states of their already existing requirements under IHL. Resolution 2417 is no exception.¹³⁷

But does the Resolution bring anything else to the table than a show of intent from the member states? In other words, is its only function to merely remind states of their minimum requirements under IHL, or does the Resolution strengthen the requirements and obligations with its wording. Salvatore Zappalà, Professor of International Law at University of Catania, says that Resolution 2417 does not go into detail on what it means to use starvation as a method of warfare, and that this may even be intentional as member states wanted to keep a degree of justifications in cases of armed conflict.¹³⁸ He argues that states might have looked to not determine causing starvation in detail as to protect themselves, with the idea that hunger could sometimes be seen as a necessary evil in armed conflicts, and that “the idea that sieges and blocks on the delivery of food, water, medicines and other essential supplies might be permissible”.¹³⁹ Therefore, Zappalà says that the Resolution simply emphasizes the absolute prohibition of intentionally using starvation of civilians as a method of warfare.¹⁴⁰ But as previously mentioned, the Resolution does not clearly define where one should draw the line. That is, when exactly can it be argued that actions during an armed conflict go from possibly permissible actions that happen to cause hunger as a collateral result, to unlawful acts that show clear intent of using starvation and hunger as a determined method of warfare.

The relevant question for this thesis is whether Resolution 2417 in fact includes anything that could bring any clarity on whether Russian actions in Ukraine in 2022 in fact can amount to a violation of international law. That is, whether Resolution 2417 answers this question itself. The Resolution does not go into detail in defining what it means to use starvation as a method of warfare, but rather reiterates the already existing prohibitions of IHL. It is worth examining

¹³⁷ Salvatore Zappalà, *Conflict Related Hunger 'Starvation Crimes' and UN Security Council Resolution 2417 (2018)* (2019), 890.

¹³⁸ Salvatore Zappalà, *Conflict Related Hunger 'Starvation Crimes' and UN Security Council Resolution 2417 (2018)* (2019), 894.

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*

though whether the Resolution sways the argument to either side when tried against the backdrop of Russian actions in Ukraine. The Resolution could e.g. help in solidifying whether Russian actions could amount to using starvation as a method of warfare or whether it purposefully leaves enough room for interpretation and discretion so one could argue that Russian actions have merely caused hunger in a collateral, and thus, a non-unlawful manner. As Zappalà for example argues, an interpretation of Resolution 2417 and the prohibition of starvation as a method of warfare could be that the Resolution does leave a degree of discretion and permissible restrictions to the rule.¹⁴¹

In conclusion one can state that in terms of legal relevance, Resolution 2417 reiterates existing obligations under IHL and urges all parties to adhere to these obligations.¹⁴² Whether Resolution 2417 was only a formal recognition of the causality between conflict and hunger, a show of political will and intent by Security Council members and the international community, or whether it in fact brings additional strength to pre-existing IHL regulations and sways the question of using hunger as a method of warfare is still up to debate. The resolution after all is still quite young, not to mention that the political landscape has changed drastically since the adoption of the Resolution, not least through Russia's full-scale invasion of Ukraine. In any case, as a Security Council resolution, it does not weigh as heavy as traditional treaty law and the previously examined articles, or customary international humanitarian law. Resolution 2417 is none the less worth noting in a legal analysis because of the high-level intent and recognition it garnered, and the emphasis it laid on pre-existing laws.

3.9. Summary of the Sources Regulating the Use of Starvation as a Method of Warfare

As is evident through the overview of the legal sources above, the prohibition of starvation of civilians as a method of warfare is broad, and at times complex. Firstly, it includes the actual prohibition of starvation set out in Article 54 of API, which also includes the prohibition of destroying objects indispensable for the survival of the civilian population. Secondly, there is the question of granting access to and the facilitating of rapid and unimpeded humanitarian

¹⁴¹ Salvatore Zappalà, *Conflict Related Hunger 'Starvation Crimes' and UN Security Council Resolution 2417 (2018)* (2019), 894.

¹⁴² *Ibid.* 897.

relief operations to civilians in need, codified in Articles 23 and 59 of GCVI and most importantly 70 of API, as withholding consent and blocking relief operations may cause starvation among civilians as well. In addition to the traditional treaty law of IHL there is customary law and the general principles of proportionality, necessity, and discrimination, and additional sources such as The Rome Statute and the Security Council Resolution 2417, which all bring further substance to the prohibition in their distinct ways.

There are a few main questions regarding the prohibition of using starvation as a method of warfare. Firstly, there is the matter of intention and aim of actions resulting in starvation among civilians, e.g., in cases of destroying objects indispensable to the civilian population. Interpretations may vary depending on the action and context, whether it is in fact the intention of actions or the effect of starvation that is the key component in deciding whether actions are unlawful or legitimate. Secondly, there is the complex question of what amounts to the arbitrary withholding of consent to humanitarian relief operations, and where the line is drawn in terms of the rapid and unimpeded facilitation of such relief operations, and when a state fails to meet these obligations. These questions result in the prohibition of using starvation as a method of warfare not being as absolute as it may seem on the surface. The simple starvation of civilians might not be enough for an actual violation of IHL, and such questions need to be answered on a case-by-case basis.

The following chapter will further examine the case at hand; allegations of Russian actions during the war in Ukraine and analyze them against the backdrop of the aforementioned legal sources of IHL. The chapter will further examine the prohibition of using starvation of civilians as a method of warfare, using examples of allegations of Russian actions in Ukraine. Could allegations of Russian actions indeed amount to the use of starvation of civilians as a method of warfare, in violation of IHL, or could one argue that Russia's actions have stayed within the limits of discretion provided in the regulations of IHL?

4. Legal Analysis: Has Russia Used Starvation as a Method of Warfare in Ukraine in Violation of International Humanitarian Law?

4.1. Introduction to the Legal Analysis

After an overview of how the prohibition of using of starvation of civilians as a method of warfare is regulated in IHL, this chapter will examine allegations of Russian actions in the war in Ukraine and attempt to answer whether the selected actions could amount to a violation of the prohibition. Russian actions, based on reports from independent organizations and media, will be analyzed without further investigating the evidence and proof of the allegations, as this is not feasible in the constraints of an academic thesis. Before venturing into further analysis, it should be noted, that while the laws of IHL regulating starvation as a method of warfare are quite well documented, as shown in the previous chapter, there is much less practice as to how these laws are investigated and implemented in real conflicts and cases. Additionally, there has been no prosecution of starvation on the international level, and how the crime intersects with other violations and situations remains relatively unexplored.¹⁴³

Recent cases of allegations of using starvation as a method of warfare have occurred in Yemen, Ethiopia, and Syria, and now in Ukraine. Prosecutors, investigators, organizations, and law practitioners are conducting evidence-based investigations into actions of belligerent parties, in the hopes of uncovering any potential violations of IHL and eventually holding violating parties and individuals accountable. The task is of course of extreme difficulty, not only due to the practical complications brought by ongoing conflict, but also because of the challenges in identifying causal relationships between the actions of belligerent parties, the adverse impact on the civilian population, and potential criminal intent.¹⁴⁴ These challenges are especially evident when investigating allegations of using starvation as a method of warfare.¹⁴⁵

¹⁴³ Global Rights Compliance ‘*The Crime of Starvation and Methods of Prosecution and Accountability: Accountability for Mass Starvation: Testing the Limits of the Law, Policy Paper #1*’ (2019), 4.

¹⁴⁴ Ibid.

¹⁴⁵ Hutter (2015) (n 16) 163.

As mentioned in Chapter 1.2 on delimitations, this thesis will not attempt to investigate allegations of Russian actions in detail, nor will an evidence-based analysis on these actions be conducted. The analysis will merely examine whether alleged Russian actions, based on available reports and material from organizations and media, can be argued to amount to the use of starvation as a method of warfare in violation of IHL, in accordance with the previously examined legal sources. A detailed investigation of occurrences on the ground cannot realistically be conducted for the purpose of this legal analysis, as such investigations require excessive amounts of resources and time. As an academic case study and legal analysis, this thesis will only attempt to answer the research question on a theoretical level. This does not though diminish the importance of understanding how the examined allegations of Russian actions ought to be interpreted a legal perspective, even before on-the-ground investigations have concluded.

The analysis will review alleged Russian actions one by one, analyzing them against the backdrop of the legal sources discussed in the previous chapter. These actions and situations will include allegations of Russian forces destroying or looting objects indispensable to the survival of the civilian population, such as food distribution centers, grocery stores, bakeries, grain silos, and crops. Due to the sheer number of incidents and allegations Russia has faced since the invasion in early 2022, every case and allegation cannot be examined, but the overall trend of Russian actions will be considered instead, using specific examples in certain cases. I will also separately analyze allegations of Russia besieging the city of Mariupol and failure to grant access to or facilitate rapid and unimpeded humanitarian relief operations to civilians in need, as failure to grant access to or facilitate relief operations is a way of causing starvation in warfare. The analysis will also at times include comparisons and input from recent examples of use of starvation of civilians in modern conflicts, mainly Syria and Yemen.

4.2. Attacking Objects Indispensable for the Civilian Population in Ukraine

4.2.1. Allegations of Russian Actions

One of the main accusations of Russia using starvation as a method of warfare during the war in Ukraine comes in the form of destroying objects indispensable to the survival of the civilian population, through destroying and burning crops, infrastructure for agriculture, looting food storages and grain silos, and killing livestock.¹⁴⁶ This is not an exhaustive list of alleged Russian actions, but these are a few fitting examples that could amount to the use of starvation as a method of warfare in violation of IHL.

Throughout the first year of the conflict, Russia was accused of deliberately targeting grain silos and storages through bombings and airstrikes in Eastern Ukraine.¹⁴⁷ Several attacks targeted agricultural infrastructure, without military presence, suggesting that Russian forces potentially conducted such actions with the specific intent of destroying the objects and thus incapacitating Ukraine's food production. Moreover, reports of livestock being killed in targeted attacks have been widespread, with cows dying in attacks on farms and agricultural facilities.¹⁴⁸ Images of burning crops also emerged, with many reports claiming Russian attacks having started and spread fires, along with landmines being planted in farmlands in Eastern Ukraine.¹⁴⁹ Russia has also been accused of looting grain supplies, e.g. in the city of Melitopol in Southern Ukraine and the Luhansk, Donetsk and Kherson regions among others, and of shipping grain and other supplies to Russia territories.¹⁵⁰ Reports from Ukrainian authorities in Luhansk have claimed that Russian forces removed or destroyed quantities of grain that could have lasted the civilian population three years.¹⁵¹

¹⁴⁶ Human Rights Watch 'Ukraine: Apparent War Crimes in Russia-Controlled Areas' (3 April 2022) and Politico 'The starvation of a nation: Putin uses hunger as a weapon in Ukraine' (1 April 2022).

¹⁴⁷ France24 The Observers 'Russian Attacks on Farms and Silos 'deliberately trying to destroy the Ukrainian economy'' (6 May 2022).

¹⁴⁸ Ibid.

¹⁴⁹ Anna Mykytenko and Maksym Vishchyk, *Opinio Juris*, "'All Our Hope is in the Famine': Investigation into Starvation Crimes in Ukraine Is Urgently Needed" (9 August 2022).

¹⁵⁰ Anna Mykytenko and Maksym Vishchyk, *Opinio Juris* (2022) (n 149) and Forbes 'Russia's War on Ukraine: News and Information From Ukraine' (1 May 2022).

¹⁵¹ Washington Post 'Ukraine says Russia is stealing grain, which could worsen food crisis' (5 May 2022).

Furthermore, Russia has been accused of indiscriminate and targeted attacks on civilians and civilian infrastructure.¹⁵² Allegations emerged of Russian forces launching air strikes on grocery stores and humanitarian aid centers in the city of Kharkiv, supported by satellite imagery depicting the destruction.¹⁵³ Reports mention no traces of military objects being found in the wreckage, indicating that the targets were not of military capacity. Other reports have alleged that Russian forces have targeted and attacked civilians queuing for food, targeting humanitarian centers and markets in the city of Chernihiv.¹⁵⁴ Reports claim that such attacks are a clear indication that Russia is deliberately targeting civilian infrastructure to cut off civilians' access to food through both destruction and intimidation. To examine each and every allegation Russia has faced since the beginning of the invasion in early 2022 is not feasible for this study, but with the allegations being so widespread, it is worth examining whether the aggregate of such actions could amount to the unlawful use of starvation as a method of warfare by Russia.

4.2.2. Focus on Civilian Suffering and Intent

When examining the situations closer and attempting to theoretically answer whether the actions amount to the unlawful use of starvation of civilians as a method of warfare or not, it is important to focus on two things: the suffering of the civilian population, and the specific Russian actions and their nature. All the examined legal sources only come into play when the civilian population is in need and its needs are not met. This does not necessarily mean that starvation and death need to occur, but a degree of civilian suffering needs to be met for e.g. Article 54 API to become applicable.¹⁵⁵ The provisions regarding starvation in IHL are after all specifically focused on civilians.¹⁵⁶ As mentioned earlier, the starvation of combatants is not expressly prohibited by IHL (see chapter 3.4 on Article 54 and the prohibition of using starvation as a method of warfare), although this right is not unlimited.¹⁵⁷ When discussing the Russian actions in Ukraine, it is thus crucial to keep in mind the effect on *civilians*. In fact, a civilian focused approach is key for any determination of potential violations in terms of

¹⁵² Anna Mykytenko and Maksym Vishchyk, *Opinio Juris* (9 August 2022) (n 149).

¹⁵³ France24 the Observers 'Fears of Food Shortages After Russian Attacks on Grocery Stores in Ukraine' (21 March 2022).

¹⁵⁴ Independent 'Russian forces 'shoot and kill 10 people queuing for bread' in Chernihiv, US claims' (16 March 2022).

¹⁵⁵ See Provost (1992) (n 36) 603 and Akande and Gillard (2019) (n 4) 760.

¹⁵⁶ Hutter (2015) (n 16) 188.

¹⁵⁷ Hutter (2015) (n 16) 192.

starvation of civilians, as it is the exact level of civilian starvation, suffering or need that may very well be the determining factor of whether a violation of IHL has occurred or not. After all, the principles of proportionality and necessity may be the key components to fill in the complex questions of discretion left by Article 54 of API.

A civilian focused approach is thus required to examine Russian actions and potential violations, but this cannot be the sole focus of the analysis. As mentioned, the second focus area needs to be the specific Russian actions and their (perceived) nature and intent. After all, hunger and starvation among civilians alone is not enough. Hunger and starvation, in the light of the prohibition of using starvation as a method of warfare, requires that the starvation can be connected to specific Russian actions. Countries plagued by conflict are often suffering from a multitude of challenges that are all intertwined. Conflict, hunger, destroyed infrastructure, halted production and import, scarcity of resources, climate shocks, disease, etc. are often connected, and it can be hard to differentiate between the causes behind them and to examine what in fact is caused by intentional military actions, and what is collateral damage of conflict as a phenomena.¹⁵⁸ Civilians are bound to suffer amid conflict, as a result of scarcity or resources such as food. Such suffering alone is not prohibited by Article 54 API or IHL, nor is the incidental starvation of civilians prohibited either.¹⁵⁹ That being said, incidental starvation cannot be deliberately amplified by a belligerent party, nor can it be disproportionate compared to the military aim, necessity and advantage.¹⁶⁰

Thus, the circumstances of each case play a huge role in the determination of whether starvation is being weaponized or used as a method of warfare. The reality on the ground and the causality between different actions and collateral events can be extremely difficult to evaluate, but still make all the difference when trying to assess if 1. a violation of IHL has occurred, 2. whether the potential violation is happening intentionally or unintentionally and 3. Whether it is a case of serious negligence or if the situation is out of the examined party's, in this case Russia's hands, so to speak.¹⁶¹ For these reasons, a focus on both the civilian population and its suffering, and Russia's perceived intent behind the actions are required to be able to evaluate whether a

¹⁵⁸ Salvatore Zappalà, *Conflict Related Hunger 'Starvation Crimes' and UN Security Council Resolution 2417 (2018)* (2019), 890.

¹⁵⁹ See Provost (1992) (n 36) 603 and Hutter (2015) (n 16) 186.

¹⁶⁰ Provost (1992) (n 36) 603.

¹⁶¹ See Leanne Digney *'The Rome Statute and Hunger as a Weapon of War - The Journey Towards Ending Impunity for Starvation Tactics'* (The Institute of International & European Affairs, 2022).

violation has occurred. In many ways, the evaluation may lie in finding a balance between the two, as depending on the context, it may very well be the principles of proportionality and necessity that dictate the found results.

4.2.3. Analysis: Has a Violation Occurred?

For Russian actions in Ukraine to amount to a violation of the prohibition of using starvation of civilians as a method of warfare, they need to fall within the scope of Article 54 of API, which, as discussed in the sources chapter, is the main law regulating the use of starvation as a method of warfare. In many ways it is paragraph 2 that is the heart of the prohibition, and for the case at hand, it is paragraph 2 that is of major importance, as accusations of Russia targeting civilian objects have been widespread.¹⁶² As paragraph 2 states, it is prohibited to attack, destroy or render objects useless, such as foodstuffs, agricultural areas, crops, livestock etc., *for the specific purpose of denying them for their sustenance value*. This is not an exhaustive list, as the wording in the article precludes such objects with “such as”.¹⁶³ In the case of Russia and the conflict in Ukraine, evidently a large number of reports have emerged accusing Russia of attacking objects distinctly described in the article. As mentioned, Russia has been accused of looting and destroying grain silos, especially in the regions of Luhansk and Donbas, burning crops through air strikes and the use of landmines, and targeting agricultural infrastructure and killing livestock.¹⁶⁴ All these examples fit the description of Article 54 API and should thus be examined.

It needs to also be observed whether paragraph 3 can be argued to come into play in the cases, as paragraph 3 establishes exceptions to the prohibition laid out in paragraph 2, through military necessity.¹⁶⁵ That is, could Russia argue that the targeted objects were being used as sustenance solely for the armed forces of Ukraine or whether they were being used in support of Ukraine’s armed forces. If that would be the case, Russia could argue that the attacks were legitimate. If the targeted areas, e.g. a grain silo in Rubizhne, eastern Ukraine, that was destroyed in early 2022 through what seems to have been a deliberate targeted attack, was used solely in support

¹⁶² Allen (1989) (n 66) 61.

¹⁶³ Additional Protocol I (1977) (n 37) art. 54.2.

¹⁶⁴ Forbes ‘Russia’s War on Ukraine: News and Information from Ukraine’ (1 May 2022) (n 153) and France24 the Observers ‘Fears of Food Shortages After Russian Attacks on Grocery Stores in Ukraine’ (21 March 2022) (n 156) and Anna Mykytenko and Maksym Vishchyk, *Opinio Juris* (9 August 2022) (n 152).

¹⁶⁵ Additional Protocol I (1977) (n 37) art. 54.2. and Provost (1992) (n 38) 604.

of Ukrainian forces, Russia's attack could be deemed legitimate.¹⁶⁶ However, the limitations set by paragraph 3 should not be understood to justify attacks on objects that are *partially* used in support of armed forces, but only objects that are used as sustenance *solely* for armed forces.¹⁶⁷ This is a very important notion, as some argue that parts of paragraph 3 in fact strengthens the prohibition of starvation of civilians, as well as weakens the military necessity exception (despite birthing it as well), as it requires belligerent parties to consider the impact of its actions on the civilian population.¹⁶⁸

The same interpretation can be applied for the second part of paragraph 3 as well. Objects used, if not as sustenance, but in support of military action, may be attacked or destroyed, but this does not mean that any objects that can be used to support Ukraine's armed forces can be legitimately targeted.¹⁶⁹ The grain silo in Rubizhne e.g. could be argued to be partially used in support of Ukraine's armed forces, as grain stored in silos could basically be used by anyone, but this does not mean that the grain silo should be regarded as being used *in direct support of military action*.¹⁷⁰ For the latter part of paragraph 3 to legitimize attacks on such objects, according to the commentaries to the Additional Protocols and a number of legal scholars, the attacks need to be conducted to prevent this direct military support from.¹⁷¹ Commentaries to the Additional Protocols provide examples of such instances of attacks on objects *in direct support of military action*; bombing a food production area to prevent an enemy from advancing, attacking a food-storage barn which is being used by an enemy for cover, or devastating a field used as a cover for the infiltration of an attacking force.¹⁷² These are only a couple examples of legitimate attacks, but they paint quite a clear picture of how paragraph 3 and its derogation to the prohibition of attacking objects indispensable to the civilian population should be read.

In the case of the destroyed grain silo in Rubizhne e.g., Russia's targeted attack could potentially be deemed lawful if it could be argued that the attack was made as Russian forces feared that the Ukrainian armed forces were using the silo to store military equipment for

¹⁶⁶ France 24 The Observers 'Russian attacks on farms and silos deliberately trying to destroy the Ukrainian economy' (6 May 2022).

¹⁶⁷ See Allen (1989) (n 63) 66 and Hutter (2015) (n 16) 201.

¹⁶⁸ Allen (1989) (n 63) 66.

¹⁶⁹ Additional Protocol I (1977) (n 35) art. 54.3.

¹⁷⁰ See Hutter (2015) (n 16) 202.

¹⁷¹ Bothe, Partsch, Solf (2013) (n 104) 341 and see Hutter (2015) (n 16) 202-203.

¹⁷² Sandoz, Y., Swinarski, C., & Zimmermann, B. (1987) (n 108) para. 2110 and Bothe, Partsch, Solf (2013) (n 105) 219.

example. Reports of the incident mentioned no military presence in the area though, which makes such arguments quite unsustainable.¹⁷³ A more stronger interpretation would be that Russia targeted the grain silo with the purpose of rendering it useless for storing grain, in theory attacking it for the specific purpose of denying it for its sustenance value to the civilian population, as worded in Article 54 API.¹⁷⁴ If Russia somehow could argue that all the grain in all destroyed silos across eastern Ukraine was being used solely by Ukraine's armed forces, this could in theory make such attacks lawful, but such claims would naturally be difficult to support. As mentioned, if the objects are being used even only in-part by the civilian population, attacks on these objects would be unlawful.¹⁷⁵ The wording in Article 54 API should always be understood in the light that when objects are being used by both military components and civilians, attacks on such objects are deemed unlawful and are prohibited.¹⁷⁶

Another allegation of Russia specifically targeting objects indispensable to the civilian population in Ukraine was reported, as satellite imagery surfaced depicting a bombed dairy farm in Shestakove in the Kharkiv region, leaving hundreds of dead cows in the wake of the shelling.¹⁷⁷ As with the previous example, no military components were reported to have been found in the wreckage or nearby.¹⁷⁸ Now, if Russia could argue that the shelling of the dairy farm was to prevent Ukrainian forces from using the farm as a base or for storage, the shelling could perhaps be argued to be lawful, but as with the example of destroying Ukrainian grain silos, this can be a hard interpretation to argue for. If the dairy farm and the livestock were destroyed on the other hand for the specific purpose of rendering them useless for food production, then it would automatically constitute a violation of Article 54 API. Similarly, unless Russia could make convincing claims that the dairy farm was being used solely in support of Ukraine's military action, the attack would need to be deemed unlawful and prohibited by Article 54 API. Any such claims would naturally require vigorous investigations into the actual occurrences, the context of each and every situation, the causes of destruction and the nature of the attacks, but from a legal perspective, what is imperative is if the intent behind Russia's actions was to destroy the grain silo and dairy farm to deny them their

¹⁷³ France 24 The Observers 'Russian attacks on farms and silos deliberately trying to destroy the Ukrainian economy' (6 May 2022) (n 170).

¹⁷⁴ Additional Protocol I (1977) (n 37) art. 54.2.

¹⁷⁵ See Allen (1989) (n 66) 62 and Provost (1992) (n 38) 604.

¹⁷⁶ See Allen (1989) (n 66) 62 and Provost (1992) (n 38) 604.

¹⁷⁷ France 24 The Observers 'Russian attacks on farms and silos deliberately trying to destroy the Ukrainian economy' (6 May 2022) (n 170).

¹⁷⁸ Ibid.

sustenance value to the civilian population, and whether these objects were being used solely in support of Ukraine's armed forces or not. These are extremely difficult questions to answer of course, as in combat situations it can be near impossible to ascertain with certainty whether objects are being used as sustenance solely for the armed forces or whether they are being used in direct support of military action. In fact, the wording of Article 54 has received criticism for its ambiguity in this regard.¹⁷⁹

Some argue that the ambiguity of the wording of paragraph 3 and what constitutes support of military action leaves room for abuse and make the law difficult to implement.¹⁸⁰ In theory, the law and its exceptions may seem simple enough, and of course it is easy to make situations seem straight forward. It is easy to claim that there were no military components close to the dairy farm or the grain silo, rendering the attack outside the scope of military necessity, but in a real-life investigation of potential Russian violations of Article 54 API in Ukraine, ascertaining such facts is far from as straight forward. In a real-life investigation, the wording of paragraph 3 of Article 54 API may in fact invite abuse from Russia's part and leave it with enough discretion to be able to argue for the legality of its attacks on food storages, agricultural infrastructure, and crops in Ukraine, through claims of military necessity and claiming targets were of a military capacity, and thus claiming that causing starvation in no way was the aim of its actions.

It should though also be emphasized again that not all attacks on objects that could be argued to be used in direct support of military action are allowed either. Belligerent parties still have an obligation to consider the destruction of their actions and the impact they have on the civilian population.¹⁸¹ As the second part of paragraph 3 states, "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".¹⁸² This clearly establishes that even in cases where Russian forces may have attacked objects that were being used in support of Ukrainian military action, they could still be deemed unlawful if the possible starvation of civilians could have

¹⁷⁹ See Esbjörn Rosenblad 'International Humanitarian Law of Armed Conflict: Some Aspects of the Principle of Distinction and Related Problems' (Geneva: Henri Dunant Institute, 1979) 117 and Hutter (2015) (n 16) 203.

¹⁸⁰ See Rosenblad (1979) (n 179) 117 and Hutter (2015) (n 16) 203.

¹⁸¹ Allen (1989) (n 63) 66.

¹⁸² Additional Protocol I (1977) (n 35) art. 54.3.

been expected.¹⁸³ This notion is also naturally supported by the principles of proportionality, that would apply even without the explicit wording of paragraph 3 in Article 54.

It can be very difficult to measure the exact civilian suffering and the impact each attack has individually had on food security among the civilian population. How the shelling of the dairy farm in Shestakove or the destroying of the grain silo in Rubizhne impacted the civilian populations starvation or suffering can be hard to measure individually, but if such instances are compiled together, one could make an argument that the total impact such attacks have on the Ukrainian civilian population's access to food and other objects indispensable to their survival, have been weakened significantly. In fact, it could be strongly argued that such prevalent, widespread, devastating and re-occurring attacks on objects used by the Ukrainian civilian population in its food production could be expected to heighten the risk of causing food insecurity and even starvation among the Ukrainian civilian population. None the less, Article 54 API does leave room for exceptions, and to some extent even leaves room for abuse in the form of argumentation of expected effects of Russia's actions. This is also where additional legal sources come in to aid in the determination of potential violations. Article 54 contains certain ambiguities and leaves opportunity for abuse and argumentation, especially regarding questions of existence of intent and the nature of attacks and targets, that is, whether one can argue that there was specific intent to cause starvation or not, and whether attacks were legitimate as a result of military necessity. The ambiguity and space for abuse left by Article 54 should be viewed in conjunction with other legal sources.

Customary law does fill the gaps left by traditional treaty law to a degree when it comes to Article 54 API and the prohibition of using starvation as a method of warfare. The prohibition is unequivocally understood as customary law.¹⁸⁴ Henckaerts and Doswald-Beck further establish in their comprehensive Customary IHL guidebook that exceptions based on military necessity are not legitimate if objects are not being used *solely* in support of military action, and that any attacks on objects are deemed unlawful by customary law if these attacks "may be expected to cause starvation among the civilian population".¹⁸⁵ Customary law thus emphasizes Russia's obligation to consider the effects on the civilian population, even in cases where Russia could potentially argue that its attacks have been legitimate because of military

¹⁸³ See Provost (1992) (n 38) 603-605 and Hutter (2015) (n 16) 205.

¹⁸⁴ Henckaerts and Doswald-Beck 'Customary IHL' (2005) (n 47) Rule 54, 189.

¹⁸⁵ Ibid. 192.

necessity within the framework of Article 54 API. Despite neither Russia nor Ukraine being parties to the Rome Statute and thus recognizing the jurisdiction of the ICC, Article 8 of the Rome Statute further supports the sentiment of customary law regarding the prohibition.¹⁸⁶ Article 8 of the Rome Statute states that destroying objects indispensable to the civilian population is a war crime, thus emphasizing the gravity of a failure to live up to states obligations, both in individual cases but also as a pattern.¹⁸⁷

As discussed in the Sources chapter, Resolution 2417 is not a part of traditional treaty law, and the role of Security Council resolutions in IHL is sometimes contested, but the Resolution still supports and emphasizes a strong interpretation of the prohibition of the use of starvation as a method of warfare. Resolution 2417 emphasizes states *obligations* to defer from any such actions that may lead to starvation or a heightened risk of food insecurity and demands states to consider their obligations under IHL.¹⁸⁸ In this light, Resolution 2417 strengthens arguments that Russia should have taken further precautions to avoid causing starvation or suffering by applying more emphasis on the principles of discrimination between military and civilian targets, and considered the impact, proportionality and necessity of its widespread attacks, even in the case that Russia could argue that causing starvation was not the specific aim of its attacks. Despite traditional treaty law, namely Article 54 API, being the most prominent regulation and establishment of the prohibition of using starvation of civilians as a method of warfare, additional sources like customary IHL, and even The Rome Statute (despite Russia not being a party) and Security Council Resolution 2417, support the interpretation that Russia's intent behind its attacks, or negligence of its obligations, indicate a potential violation of the prohibition.

Not only is the destroying of objects, like grain silos, agricultural infrastructure and burning crops a violation of Article 54 API, but also destroying areas and other infrastructure as well. Destroying and attacking civilian areas where food is being distributed, like markets and grocery stores, such as the alleged Russian attacks in Kharkiv and Chernihiv,¹⁸⁹ can also amount

¹⁸⁶ See Akande and Gillard (2019) (n 4) 772.

¹⁸⁷ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) Art. 8(2)(b)(xxv), also see Akande and Gillard (2019) (n 4) 772-773.

¹⁸⁸ Salvatore Zappalà, *Conflict Related Hunger 'Starvation Crimes' and UN Security Council Resolution 2417 (2018)* (2019), 890.

¹⁸⁹ France24 The Observers 'Fears of Food Shortages After Russian Attacks on Grocery Stores in Ukraine' (21 March 2022) (n 22) and Independent 'Russian Forces 'shoot and kill 10 people queuing for bread' in Chernihiv, US claims' (16 March 2022) (n 22).

to a violation of Article 54 API. In fact, some argue that the threat of violence and the indirect effect this has on food security is also covered by Article 54 API.¹⁹⁰ In Chernihiv for example, allegations emerged of Russia shelling and shooting civilians queuing for bread at a humanitarian service spot in late March of 2022.¹⁹¹ In Kharkiv and on the outskirts of Kyiv, Russia was accused of deliberately firing missiles on civilian objects such as shopping malls and supermarkets at the end of March of 2022.¹⁹² Such acts, or threats of such acts, are prohibited by Article 54 API as they either directly or indirectly impact civilians access to food and other necessities. Such attacks on civilians are of course prohibited by IHL otherwise too, as targeting civilians in such an indiscriminate way is unlawful, but deliberately hampering civilians' access to food and other necessities in such a manner can very well be argued to be in violation of Article 54 API as well.¹⁹³

Such tactics have also been found and investigated in other conflicts too. As previously mentioned, no prosecutions of using starvation of civilians have ever been made, but investigations of previous conflicts and allegations are very useful to learn how the extent of the Article 54 prohibition is understood. Back in 2012, the Syrian government was accused of dropping bombs and artillery at bakeries and other food distribution areas, thus rendering them useless and dangerous, directly impacting civilians access to objects indispensable for their survival, and are thus covered by article 54 API.¹⁹⁴ In the same vein, Russian forces targeting grocery shops, markets, humanitarian service centers or other areas where food and other indispensable objects are being delivered and rationed, they are either directly destroying them or rendering them useless in violation of Article 54 API.

Many of the reports, including the cases in Chernihiv and Kharkiv, also in no way indicate that the targeted areas would be in the vicinity or being used by the Ukrainian armed forces, but either primarily or solely being used by civilians. The exact nature of the situation on the ground is of course difficult to ascertain, but if the case is that the targets had no military capacity or were even only partially being used for military action, then the cases are even more

¹⁹⁰ See Hutter (2015) (n 16) 197.

¹⁹¹ France24 The Observers 'Fears of Food Shortages After Russian Attacks on Grocery Stores in Ukraine' (21 March 2022) (n 20) and Independent 'Russian Forces 'shoot and kill 10 people queuing for bread' in Chernihiv, US claims' (16 March 2022) (n 20)

¹⁹² Ibid.

¹⁹³ See Hutter (2015) (n 16) 197-205.

¹⁹⁴ Global Rights Compliance 'Policy Brief No. 3: Accountability for Starvation Crimes: Syria Policy Paper' (June 2019) 1-4 and see Hutter (2015) (n 16) 197.

clear-cut. As discussed earlier, paragraph 3 of Article 54 API limits the scope of the prohibition through exceptions by stating that “The prohibitions in paragraph 2 shall not apply to such of the objects covered by it as are used by an adverse Party: (a) as sustenance solely for the members of its armed forces; or (b) if not as sustenance, then in direct support of military action,...”.¹⁹⁵ The article thus clearly states that targeting and attacking objects used by the armed forces or in support of military action, are exempt from the prohibition laid out in paragraph 2. But in the cases of Kharkiv and Chernihiv for example, there have been no indication of the targeted areas being used by military components or in support of military action. The actions of Russian forces could thus be argued to have been in violation of paragraph 2 of Article 54 API.

As previously established, even if one could argue that in some cases Ukrainian armed forces were using the same food distribution centers or storages, Russian attacks on these areas could still be deemed unlawful in the eyes of Article 54, as paragraph 3 continues by stating that even if the objects are in support of military action, “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”.¹⁹⁶ The aforementioned attacks in Chernihiv, Kharkiv and outside Kyiv are of course relatively straight forward, as Russian authorities would struggle to argue that the destroyed supermarkets or the humanitarian service center where civilians queuing for bread were targeted were solely used in support of Ukrainian military action in accordance with paragraph 3. The clear presence of civilians in these attacks deems the military necessity exception brought forward by paragraph 3 redundant in these cases.

Additionally, as hard facts and proof of civilian presence can be difficult to come by in conflict situations, especially in hindsight, and Russia in principle could argue military necessity in accordance with paragraph 3, the civilian casualties and the widespread destruction of objects indispensable for the civilian population’s survival, such as humanitarian service centers or supermarkets, could still be determined to be disproportionate and thus unlawful in the eyes of IHL. This means that even in cases where Russia has attacked food storages, grain silos, food distribution centers or anything else, that are clearly being used in support of Ukraine’s military

¹⁹⁵ Additional Protocol I (1977) (n 37) art. 54.3.

¹⁹⁶ Ibid.

action, the attacks could still be deemed unlawful if it disproportionately affects the starvation among civilians.

Now, the exact level of starvation among the civilians in Kharkiv and Chernihiv can be difficult to determine and is not feasible to answer in a theoretical thesis such as this one. To truthfully be able to investigate whether a violation of the Article 54 prohibition has occurred in Ukraine, one would need a full-blown investigation that would require copious amounts of resources. None the less, based on the sheer volume and gravity of reports of targeted attacks on civilians and civilian objects, and civilian suffering (often related to food security) in Ukraine at the hands of Russian forces, especially in the first 6 months of the conflict, the degree of suffering experienced by civilians could strongly be argued to trigger the prohibition of starvation in Article 54 API. As mentioned previously, for Article 54 and the prohibition of starvation of civilians as a method of warfare to come into play, actual starvation does not need to necessarily occur. This means that people do not necessarily need to be dying of starvation in Chernihiv for the Russian attacks on the bakery or food distribution center to be in violation of Article 54, but rather that the heightened risk of starvation is enough to trigger the prohibition.¹⁹⁷

4.2.4. Determining Intent

As mentioned, ascertaining the impact singular attacks and incidents have on the civilian population can be challenging to measure. The impact of incidents and attacks on the starvation and suffering of the civilian population is of great importance though, as it is imperative when trying to determine whether the starvation of civilians was either the specific aim behind Russian actions or whether the heightened risk of starvation among Ukraine's civilians could be expected.

Despite it being challenging to measure the impact of each case individually, the compounded affect these attacks have on the civilian population is of relevance as well. The list of examples of Russian actions discussed in this chapter are as mentioned not exhaustive, and the sheer volume of reports and allegations of Russian forces targeting objects indispensable to the survival of the civilian population are extremely widespread. The sheer volume and the similar pattern these reports, coming from media, NGOs and CSOs and government authorities, is of

¹⁹⁷ See Provost (1992) (n 38) 603 and Akande and Gillard (2019) (n 4) 760.

importance when attempting to determine whether Russia has violated the prohibition of using starvation as a method of warfare or not. A narrow interpretation of Article 54 after all suggests that the intent of starving civilians is required for actions to become a violation. Although some may argue that Article 54 in itself already invites a wider interpretation as it states that attacks on indispensable objects for civilians are prohibited “whatever the motive”,¹⁹⁸ or if attacks are disproportionately causing civilian starvation, it is also accepted that for an outright violation to occur, intent, or at the very least expectation of starvation needs to be present to some extent.¹⁹⁹ It cannot be expected that Russia would outright express intent to starve out the civilian population in Ukraine to force them into capitulation, which means that Russia’s intent behind the attacks needs to be examined in a different way.

This is where the sheer number of reports of Russian attacks on objects indispensable to the civilian population comes in, whether it be through burning of crops and placing landmines on farmlands, targeting grocery stores, markets and food distribution centers through airstrikes or looting grain silos. The sheer volume of reports, the manner of the alleged attacks and the repetitive character of the targets, could be interpreted as indications of a conscious and deliberate tactic used by Russian armed forces, targeting civilian objects, especially objects and infrastructure used for food production or distribution, to weaken the food security of the Ukrainian population. At the very least, a heightened risk of civilian suffering and starvation should be expected as a result of these widespread attacks.

In Yemen for example, it is quite widely accepted that starvation tactics were used by the belligerent parties to the conflict, in violation of IHL.²⁰⁰ Some investigative entities, such as the Global Rights Compliance investigating and researching the use of starvation as a method of warfare and allegations of such actions, argue that a clear, repetitive manner and pattern in attacks targeting objects indispensable for the civilian population supported findings of intent to cause starvation among the civilian population.²⁰¹ Such investigations have naturally been on the ground and used amounts of recourses to confirm such allegations, which is something that is not feasible for this thesis. But using a similar method to determine whether Russia’s widespread actions support finding of intent to cause starvation among the civilian population

¹⁹⁸ Additional Protocol I (1977) (n 35) art. 54.3.

¹⁹⁹ See Allen (1989) (n 63) 61-66, Provost (1992) (n 36) 605 and Hutter (2015) (n 16) 197-203.

²⁰⁰ Global Rights Compliance ‘*Starvation Makers – the use of starvation by warring parties in Yemen*’ (2021) 4.

²⁰¹ *Ibid.* 8.

in Ukraine is none the less beneficial. Based on the reports used for the legal analysis, Russian actions could strongly be argued to make up such a broad pattern that signifies intent to cause starvation among civilians in Ukraine within the scope of a violation of Article 54, or at least such suffering and a heightened risk should have been foreseen by Russian forces.

Russian authorities have also in statements confirmed the dire humanitarian situation in various regions in Ukraine, including Kharkiv, Chernihiv and Mariupol, which clearly indicates that Russian armed forces have been aware of the civilian suffering in the areas.²⁰² Despite this acknowledgement, attacks on these areas and objects indispensable to the survival of the civilian population in Ukraine have continued, further supporting an understanding that a degree of intent or expectation is behind the Russian troops' actions, thus constituting a potential violation of Article 54 API and the prohibition to use starvation of civilians as a method of warfare. Mere recognition of the scale of civilian suffering can be sufficient to indicate an understanding of the effects of Russia's attacks on the civilian population, as it would indicate that while undertaking said actions, Russian forces have not adequately considered the forthcoming effects of the civilian population and its needs.

The widespread allegations of Russia destroying objects indispensable to the survival of the civilian population in Ukraine, either through targeted attacks on areas for food distribution, agricultural infrastructure, humanitarian centers, grocery stores, or any other objects or areas undeniably used by civilians, suggest a pattern in Russian armed forces tactics. As discussed above, this pattern could directly indicate a specific aim of causing starvation among the civilian population in Ukraine, by decreasing their access to essential objects like foodstuff, and thus exacerbating the level of need among the population. Even if Russia could argue to not have had the specific aim or purpose of destroying objects indispensable to the civilian population and depriving them of their sustenance value, one could argue that Russia would have at the very least not acted in accordance with the principles of precaution, distinction, necessity or proportionality, as its attacks, whether legitimate in their objective or not, could still very well be argued to have disproportionately affected the civilian population and aggravated the risk of starvation. The findings of the discussion above will be further discussed in the final chapter, whereas the next chapter will analyze allegations of Russia using starvation as a method of warfare in Ukraine through impeding access to relief operations.

²⁰² Anna Mykytenko and Maksym Vishchyk, *Opinio Juris* (9 August 2022) (n 152).

4.3. Impeding access to humanitarian relief operations

4.3.1. Introduction: Is Russia an Occupying Power in Ukraine?

The following chapter will examine allegations of Russia using starvation as a method of warfare by withholding consent to, or failure to facilitate humanitarian relief operations to the civilian population in Ukraine, and whether Russia's actions could amount to a violation of IHL. Before further examining allegations of Russian actions and their potential illegality, it is relevant to determine whether Russia could be seen as an occupying party in Ukraine, as belligerent occupation is often viewed as a distinct factor in IHL.²⁰³ Therefore, it may be relevant to determine if Russia can be viewed as occupying territories in Ukraine to understand whether a violation of IHL in fact has occurred, especially when it comes to allegations of withholding consent to humanitarian relief operations. This is of distinct importance, as in situations of occupation, it is Article 59 GCVI that applies, whereas in all other conflict situations of IACs, it is Article 70 API. As discussed in the chapter 3 on sources of IHL, the regulations regarding consent to humanitarian relief operations differ depending on the article that is applied, which is why it is important to understand whether Russia can be viewed as an occupying power in Ukraine or not.²⁰⁴

There are differences in a state's obligations depending on whether it can be established that the state is occupying territories or not, or whether it e.g., is in the invasion phase. This is particularly true when states argue their responsibilities and their negative and positive obligations over the occupied territory and the civilians that reside there.²⁰⁵ If a situation of occupation is taking place, then Article 59 of GCVI would apply, which would in short mean that in cases of civilians being in need, the occupying power could not lawfully withhold consent, as Article 59 GCVI does not allow this.²⁰⁶ Conversely, if the situation does not amount to occupation, it would be Article 70 of API that would come into play, and Russia would be awarded discretion to withhold consent, albeit not arbitrarily of course.

²⁰³ Tristan Ferraro 'Expert Meeting: Occupation and Other Forms of Administration of Foreign Territory' (International Committee of the Red Cross, March 2012) 4.

²⁰⁴ See also Hutter (2015) (n 16) 166.

²⁰⁵ Tristan Ferraro 'Expert Meeting: Occupation and Other Forms of Administration of Foreign Territory' (International Committee of the Red Cross, March 2012) 8.

²⁰⁶ Geneva Convention IV (1949) (n 86) art 59.

It is though widely accepted that regardless of whether a state in fact has occupied a territory or whether it is in the invasion phase, some provisions of occupation law still apply, as reflected in the ICRC commentary of Jean S. Pictet to the Fourth Geneva Convention (Article 6).²⁰⁷ In the Commentary, Pictet argues that for the GCVI and the protection of civilians to be applicable, the threshold and meaning of occupation is lower than traditionally understood. He argues that the laws regulating protection civilians become applicable the instance there is contact between forces of a belligerent party and the civilian population.²⁰⁸ The occupying power does according to Pictet not need to exercise authority over the civilian population or have complete administrative control over an area for the protections of GCVI to become applicable. The mere passing through or hostilities of a belligerent party's forces is enough to activate the protections awarded to civilians by GCVI.²⁰⁹ Even though some discrepancies exist in terms of the application of occupation law, especially how it should be applied in modern conflicts, the international community and legal scholars have come to a degree of consensus, that a minimum degree of protection exists regardless of the exact status of occupation.²¹⁰

Some territories are undeniably under Russian occupation, and have been so for some time, including parts of the regions of Donbas and Luhansk for example.²¹¹ The status of other territories on the other hand can be harder to determine, as control over the territories have changed rapidly and continuously between Russia and Ukraine throughout the conflict. Therefore, it can at times be necessary to differentiate whether Russian actions in Ukraine fall under the domain of occupation or not, as Russia's responsibilities regarding the degree of protection of civilians and the meaning of starvation of civilians as a method of warfare may vary accordingly. Some entities examining Russian actions and potential violations of IHL in the war in Ukraine, like the OSCE for example, have utilized a sliding scale when it comes to the difference between occupation and invasion phase and the obligations that follow under IHL.²¹² The OSCE's mission of experts argue that a modern interpretation of occupation law

²⁰⁷ Jean Pictet *The Geneva Conventions of 12 August 1949: Commentary GCIV* (Geneva: ICRC 1958) Art. 6 60, see also Tristan Ferraro *Expert Meeting: Occupation and Other Forms of Administration of Foreign Territory* (International Committee of the Red Cross, March 2012) 9.

²⁰⁸ Jean Pictet *The Geneva Conventions of 12 August 1949: Commentary GCIV* (Geneva: ICRC 1958) Art. 6 60-61.

²⁰⁹ *Ibid.*

²¹⁰ Tristan Ferraro *Expert Meeting: Occupation and Other Forms of Administration of Foreign Territory* (International Committee of the Red Cross, March 2012) 9, 53-54.

²¹¹ OSCE *Report on violations of IL, IHRL and IHL in Ukraine since February 2022*, (April 2022) (n 12) 7.

²¹² *Ibid.*

should be applied, where instead of a “all or nothing” approach to a belligerent party’s obligations, the obligations applied should be decided on the degree of control of the belligerent party.²¹³ The report states that negative obligations should come into force as soon as the conduct they prohibit is materially possible, and positive obligations come into force later on, when the occupying state enjoys a higher degree of control.²¹⁴

If one is to use this sliding scale when investigating the prohibition of using starvation of civilians as a method of warfare, the important question to determine is whether the prohibition should be seen as a positive or negative obligation. That is, whether states should take active measures to ensure that their actions do not disproportionately cause starvation among civilians or whether it is enough to simply abstain from specifically aiming to use starvation as a method of warfare. This differentiation between degree of obligation, as established in the previous chapter, depends on the actions being examined. That is, whether starvation has been caused e.g., through destroying objects indispensable to the civilian population or through blocking humanitarian relief operations to civilians in need. In the former example, one could argue that it is predominantly a negative obligation, as states should primarily abstain from destroying such objects, to ensure that starvation among civilians does not occur. In the latter example, one could argue that it is more of a positive obligation, especially in cases of occupation, as the belligerent party has a positive obligation to ensure and facilitate humanitarian relief operations to civilian populations in need.

As mentioned earlier, disseminating the exact situation on the ground is extremely difficult, especially in cases of ongoing and fluctuating conflict. With the control of regions continuously changing between Russia and Ukraine, it is difficult to say whether Russia was an occupying power at a certain moment or not from a legal perspective. These are limitations that cannot be helped, nor answered in a theoretical thesis. Thus, both situations of potential occupation and situations of no occupation will be discussed in the following analysis of allegations of Russia using starvation as a method of warfare in Ukraine by blocking humanitarian relief operations. For this reason, the following chapters will discuss the obligations under both article 59 GCVI and article 70 API, without further investigating whether Russia could have been deemed an occupying power during certain events or not.

²¹³ OSCE *Report on violations of IL, IHRL and IHL in Ukraine since February 2022*, (April 2022) (n 12) 8.

²¹⁴ OSCE *Report on violations of IL, IHRL and IHL in Ukraine since February 2022*, (April 2022) (n 12) 8.

4.3.2. Allegations of Russia Impeding Humanitarian Relief Operations in Ukraine

One of the main allegations of Russia using starvation of civilians as a method of warfare in Ukraine is the use of siege tactics and obstructing humanitarian relief operations from reaching civilian populations in need. Russia besieged cities such as Sumy, Chernihiv, and most notably, Mariupol, especially in the early stages of the war, leaving thousands of civilians stranded without possibilities to leave the besieged cities and without access to necessities. The UN, International Red Cross, and other humanitarian organizations reported extreme difficulties in reaching civilians in need in the besieged areas, and highlighted the urgent need of the civilian population, calling on the belligerent parties to facilitate and ensure relief operations.²¹⁵ Allegations of potential violations of IHL came especially in relation to the siege of Mariupol in eastern Ukraine, where thousands of civilians were reportedly left without water, heat, or sufficient amounts of food, as the city was under total blockade and devastating shelling that left the entire city in rubble.²¹⁶ The reported civilian need in Mariupol was apparent and dire, and calls from aid organizations and the international community to grant and facilitate relief operations or evacuation schemes grew, but for weeks, especially during March and April 2022, the city and the civilians in it were completely blocked off, and allegations of Russia obstructing humanitarian aid channels emerged at an increasing rate.

Despite the apparent need of civilians in Mariupol, Russia has been accused for deliberately blocking humanitarian aid channels from reaching the besieged city of Mariupol in several instances. Allegations of Russian forces shelling planned humanitarian aid corridors in and out of the city emerged in late March and April of 2022, thus blocking any relief operations from reaching the civilian population.²¹⁷ Ukrainian officials accused Russia of shelling safe routes outside fighting hotspots, that had earlier been agreed to function as corridors for both evacuation and relief operations.²¹⁸ Additionally reports emerged of Russian forces shelling designated relief service areas in the city, leaving any kind of relief operations impossible to conduct safely, despite the ongoing negotiations.²¹⁹ Similar reports emerged from the besieged

²¹⁵ UN News 'Ukraine: Second UN Convoy Reaches Sumy, Mariupol Access Thwarted' (31 March 2022).

²¹⁶ France 24 'As it Happened: Russia Forces Encircle Kyiv and Continue Mariupol Siege' (12 March 2022).

²¹⁷ Financial Times 'Hell on earth': Survivors Recount the Assault on Mariupol' (20 March 2022) and The Guardian 'Mariupol Officials Say Russians Blocking Aid Reaching Besieged Ukrainian City' (1 April 2022) and Human Rights Watch 'Urgently Help Ukraine Civilians Flee Mariupol' (26 April 2022).

²¹⁸ The Guardian 'Russia Accused of Shelling Mariupol Humanitarian Corridor' (26 April 2022).

²¹⁹ The Guardian 'Mariupol Officials Say Russians Blocking Aid Reaching Besieged Ukrainian City' (1 April 2022) (n 217).

city of Sumy March of 2022, where civilians were left stranded without possibilities to flee, and without adequate access to essential supplies such as food, water, shelter, and heat.²²⁰ These are only a few examples among a wider array of allegations of Russia impeding and failing to facilitate relief operations.

Russia has adamantly denied all allegations of attacks on humanitarian corridors or targeting or blocking relief operations and emphasized their will to negotiate safe routes for relief operations. Russia also never openly expressed that it would withhold consent to relief operations to civilians and seemed to be actively engaging in negotiations with both Ukraine and humanitarian organizations about granting access.²²¹ This is significant when trying to assess whether Russia has arbitrarily or unlawfully withheld consent to offered relief operations, and when trying to determine Russia's intent when it comes to its actions regarding relief operations and the civilian population in cities like Mariupol and Sumy. The main allegations of Russia impeding humanitarian relief operations have thus revolved around not facilitating relief operations in a timely manner, especially to civilians in the besieged cities of Mariupol and Sumy, as civilians in the cities were reportedly running out of food and other essential supplies. Furthermore, grave allegations emerged of Russia deliberately targeting agreed humanitarian corridors,²²² which would automatically constitute a violation of its obligations under IHL, as not only does Russia have an obligation to consent to and facilitate relief operations, but to obstruct them through attacks would constitute an even more blatant violation.²²³ The following chapter will further examine and discuss the aforementioned examples of alleged Russian violations, specifically the cases of the besieged cities of Mariupol and Sumy, and examine whether Russia's actions, or inaction, could amount to a violation of the prohibition of using starvation of civilians as a method of warfare.

4.3.3. Legal Analysis

For a violation of the prohibition of using starvation of civilians as a method of warfare to occur through impeding access to relief operations, a state would be required to violate its obligations

²²⁰ Human Rights Watch 'Trying to Survive in a Besieged Ukrainian City' (9 March 2022).

²²¹ UN News 'Ukraine: Second UN Convoy Reaches Sumy, Mariupol Access Thwarted' (31 March 2022) (n 214).

²²² The Guardian 'Mariupol Officials Say Russians Blocking Aid Reaching Besieged Ukrainian City' (1 April 2022) (n 217).

²²³ Geneva Convention IV (1949) (n 86) art 59 and Additional Protocol I (1977) (n 93) art 70 and see commentary on customary law in Henckaerts and Doswald-Beck, Customary IHL, Rule 55, p. 193-199.

under Articles 23 GCVI, 59 GCVI and finally 70 API, which should all be read in conjunction with the general prohibition laid out in Article 54 API.²²⁴ The articles establish state's obligations as either occupying powers (regulated by Article 59 GCVI) or as a belligerent parties in general, to firstly consent to, and finally facilitate the unimpeded and rapid passage of relief operations in cases where the civilian population is not adequately provided with supplies essential to its survival.²²⁵ In short, for a violation to occur, the state needs to either unlawfully or arbitrarily withhold consent to grant access to relief operations, or fail to meet its obligations of facilitating their rapid and unimpeded passage.

As in the previous examination of causing starvation among civilians by attacking and destroying objects indispensable to their survival, one needs to focus on a few key factors when examining allegations of impeding relief operations to civilians in need. Firstly, one needs to consider whether Russia's alleged actions could indicate a degree of intent to cause starvation among civilians, as such intent would directly result in a violation of the prohibition under IHL. That is, did Russia deliberately delay or impede relief operations with the specific aim of causing starvation and suffering among the civilian population in Mariupol e.g.

Secondly, and perhaps even more importantly, the degree of civilian suffering needs to be considered, as only a certain level of civilian need will make the relevant articles of IHL applicable, that is, articles 54 API, 59 GCVI, and 70 API.²²⁶ Additionally, any potential disproportionate suffering of the civilian population could deem Russia's actions unlawful despite starvation not being the specific aim of its actions. Whether Russia neglected its obligation to facilitate and ensure unimpeded relief operations to the civilian population in need may very well be decided by the principles of proportionality, necessity, and discrimination, as a principal question is whether Russia's failure to facilitate and ensure relief operations resulted in disproportionate civilian suffering. After all, siege warfare, albeit controversial, is still lawful, and finally relief operations did reach the civilian population in Sumy e.g..²²⁷ But the question is whether the civilian suffering up until that point could deem Russia's actions,

²²⁴ See Hutter (2015) (n 16) 235-242.

²²⁵ Geneva Convention IV (1949) (n 86) art 59 and Additional Protocol I (1977) (n 93) art 70.

²²⁶ See Provost (1992) (n 38) 606, Hutter (2015) (n 16) 230-235 and Akande and Gillard (2019) (n 4) 775.

²²⁷ See Hutter (2015) (n 16) 226 and Global Rights Compliance 'The Crime of Starvation and Methods of Prosecution and Accountability: Accountability for Mass Starvation: Testing the Limits of the Law, Policy Paper #1' (2019) 21.

or rather inaction, a violation of the prohibition of the use of starvation of civilians as a method of warfare.

Finally, one also needs to consider whether the effects of Russia's actions could have been expected. If the civilian need and suffering are found to have been exacerbated by Russian actions, then it needs to be considered whether Russia could have foreseen such adverse effects. This is of special importance in cases where the existence of a specific aim of causing starvation among civilians is not completely undeniable. The aggregate findings of these factors, despite potentially being difficult to assess, can provide a general understanding of whether the alleged Russian actions in Ukraine could amount to the unlawful use of starvation of civilians as a method of warfare by impeding access to relief operations.

4.3.4. Sieges, Blockades and Starvation of Civilians

The examples of allegations of Russia impeding humanitarian relief operations in violation of IHL in Mariupol, but also Sumy are distinct in the fact that the civilian need came about through Russian armed forces using siege tactics against the cities. This needs to be acknowledged as sieges and blockades, and civilian suffering caused by them, constitute a complex reality in IHL.

The prohibition of using starvation of civilians as a method of warfare, regulated by Article 54 of API, does not expressly prohibit the use of blockades or sieges by a belligerent party of a conflict, and neither do any other sources of IHL.²²⁸ The requirement for siege tactics to be lawful is that the siege or blockade has a purpose of achieving a legitimate military objective, e.g. depriving enemy forces of supplies to hinder them from continuing hostilities.²²⁹ Even so, the legality of sieges is a complex question within IHL, as they in theory are lawful, but also easily contradict general principles and other regulations of IHL in practice. Some even argue that full-scale sieges of cities, especially when expected to cause starvation among civilians, are illegitimate in their aim, as they do not necessarily provide any substantial military advantage, thus being both indiscriminate, disproportionate and unnecessary in nature and in

²²⁸ See Provost (1992) (n 36) 606 and Hutter (2015) (n 16) 226 and Global Rights Compliance 'The Crime of Starvation and Methods of Prosecution and Accountability: Accountability for Mass Starvation: Testing the Limits of the Law, Policy Paper #1' (2019) 21.

²²⁹ See Hutter (2015) (n 16) 226.

violation of Article 54 API, which further supports the conclusion of a violation of the prohibition in Ukraine.²³⁰ Belligerent parties using siege tactics need to consider their obligations within IHL and customary law, especially the general principles of distinction between civilians and combatants and the principles of proportionality, precaution, and necessity, despite the existence of a legitimate aim for the siege or blockade.²³¹ Furthermore, belligerent parties need to fulfill their obligations under Articles 59 GCVI and 70 API, in respect to the civilian population in need, by granting, facilitating and ensuring rapid and unimpeded evacuation or relief operations.²³²

In most cases of siege tactics, it can be near impossible to besiege a city, without detrimentally affecting the civilian population, which in general would be prohibited under IHL. The principle of distinction dictates that belligerent parties should always only target combatants and defer from indiscriminate attacks that target both civilians and combatants, which makes conducting sieges and blockades around areas containing both combatants and civilians difficult in practice, as they naturally impact both groups.²³³ This is precisely where the complexity regarding the unlawful starvation of civilians and siege tactics presents itself. If sieges and blockades are generally lawful under IHL, but exacerbating the risk of starvation among civilians is prohibited by the prohibition of using starvation of civilians as a method of warfare, then where is the line drawn?²³⁴ When can a state conduct an otherwise lawful blockade, without affecting the civilian population in an unlawful manner?

Civilians suffering starvation in a conflict is not directly unlawful under IHL, as civilian starvation can be incidental and viewed as collateral to conflict.²³⁵ This is also true in cases of sieges and blockades. This is however only the case if the party conducting the siege has fulfilled all its obligations under IHL, that is, considered its actions through the lens of necessity, proportionality, distinction, and precaution, and perhaps most importantly, by facilitating rapid and unimpeded humanitarian relief operations if the civilian population is

²³⁰ Mark Lattimer ‘*Can Incidental Starvation of Civilians be Lawful under IHL?*’ (Blog of the European Journal of International Law, 2019).

²³¹ Global Rights Compliance ‘*The Crime of Starvation and Methods of Prosecution and Accountability: Accountability for Mass Starvation: Testing the Limits of the Law, Policy Paper #1*’ (2019) 16, 21.

²³² Geneva Convention IV (1949) (n 89) art 59 and Additional Protocol I (1977) (n 93) art 70 and see Global Rights Compliance ‘*The Crime of Starvation and Methods of Prosecution and Accountability: Accountability for Mass Starvation: Testing the Limits of the Law, Policy Paper #1*’ (2019) 21.

²³³ See Hutter (2015) (n 16) 223-230.

²³⁴ Additional Protocol I (1977) (n 35) art 54.

²³⁵ See Allen (1989) (n 63) 68 and Provost (1992) (n 36) 606.

inadequately supplied with essential supplies. In siege situations, as mentioned above, it is nearly impossible not to affect the civilian population and spare them of deprivation of essential supplies during a blockade.²³⁶ In fact, civilians are often the ones to suffer the most at the hands of blockades. Even in cases where a belligerent party has put an area under siege with the legitimate aim of e.g., forcing enemy forces to surrender by depriving them of sustenance, it is often more likely that the civilian population will suffer the effects of the blockade before this legitimate military objective has been achieved.²³⁷

Provost suggests that this notion could deem food blockades unlawful under Article 54 API, as they will almost always result in deprivation of supplies essential to the survival of the civilian population, and thus cause food shortages to an extent that could trigger the Article 54 API prohibition.²³⁸ It should be noted that actual starvation in the form of famine is not required for the prohibition to become applicable, as previously discussed, as a lower threshold of deprivation of essential supplies and food is sufficient to potentially trigger the prohibition.²³⁹ Provost suggests that knowingly aggravating the risk of starvation among the civilian population, and the absence of due consideration or precaution, could deem actions unlawful under Article 54 API.²⁴⁰ Therefore, starvation among civilians in itself is not unlawful, but if a belligerent party's actions exacerbate the risk of starvation among the civilian population, this could amount to a violation of Article 54 API.

In the present context this would mean that even if Russia had a legitimate military objective behind its blockades of Mariupol and Sumy, this does not automatically mean that a violation of Article 54 API and the prohibition of starvation has not occurred. If Russia's weeks long blockade of Mariupol had a legitimate military objective, through e.g., forcing the defending combatants in Mariupol to surrender through depriving them of sustenance and essential supplies, this would deem the siege lawful. Even so, Russia would have to consider the blockade's impact on the civilian population in Mariupol, mainly through the lens of proportionality and precaution, and its obligations to provide relief operations if the civilian population is in need. In practice this means that Russian forces should have considered the civilian population's suffering, and the blockades impact on their food security and the

²³⁶ See Provost (1992) (n 36) 606 and See Hutter (2015) (n 16) 228.

²³⁷ Ibid.

²³⁸ See Provost (1992) (n 36) 606–609.

²³⁹ Hutter (2015) (n 16) 229.

²⁴⁰ See Provost (1992) (n 36) 606–609.

heightened risk of starvation. With widespread reports depicting the dire situation in Mariupol, and Russia even admitting to the existence of a humanitarian crisis, one can conclude that the civilian need in Mariupol was severe.²⁴¹ This is also without considering the widespread and devastating destruction of civilian infrastructure and direct targeting of civilians in the city through Russian shelling, which should naturally be expected to aggravate the need of the civilian population even further. The apparent and increasing need and desperation among the civilian population, in conjunction with the continued blockade of the city, suggests that Russian forces should have taken rapid measures to minimize civilian suffering in Mariupol. If not, then the otherwise lawful blockade becomes unlawful through the deteriorating impact it has on the sizable civilian population in Mariupol.

The example of Mariupol reveals the dilemma when it comes to siege tactics and the impact on civilians under IHL. If siege tactics and food blockades are to be deemed lawful, not only do they need to be justified by military necessity, but precautions and measures need to be taken to minimize the risk of civilian suffering, and it could prove to be difficult to argue that Russian forces would have done so to their maximum capacity. If the military objective of a blockade is to force opposition forces to surrender through depriving them of essential supplies, this also entails that for this legitimate aim to be reached, a quite serious degree of deprivation of sustenance needs to be reached.²⁴² This will naturally be extremely difficult to achieve without it having adverse effects on the civilian population as well. The contradiction of IHL and siege tactics is thus how sieges can be lawful in theory, but near impossible to conduct lawfully in practice, without e.g., violating the prohibition of Article 54 API.

With this complexity in mind, Provost's broad interpretation of the prohibition of the use of starvation as a method of warfare can be difficult to support and implement in real-life cases of sieges and blockades being used. If food blockades are generally lawful under IHL, and states, such as Russia, therefore choose to utilize them, then the Article 54 API prohibition rendering them almost automatically unlawful in practice, can be viewed as an innate contradiction in the regulations of IHL. Such a broad interpretation would in practice deem the in-theory legitimate use of blockades unlawful, as one could argue that no state can conduct blockades without detrimentally affecting the civilian population. According to some, this

²⁴¹ Anna Mykytenko and Maksym Vishchyk, *Opinio Juris* (9 August 2022) (n 149).

²⁴² See Hutter (2015) (n 16) 230.

contradiction makes the overall interpretation of the prohibition problematic and difficult to implement, and thus argue that this broad scope of the prohibition should be adjusted.²⁴³ Hutter e.g. suggest that the Article 54 API prohibition, in situations of blockades, should be narrowed down to allowing blockades if civilians are provided safe evacuation.²⁴⁴ Simultaneously though, this could in many ways also deem the entire blockade redundant as well.

The paradoxical nature of blockades being lawful under IHL in theory but being near impossible to conduct in practice without causing suffering and starvation among civilians, and thus becoming unlawful under Article 54 API is complex and demonstrates a wider gap within the regime of IHL. That is, how to strike a realistic balance between military necessity, and simultaneous protection of civilians. This contradiction may end up being more harmful to civilians, as it may result in states neglecting their obligations towards the civilian population because of the assumed theoretical lawfulness of their actions. The contradiction may ultimately birth confusion in how the regulations should be interpreted, which heightens the risk of potential violations.²⁴⁵ This contradiction should in theory be remedied by the additional regulations of IHL, such as customary law and the general principles of proportionality e.g., which is also precisely what Security Council Resolution 2417 emphasized, as it urged states to consider their general obligation under IHL and minimize civilian starvation while conducting otherwise legitimate warfare.²⁴⁶

Therefore, the mere legitimacy of the sieges of Mariupol or Sumy is not the only aspect to be considered. Russia's sieges may be lawful through the potential military objective of forcing combatants in the city to surrender, but Russia's overall actions, including the indiscriminate shelling of disproportionate proportions, the failure to consider the adverse effects on the civilian population, and alleged failure to provide rapid and unimpeded relief operations to civilians in need, could together indicate a violation of IHL and the prohibition of the use of starvation of civilians as a method of warfare.

²⁴³ See Hutter (2015) (n 16) 230.

²⁴⁴ Ibid.

²⁴⁵ See Allen (1989) (n 63) 82.

²⁴⁶ United Nations Security Council (UNSC) Res. 2417 (24 May 2018) UN Doc S/RES/2417, 3.

4.3.5. Intent to cause Starvation Among Civilians in Sieges

Russia may be able to justify the use of blockades in the cities of Mariupol and Sumy through the argument of military necessity and legitimate objectives, as discussed above, but does this automatically mean that Russia could not simultaneously have had the specific aim of causing starvation of civilians behind its actions? The general prohibition of using starvation of civilians as a method of warfare requires a degree of intent behind the actions, which begs the question of whether Russia's blockade, including the aspect of not immediately facilitating rapid and unimpeded relief operations to the civilian population, indicates an intent to cause starvation among the civilian population.

Determination of intent in cases where siege tactics are being used can be more complex than in other examples of causing starvation among civilians, like destroying objects indispensable to the civilian population e.g. When examining allegations of destroying objects indispensable to the survival of the civilian population, the specific purpose of denying the objects of their sustenance value to the civilian population, and thus exacerbating the risk of starvation among civilians is required for a direct violation of Article 54 API to have occurred.²⁴⁷ In such cases, the unlawful intent can be relatively feasible to ascertain, at least in theory, as the presence of civilians and their use of the attacked objects suggest that the belligerent party destroyed the objects to deny them of their value to the civilian population. In situations of siege and granting access to relief operations, determination of intent may not be as simple to establish. As sieges and blockades may have legitimate aims as their basis, this may deem it more complicated to assess whether an intent to cause starvation also existed, especially in potential situations of actual prosecution.²⁴⁸

The organization Global Rights Compliance, which has conducted comprehensive examinations surrounding the laws of using starvation of civilians as a method of warfare, along with on-the-ground investigations in countries like Yemen and Syria, argue that the violation of the Article 54 API prohibition of starvation tactics does not strictly require a *desire* to cause starvation among civilians.²⁴⁹ The organization highlights the difficulty in ascertaining intent when it comes to starvation crimes, especially given the fact that such allegations have

²⁴⁷ See Allen (1989) (n 63)

²⁴⁸ Global Rights Compliance 'The Crime of Starvation and Methods of Prosecution and Accountability: Accountability for Mass Starvation: Testing the Limits of the Law, Policy Paper #1' (2019) 20.

²⁴⁹ Ibid. 10-11.

never been prosecuted by the ICC, but argues that a broader interpretation of intent is warranted, even in cases of impeding relief operations.²⁵⁰ While they leave the question up to interpretation for future prosecutions and investigations, they argue that there is little to support the conclusion that a violation of the prohibition would strictly require proof of purpose or *desire* to cause starvation among civilians.²⁵¹ They argue that there are substantial grounds to support a broader interpretation of intent in cases of causing starvation, stating that a knowledge based understanding, where a belligerent party's knowledge of the effects of its actions and the adverse impact they have on the civilian population, may be sufficient to indicate a level of unlawful intent.²⁵² This interpretation would mean that a blockade need not be conducted with the specific aim of causing starvation among the civilian population per se, but that the expected outcome and heightened risk of starvation, and knowingly allowing this to happen, would be a sufficient degree of intent to trigger a violation of the prohibition under IHL.

In the present case of allegations of Russia impeding the Ukrainian civilian population's access to relief operations in Mariupol and Sumy, it could prove to be difficult to argue that Russia's actions indicate a specific aim or purpose to cause starvation among the civilian population. Firstly, because Russia could argue that the blockades were legitimate through its military objective of forcing Ukrainian armed forces to surrender, and secondly, because Russia participated in negotiations with Ukraine and humanitarian organizations to provide relief operations. These factors could indicate at the very least a symbolic consent to grant access to relief operations to reach the civilian populations in Mariupol and Sumy. This begs the question of whether Russia's expressed willingness to agree to relief operations automatically means that it did not have the intent to cause starvation among civilians in Mariupol, or whether criminal intent can be assumed even in cases where the state expressly denies such intent, and some of its actions and their aims are also legitimate and point to the contrary.

On the one hand, expressed intent in the form of formal statements from the state in question, naturally weigh in. Russia's participation in negotiations for relief operations could indicate that the starvation of civilians was not the specific aim of its actions. The participation also possibly indicates that Russia was not withholding consent to humanitarian relief operations.

²⁵⁰ Global Rights Compliance 'The Crime of Starvation and Methods of Prosecution and Accountability: Accountability for Mass Starvation: Testing the Limits of the Law, Policy Paper #1' (2019) 15.

²⁵¹ Ibid.

²⁵² Ibid.

Unlawfully or arbitrarily withholding consent would constitute a violation of IHL, especially if Russia was viewed as an occupying power,²⁵³ but Russia's participation in negotiations suggests that it was not formally withholding consent. On the other hand, practical actions and their effects are also understood as evidence and indications of intent, alongside expressed intent.²⁵⁴ This means that Russia's mere participation in negotiations and expressing willingness to grant access to relief operations is not sufficient to exclude the potential existence of an unlawful intent to cause starvation among civilians in Mariupol.

Intentions behind military actions do not exist in a vacuum, and that a state could simultaneously have both legitimate military objectives, and unlawful ones.²⁵⁵ For example, Russia could argue to have had a legitimate military objective in besieging Sumy or Mariupol, e.g., the aim of stopping Ukrainian armed forces from using the city as a base or weakening their ability to conduct hostilities through depriving them of their access to supplies. This legitimate and perhaps necessary military objective does not however fully exclude the possibility that in besieging the cities, Russian forces also had the specific aim of causing starvation among civilians, either through destroying objects indispensable to its survival or by impeding relief operations.²⁵⁶ A legitimate aim does not fully eliminate the possibility that the action is unlawful either. If the action, despite its legitimate aim, is disproportionate or indiscriminate in its nature and its adverse impact on the civilian population, it could be deemed to be in violation of IHL. In Yemen e.g., Saudi Arabian supported troops established a blockade in response to a missile being launched against Saudi Arabian soil, with the aim of halting smuggling of weapons, which naturally constitutes a legitimate military objective.²⁵⁷ Even so, the blockade in its entirety seems to have violated several regulations of IHL, including obligations to provide civilian populations with unimpeded and rapid relief.²⁵⁸ Thus, the existence of a legitimate military objective behind the blockade in Yemen, did not exclude the potential illegality of actions in total.

²⁵³ Geneva Convention IV (1949) (n 86) art 59 and Additional Protocol I (1977) (n 35) art. 70.

²⁵⁴ Global Rights Compliance 'The Crime of Starvation and Methods of Prosecution and Accountability: Accountability for Mass Starvation: Testing the Limits of the Law, Policy Paper #1' (2019) 14.

²⁵⁵ Ibid. 20.

²⁵⁶ Ibid.

²⁵⁷ Global Rights Compliance 'The Crime of Starvation and Methods of Prosecution and Accountability: Accountability for Mass Starvation: Testing the Limits of the Law, Policy Paper #1' (2019) 20.

²⁵⁸ Ibid.

The example of Yemen shows that despite a legitimate aim behind military action such as blockades, a belligerent party can simultaneously not only violate its overall obligations under IHL, but also have illegitimate and unlawful aims. Therefore, even if Russia could argue that its blockades of Mariupol and Sumy were legitimate through military necessity, this does not exclude the possibility that Russian actions had the aim of causing starvation among the civilian population. Neither does Russia's expressed readiness to grant access to relief operations automatically justify its actions, as additional factors need to be considered as well. Expressed intent to grant humanitarian access is not solely enough to justify siege tactics, but action needs to be taken in practice and in a timely manner, as to minimize the effects of the otherwise legitimate siege on the civilian population. As Global Rights Compliance suggests, a knowledge-based interpretation of intent could be utilized when examining allegations of the use of starvation as a method of warfare, meaning that Russia's assumed knowledge of the adverse effect its blockades had on the civilian populations in Mariupol and Sumy, could be sufficient proof of intent to cause starvation among civilians in violation of Article 54 API.²⁵⁹

The widespread reports of civilian suffering, especially reports of civilians running out of food and other essential supplies in Mariupol, along with the excessive duration of the blockade, could still indicate a degree of intent from the Russian armed forces to cause starvation among civilians. This notion is further supported when considering other cases of Russian actions in Ukraine, e.g., the similar example of the siege of Sumy. Despite the blockade of Sumy not being as devastating in its scale or duration, the cases together showcase a pattern of action by Russian armed forces. A pattern, that clearly contradicts Russia's expressed and assumed intent to grant and facilitate relief operations to the civilian population. Consider allegations of Russian armed forces destroying objects indispensable to the survival of the civilian population in conjunction with the allegations of impeding relief operations, especially in the city of Mariupol, and it further suggests that a degree of intent to cause starvation and suffering among the civilian population can be established in Russian actions. Even if Russia argues that causing starvation was not the specific purpose of its actions, the compounded effect its actions would have on the civilian population were to be expected, which could already be sufficient for a violation of Article 54 API.

²⁵⁹ Global Rights Compliance 'The Crime of Starvation and Methods of Prosecution and Accountability: Accountability for Mass Starvation: Testing the Limits of the Law, Policy Paper #1' (2019) 15.

4.3.6. The Obligation to Provide Relief Operations and Potential Russian Violations

The dilemma of starvation of civilians and siege tactics in IHL demonstrates the importance of relief operations within IHL. IHL exists to attempt to find a compromise between military necessity and protection of civilians in conflict, which is evident through the example of siege tactics and blockades being lawful.²⁶⁰ If blockades can be lawful under IHL, then this needs to be balanced out by considering its adverse effects on the civilian population. Therefore, facilitating relief operations to civilians, especially in situations of blockades, is increasingly important for states to not violate the prohibition of using starvation of civilians as a method of warfare. For states to not cause starvation in violation of Article 54 API, they may need to take precautions to ensure that even incidental starvation does not occur, especially in situations where the state's military action can be expected to exacerbate sustenance problems of civilians, which sieges and blockades undeniably should be expected to.²⁶¹ Article 54 API and its prohibition of using starvation as a method of warfare is not only a negative obligation, where states are obliged to abstain from deliberately causing starvation, but does also require states to take steps to ensure that starvation does not occur in a disproportionate manner, as a result of its military action.²⁶² This becomes increasingly important when states utilize blockades of cities containing civilians, as was the case in Mariupol.

The obligation to allow and provide relief operations to the civilian population in need exists precisely for this reason, to ensure that despite a belligerent party's military action, civilian suffering would not be disproportionate.²⁶³ If food blockades are lawful when there is a legitimate military objective, but disproportionate civilian suffering is prohibited, then granting and facilitating relief operations may often be the only measure states can take to minimize civilian suffering, and thus justify their blockade as lawful under IHL, without violating Article 54 API. As Russia's siege of Mariupol went on for weeks, and the increasing number of reports of civilian suffering and even starvation emerged, unimpeded passage of humanitarian relief operations should have been granted and facilitated. Otherwise, the failure to facilitate evacuations or relief to the civilian population, could indicate that Russian armed forces had either the specific aim of causing starvation among civilians, as discussed in the previous

²⁶⁰ Peter Macalister-Smith 'Protection of the Civilian Population' (1991) 441 and Hutter (2015) (n 16) 236.

²⁶¹ See Allen (1989) (n 63) 68-69.

²⁶² See Allen (1989) (n 63) 68-69 and Provost (1992) (n 36) 603-606.

²⁶³ Allen (1989) (n 63) 69.

section, or at the very least neglected its obligation to ensure that its blockade did not exacerbate the risk of starvation among the civilian population.

What makes the case study more complicated, is the fact that Russia participated in negotiations for relief operations to reach both Mariupol and Sumy, and relief operations and evacuations of civilians were finally achieved in Sumy as well, albeit after weeks of full-scale blockade.²⁶⁴ The prevalent question for the case study of Russian actions in Ukraine is thus not so much whether Russia unlawfully or arbitrarily withheld consent to humanitarian relief operations, as Russia's participation in negotiations throughout the blockades could indicate a degree of consent. Additionally, the fact that relief operations were finally conducted in certain cases, makes the argument regarding consent irrelevant to a degree, as it was finally given in practice as well. Despite this implied consent from Russia, it took weeks for any relief schemes to take place, which highlights the more important question at hand, which is whether Russia failed to facilitate *rapid* and *unimpeded* passage of relief operations, in violation of its obligations under article 59 GCVI and article 70 API, or whether Russian actions were sufficient and within its discretion.

Articles 59 GCVI and 70 API regulate state's obligations to provide relief operations to civilians in need and should also be read in conjunction with Article 54 API and the prohibition of using starvation of civilians as a method of warfare.²⁶⁵ The consensus, supported by the acceptance of such regulations as part of customary IHL, is that states are obliged to grant humanitarian relief operations to civilian populations as soon as the population is not adequately provided with supplies essential to its survival, such as food stuffs.²⁶⁶ This means that while conducting its blockade of Mariupol and Sumy, Russia should have not only allowed, but facilitated rapid and unimpeded relief operations to the cities. What constitutes facilitating rapid and unimpeded passage, and what a violation of this obligation would entail is not clearly defined in the legal sources of IHL, nor has the ICC ever prosecuted the use of starvation as a method of warfare.²⁶⁷

²⁶⁴ UNOCHA 'UN and Partners Deliver Aid to the Encircled City of Sumy' (31 March 2022).

²⁶⁵ Geneva Convention IV (1949) (n 86) art 59, Additional Protocol I (1977) (n 93) art 70 and see Provost (1992) (n 36) 606.

²⁶⁶ Geneva Convention IV (1949) (n 86) art 59, Additional Protocol I (1977) (n 93) art 70 and see Henckaerts and Doswald-Beck 'Customary IHL' (2005) (n 47) Rule 55 and Hutter 242.

²⁶⁷ Akande and Gillard (2019) (n 4) 773-774.

The case of Russian actions in Ukraine, especially in Mariupol and Sumy introduces the question of where the threshold for *rapid* and *unimpeded* passage of relief operations drawn. The important factors to consider in answering these questions is the degree of the civilian need in the besieged cities, the customary law principles of proportionality and necessity, whether Russian armed forces could have foreseen the degree of civilian suffering and in accordance with these factors, whether the belligerent party took sufficient action to fulfill its obligation in relation to the civilian population in need, also considering the principles of proportionality and necessity.²⁶⁸ In the case of allegations of Russia impeding access to relief operations in Mariupol and Sumy, this requires an estimation of the civilian need in the cities until eventual relief operations were achieved, whether the adverse effects and degree of civilian suffering could have been expected, and finally, whether Russian armed forces should then have provided rapid and unimpeded relief. Naturally, specific actions do not exist individually in a vacuum, and Russian actions should be considered in conjunction with each other, as established in the previous chapter. This includes allegations of Russia conducting food blockades and impeding relief operations in Mariupol and Sumy, but also allegations of other violations of IHL, such as destroying objects indispensable to the civilian population.

Furthermore, the IHL regulations on relief operations and states' obligations thereto do include exceptions to the rule, in which case states may lawfully impede relief operations. Article 59 GCVI and 70 API establish that in cases where the relief operations are not necessary, or when there is a legitimate fear that relief operations are not conducted in an impartial, humanitarian, and non-discriminatory manner, relief operations may be impeded.²⁶⁹ Any such derogations from a state's obligation to allow and facilitate relief operations should be made in good faith though, and a state can only ever divert or delay the distribution of relief consignment in "cases of urgent necessity in the interest of the civilian population concerned."²⁷⁰ Whether Russia could argue to have lawfully abstained from facilitating relief operations, in accordance with the aforementioned exceptions should be examined as well.

²⁶⁸ See Hutter (2015) (n 16) 188, 229-231 and See Global Rights Compliance 'The Crime of Starvation and Methods of Prosecution and Accountability: Accountability for Mass Starvation: Testing the Limits of the Law, Policy Paper #1' (2019) 19-21.

²⁶⁹ See Sandoz, Y., Swinarski, C., & Zimmermann, B. (1987) (n 105) paras. 4881–4883 and Bothe, Partsch, Solf (2013) (n 104) 696 and Hutter (2015) (n 16) 240-241.

²⁷⁰ Additional Protocol I (1977) (n 93) art 70.

When it comes to the need of the civilian population and the necessity of relief operations in the case of the siege of Mariupol, it is difficult to argue that Russia would not have been obliged to facilitate rapid and unimpeded humanitarian relief operations. The absolute destruction of infrastructure the city was subjected to through Russian shelling and airstrikes, the weeks long, absolute blockade of goods entering the city, and the sizable, stranded civilian population are all clear indications that the civilian need in the city would be acute. This critical humanitarian situation was further supported by reports and imagery from the city, which emerged rapidly after the siege had begun. In short, Russia's relentless bombardment of the city and the duration of the siege were expected to leave the civilian population with a seriously deteriorated access to essential supplies and in need of rapid assistance. Considering these factors, one cannot argue that Russia could have impeded relief operations from reaching the civilian population in Mariupol through the argument that relief operations were not necessary. Simultaneously, the severe degree of need among the civilian population in Mariupol makes it difficult to argue that anything less than providing immediate relief could suffice to fulfill the obligations under Articles 59 GCVI and 70 API. The articles become applicable as soon as the civilian population is not adequately provided with essential supplies, and available reports suggest that this threshold was reached at the very early stages of the siege when the bombardment of civilian infrastructure and objects began.

The serious civilian need in Mariupol should thus also have been expected. Not only did Russian armed forces allegedly destroy objects indispensable to the survival of the civilian population in Mariupol at a devastating scale but held the city under siege as well. The actions, whether legitimate through military objectives or not, would in all cases result in a detrimental situation among the civilian population in the city, hinder their access to essential supplies and exacerbate the risk of starvation. This expected result leaves little room for an interpretation other than that Russian armed forces should have taken further measures to ameliorate civilian suffering in the city. This then begs the question whether Russia in fact provided rapid and unimpeded relief operations to the civilian populations in Mariupol and Sumy.

The fact that relief operations finally reached Sumy after a few weeks of blockade and bombardment makes the situation more difficult to assess. The conditions of the siege and the situation of the civilian population, before relief operations reached the city, should be examined in further detail to be able to conclude whether Russia violated its obligation to provide rapid and unimpeded relief in the individual case. The siege of Mariupol on the other

hand was longer and more destructive, with widespread evidence-based reports of attacks on civilians and civilian infrastructure and objects. The weeks long siege, the multiple failed attempts from neutral relief organizations to reach the civilian population, despite promises of routes being ensured, in conjunction with the alleged attacks by Russian forces on agreed upon humanitarian corridors, all suggest that Russia did not take sufficient measures to provide *rapid* and *unimpeded* passage of relief in accordance with its obligations under either article 59 GCVI or article 70 API, depending on whether it Russia was deemed to be an occupying power or not.²⁷¹ Furthermore, Russian armed forces did not consider the proportionality and impact of their actions on the civilian population in besieging Mariupol and no providing rapid relief, thus deeming the otherwise potentially legitimate siege unlawful, as Russia did not adhere to its obligations of precaution, proportionality, or distinction under customary IHL.²⁷²

These findings suggest that Russia should have taken further action to provide rapid and unimpeded relief, as the civilian need was dire and such operations were clearly necessary. But could Russia argue that it impeded such operations with legitimate reasoning, in accordance with the exceptions established in IHL? I.e., could Russia argue that relief operations to Mariupol were impeded out of legitimate fear that relief operations, offered by humanitarian organizations, would not have been impartial, humanitarian, and indiscriminate in nature? Russia accused Ukraine for not adhering to agreements of humanitarian corridors e.g., just like Ukraine accused Russian forces of the same violations,²⁷³ but this alone does not necessarily constitute sufficient reasoning to impede agreed relief operations.

Article 70 API establishes that “Offers of such relief shall not be regarded as interference in the armed conflict or as unfriendly acts.”, which should be interpreted as a limitation to states’ discretion to impede relief operations based on the fear of such operations being taken in bad faith.²⁷⁴ For such claims to legitimize impeding relief operations to a civilian population in need, the state making such claims would need to provide well-rounded, evidence-based arguments for such fears to be justified. In the present case, this could be that Russian forces had a legitimate, substantiated fear that relief operations would e.g., have been diverted solely

²⁷¹ Geneva Convention IV (1949) (n 86) art 59 and Additional Protocol I (1977) (n 93) art 70.

²⁷² See Allen (1989) (n 63) 30, Hutter (2015) (n 16) 242 and Global Rights Compliance ‘*The Crime of Starvation and Methods of Prosecution and Accountability: Accountability for Mass Starvation: Testing the Limits of the Law, Policy Paper #1*’ (2019) 19-21.

²⁷³ The Guardian ‘*Mariupol Officials Say Russians Blocking Aid Reaching Besieged Ukrainian City*’ (1 April 2022).

²⁷⁴ Additional Protocol I (1977) (n 93) art 70.3.

to combatants in Mariupol, instead of being delivered to the civilian population. Such claims cannot be made lightly though, as the wording in Article 70 API suggests. Such claims and justifications of impeding relief operations would need to be substantiated, otherwise it could be argued that Russia is not acting in good faith and thus impeding relief operations from reaching the civilian population in Mariupol, in violation of its obligation under Article 59 GCVI or Article 70 API, and in conjunction with the prohibition of Article 54 API. Additionally, it should be noted that states have the right to dictate how relief operations are technically arranged when granting them.²⁷⁵ This can take form in requirements of use of specific routes and humanitarian corridors, as was the case with eventual humanitarian relief operations to Sumy. Despite enjoying such discretion, such arrangements and requirements should always be taken in good faith and should never impede the rapid facilitation of relief operations, nor should they ever be disproportionate.²⁷⁶ For Russia to reason its failure to provide rapid and unimpeded relief operations to the civilian population in Mariupol, and potentially Sumy, on the basis of legitimate fears of the offered relief not being humanitarian or neutral in nature, or for fears of Ukrainian armed forces gaining advantage as a result of relief operations would thus be difficult to substantiate.

As a result of the overall pattern of Russian actions, it could be argued that Russia in fact even had the intent of causing starvation and suffering among the civilian population in Mariupol. The existence of legitimate military aim behind the siege does not exclude the possibility that Russian forces conducted the siege and impeded relief operations with the additional, unlawful aim of causing starvation among civilians. The overall destruction in Mariupol caused by attacks of Russian armed forces, the complete lack of distinction between military and civilian targets, the evident lack of consideration for the proportionality of attacks, in conjunction with not facilitating, and even allegedly endangering efforts of immediate, rapid, and unimpeded relief to the civilian population, further support a notion of intent to cause starvation among the civilian population in Mariupol. At the very least, the compounded factors point to negligence and disregard of the impact Russian actions would have on the civilian population and the exacerbated risk of starvation, and therefore its obligation to facilitate relief operations. Such findings would constitute clear violations of the prohibition of the use of starvation of civilians

²⁷⁵ Akande and Gillard (2019) (n 4) 774.

²⁷⁶ Ibid.

as a method of warfare under the overall regulation of Article 54 API and articles 59 GCVI and 70 API.

5. Conclusion and Findings

The prohibition of the use of starvation of civilians as a method of warfare is broad and far reaching, as has become evident through the above examination of its codification in IHL and the case study of allegations of Russian violations in Ukraine. The prohibition is comprehensive through Article 54 API and its potentially broad scope and interpretation. The article can be interpreted to prohibit not only deliberately causing starvation and destroying indispensable objects, by depriving them of their sustenance value to the civilian population, but also prohibits actions that could be expected to exacerbate the risk of starvation among civilians. States have an obligation to abstain from actions that could be expected to aggravate the risk of starvation and take precautions and consider the necessity and proportionality of its actions and their effects on the civilian population, as per the principles of customary IHL. The scope of the prohibition is broadened even further through the obligation to provide rapid and unimpeded relief operations to civilians in need, brought by articles 59 GCVI and 70 API, which should be read in conjunction with the Article 54 API prohibition. The scope of the prohibition is thus broad, as not only is it prohibited to attack objects of civilian capacity, but in cases where civilians are expected to suffer adverse effects, precautions and positive measures need to be taken as not to violate the prohibition and the overall regulations of IHL.

The imperative focus when examining potential violations of the prohibition of using starvation as a method of warfare is the degree of civilian need, the assumed intent and aim behind actions from armed forces, and the expected effects and impact of these actions. The civilian focus is imperative for multiple reasons, as only a certain degree of need and inadequate degree of access to essential supplies triggers the relevant articles of IHL. For Article 54 API, the aggravated risk of starvation among the civilian population is required for a potential violation, just as the civilian population needs to be inadequately provided with supplies essential to its survival for the regulation of relief operations to become applicable. The degree of civilian need is also an important consideration when trying to assess both the intent behind actions of armed forces, and even more so when considering their legality in terms of proportionality.

A careful assessment of intent is required as well, as a determination of intent to cause starvation among civilians would automatically render an action unlawful. Intent of armed forces can be challenging to determine, as actions, such as sieges e.g., may have both legitimate military objectives and unlawful ones simultaneously. Naturally states will likely often deny any criminal intent as well, which is why a compounded, knowledge-based assessment of intent is required. This means that an armed force's actions should be considered not only as separate incidents, but in conjunction with each other, to potentially find patterns. As mentioned above, not only is deliberate and clear intent of causing starvation of civilians prohibited by IHL, but actions that could be expected to cause starvation could be deemed unlawful as well. Therefore, the expected impact of actions, especially when considered in conjunction with each other is imperative.

Considering the relevant regulations of IHL regarding starvation as a method of warfare and the available reports of Russian actions and the degree of civilian suffering in Ukraine, one can conclude that the widespread allegations of Russia destroying objects indispensable to the civilian population, by destroying crops and farmland, looting and attacking grain silos, killing livestock and shelling markets, grocery stores and food distribution centers, amount to a potential violation of the prohibition of using starvation as a method of warfare. The manner and nature of the alleged attacks, the repetitiveness, and the prominent civilian nature of the targets together indicate a purpose of Russian forces to deny the targeted objects their sustenance value to the civilian population. A large portion of the targets of the alleged attacks, most of which have had direct linkages to food security either through production or distribution, have included no signs of military capacity or presence. Even if one could argue that some objects or areas have been used or could be used in support Ukraine's military action, many targets have had a clear civilian nature to them, being directly used by the civilian population for sustenance and for their survival. This directly triggers the Article 54 API prohibition, as attacking objects that are not *solely* used by armed forces make the article applicable.²⁷⁷

The sheer volume of the attacks does not only indicate Russian armed forces' possible intent to cause starvation among civilians, but also that the effects on the civilian population should also have been foreseen and expected, something that Russia's admission of the ongoing

²⁷⁷ Provost (1992) (n 36) 603 and Hutter (2015) (n 16) 199-202.

humanitarian crisis in Ukraine even indicates. Even without the specific aim of causing starvation among the civilian population, the adverse effect of Russian actions on the civilian population should have been expected. Furthermore, the failure to provide rapid and unimpeded relief operations to civilians, especially in Mariupol that had been subjected to relentless, indiscriminate shelling, further strengthens the argument for a potential violation of the prohibition of using starvation of civilians as a method of warfare. States should carefully consider their actions and their potential impact on the food security of the affected civilian population, as not to aggravate the risk of starvation, as Resolution 2417 emphasized. This means that not only was Russia obliged to abstain from deliberately causing starvation among the civilian population in Ukraine but should have considered whether its actions may exacerbate the risk of starvation, as not to violate Article 54 API and its prohibition.

The customary law principles of distinction, proportionality, and necessity further support this notion. Even if Russia could argue to have acted out of military necessity in its attacks on objects indispensable to the civilian population and its blockade of Mariupol, it would need to do so while considering the actual necessity and proportionality of its attacks. The widespread attacks on objects presumably used as sustenance for the civilian population across the country, and the weeks long siege of Mariupol in conjunction with the failure to provide rapid relief operations make it difficult to support an interpretation that such actions would have been either discriminate, proportionate or even necessary.

In conclusion it should be noted that, as discussed in the Introduction to this thesis, a definite answer whether Russia has used starvation of civilians as a method of warfare in Ukraine in violation of IHL cannot be given within the framework of this case study. This would require rigorous investigations into the details of the examples and the situation on the ground. Despite the widespread reports and allegations of Russia attacking and destroying objects indispensable to the civilian population, the actual implementation of laws and prohibitions of IHL, through actual investigations and potential prosecution and eventual accountability is never as uncomplicated. Not only are investigations and ascertaining concrete evidence extremely challenging during ongoing conflict, but the discretion and room for argumentation of facts that even Article 54 leaves, despite being a relatively rigorous and clear prohibition within IHL and customary law, makes determining cases and potential violations even more difficult. Naturally, even if Russia was found to have violated Article 54 API and IHL, what this would mean in terms of consequences and accountability is also difficult to ascertain. How violations

of the prohibition of using starvation of civilians as a method of warfare is implemented, especially without the ICC having prosecuted the war crime, is a question that requires further examination and development, as with accountability of violations of IHL in general.

The above examination of the prohibition of the use of starvation as a method of warfare does though present the potential scope of the prohibition, further supported by the growing discourse surrounding the causality between warfare and hunger, most notably emphasized by Security Council Resolution 2417. The compounded articles of 54 API and the articles regulating relief operations, along with customary international humanitarian law, provide a quite rigorous and civilian focused prohibition. The biggest challenge is thus the actual implementation of such regulations in conflicts, something that the war in Ukraine and Russian actions therein have made abundantly clear.

IHL attempts to strike a balance between military necessity and protection of civilians. In the case of the prohibition of starvation as a method of warfare, the protection of civilians is quite thorough, yet violations of this protection have been apparent, blatant, and severe in Ukraine, at least based on available reports and the present understanding of the prohibition and its scope. The question is thus whether the desirable balance between military necessity and protection of civilians has been achieved in terms of protecting civilians against starvation methods. It is uncomplicated to suggest that the more extensive the civilian protection of a regulation of IHL is, the stronger the regulation is, but is this undeniably the case? One could argue that in some cases, if an interpretation of a law supports a very extensive civilian protection, it can make otherwise lawful military action difficult to conduct in practice, e.g., in cases of sieges and blockades, resulting in a confusing contradiction between regulations and their interpretations. The fact that IHL includes contradictions between military necessity and protection of civilians is expected but can also result in further violations, as states may choose to defend their actions by claiming legitimacy, even though they may contradict other regulations of IHL.

The apparent paradox of sieges and blockades being lawful in theory but unlawful in practice, through the broad interpretation of Article 54 API, may result in states further neglecting their obligations in relation to the civilian population, if they choose to conduct sieges regardless. Add into consideration the extreme difficulty of ascertaining evidence-based facts in conflict areas, and the consequential room for accused states to argue the legitimacy of their actions,

and the practical implementation of the regulation becomes even more challenging. However, there is not much that suggests that Russia would not have violated IHL and its obligations therein, if the obligations towards the civilian population were not interpreted as extensive as they presently are. Russia would most likely have resorted to siege tactics in Mariupol regardless of whether a narrower interpretation of the prohibition of starvation methods was eminent. None the less, the question is still worth consideration from a legal perspective, when considering the development of IHL and the protection of civilians. If IHL regulations lean too much to the side of the protection of civilians and thus leaves military necessity as a secondary priority, can this result in belligerent states further neglecting their obligations?

Such normative questions are beyond the scope of this legal analysis, and whether the codification of the prohibition of the use of starvation of civilians as a method of warfare is ideal or not is highly relevant to the case study of Russian actions in Ukraine. The present interpretation of the prohibition is far reaching and broad in theory, indicating clear potential violations of the law by Russian armed forces in Ukraine, and call for further investigations into the matter.

Bibliography:

Treaties and statutes

Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), International Committee of the Red Cross (ICRC), 12 August 1949, 75 UNTS 287.

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention), International Committee of the Red Cross (ICRC), 12 August 1949, 75 UNTS 31.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), International Committee of the Red Cross (ICRC), 8 June 1977, 1125 UNTS 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), International Committee of the Red Cross (ICRC), 8 June 1977, 1125 UNTS 609

UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, 2187 UNTS 38544

United Nations, *Statute of the International Court of Justice*, 18 April 1946, 33 UNTS 993.

Declarations, Resolutions and Recommendations

United Nations Security Council, Res. 2417, (24 May 2018) S/RES/2417.

Monographs and Articles

Akande, Dapo and Gillard, Emanuela-Chiara, *Conflict-induced Food Insecurity and the War Crime of Starvation of Civilians as a Method of Warfare The Underlying Rules of International Humanitarian Law*, (Journal of International Criminal Justice Vol. 17, 2019) p.753-779.

Akande, Dapo and Gillard, Emanuela-Chiara, ‘*Arbitrary Withholding of Consent to Humanitarian Relief Operations in Armed Conflict*’, (U.S. Naval War College, International Law Studies Vol. 92, 2016) p. 483-511.

Allen, Charles A., *Civilian Starvation and Relief during Armed Conflict: The Modern Humanitarian Law* (Georgia Journal of International and Comparative Law, Vol. 19, No. 1, 1989) pp. 1-85.

Bartels, Rogier, Jean-Marie Henckaerts, Jean-Marie and Doswald-Beck, Louise (eds), *Customary International Humanitarian Law*, (ICRC/Cambridge University Press, Geneva/Cambridge, 2005, p. 35-67 in the International Review of the Red Cross Vol. 91 Nr 873, 2009).

Benedek, Wolfgang, Bílková, Veronika and Sassòli, Marco, Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights ‘*Report on violations of international humanitarian and human rights law, war crimes and crimes against humanity committed in Ukraine since 24 February 2022*’ (Warsaw, 12 April 2022) ODIHR.GAL/26/22/Rev.1

Bothe, Partsch, Solf, *New Rules for Victims of Armed Conflicts, Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949*, (Martinus Nijhoff Publishers, 1982).

Digney, Leanne, *The Rome Statute and Hunger as a Weapon of War - The Journey Towards Ending Impunity for Starvation Tactics*, (The Institute of International & European Affairs, 13 July 2022).

Ferraro, Tristan, *Expert Meeting: Occupation and Other Forms of Administration of Foreign Territory*, (International Committee of the Red Cross, March 2012).

Global Rights Compliance ‘*The Crime of Starvation and Methods of Prosecution and Accountability: Accountability for Mass Starvation: Testing the Limits of the Law, Policy Paper #1*’ (The Hague, 2019).

Global Rights Compliance ‘*Policy Brief No. 3: Accountability for Starvation Crimes: Syria Policy Paper*’ (The Hague, June 2019).

Henckaerts, Jean-Marie and Doswald-Beck, Louise, *Customary International Humanitarian Law Volume I: Rules* (Cambridge University Press, Cambridge, 2005).

Henckaerts, Jean-Marie and Doswald-Beck, Louise, *Customary International Humanitarian Law Volume II: Practice*, (Cambridge University Press, Cambridge, 2005).

Hortensia D. T. Gutierrez Posse, *The Relationship Between International Humanitarian Law and the International Criminal Tribunals*, (International Review of the Red Cross, Vo. 88, Nr 861, 2006).

Hutter, Simone, *Starvation as a Weapon: domestic Policies of Deliberate Starvation as a Means to an End under Internatioal Law*, (Brill, Nijhoff, International Humanitarian Law Series, Vol. 46, 2015)

Lattimer, Mark, *Can Incidental Starvation of Civilians be Lawful under IHL?*, (Blog of the European Journal of International Law, 26 March 2019).

Macalister-Smith, Peter, *Protection of the Civilian Population and the Prohibition of Starvation as a Method of Warfare: Draft Texts on International Humanitarian Assistance* (International Review of the Red Cross, Vol. 31, October 1991) 440-459.

Pictet, Jean *Commentary on the Geneva Conventions of 12 August 1949. Volume IV*, (Geneva: International Committee of the Red Cross 1958).

Provost, René, *Starvation as a Weapon: Legal Implications of the United Nations Food Blockade against Iraq and Kuwait*, (Columbia Journal of Transnational Law Vol. 30, 1992) p. 577-639.

Rosenblad, Esbjörn, *International Humanitarian Law of Armed Conflict*, (Geneva: Henri Dunant Institute, 1979, Published online by Cambridge University Press: 27 February 2017)

Sandoz, Y., Swinarski, C., & Zimmermann, B., Eds, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Geneva: International Committee of the Red Cross, Martinus Nijhoff Publications, 1987).

Welsh, Caitlin, Center for Strategies & International Studies (CSIS) *The Impact of Russia's Invasion of Ukraine in the Middle East and North Africa* (Statement before the House Foreign Affairs Subcommittee on Middle East, North Africa and Global Counterterrorism, 18 May 2022).

Zappalà, Salvatore, *Conflict Related Hunger, 'Starvation Crimes' and UN Security Council Resolution 2417 (2018)*, (Journal of International Criminal Justice 17, 2019) p. 881-906.

Publications from International Organizations and Institutions

FAO, IFAD, UNICEF, WFP and WHO *'The State of Food Security and Nutrition in the World 2022. Repurposing food and agricultural policies to make healthy diets more affordable'* (Rome: FAO, December 2022).

Global Rights Compliance *'Starvation Makers – the use of starvation by warring parties in Yemen'* (The Hague, September 2021).

Human Rights Watch *'Trying to Survive in a Besieged Ukrainian City'* (9 March 2022) available at: <https://www.hrw.org/news/2022/03/09/trying-survive-besieged-ukrainian-city> accessed 15.3.2023

Human Rights Watch ‘*Ukraine: Apparent War Crimes in Russia-Controlled Areas*’ (3 April 2022) available at: <https://www.hrw.org/news/2022/04/03/ukraine-apparent-war-crimes-russia-controlled-areas> accessed 10.1.2023

Human Rights Watch ‘*Urgently Help Ukraine Civilians Flee Mariupol*’ (26 April 2022) available at: <https://www.hrw.org/news/2022/04/26/urgently-help-ukraine-civilians-flee-mariupol> accessed 30.3.2023

Integrated Food Security Phase Classification (IPC), *The IPC Acute Food Insecurity Scale*, available at: <https://www.ipcinfo.org/famine-facts/> [accessed 15.1.2023].

International Committee of the Red Cross, *International Humanitarian Law Database*, available at: <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/state-parties?activeTab=undefined> [accessed 12.1.2023].

International Criminal Court ‘*Situation in Ukraine*’ ICC-01/22 (2022).

Mykytenko Anna & Vischyk Maksym, *Opinio Juris*, “*All Our Hope Is in the Famine*”: *Why an Investigation into Starvation Crimes in Ukraine Is Urgently Needed*, (2022) available at: <http://opiniojuris.org/2022/08/09/all-our-hope-is-in-the-famine-why-an-investigation-into-starvation-crimes-in-ukraine-is-urgently-needed/> [accessed 15.4.2023].

Official Records Of The Diplomatic Conference On The Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, (Geneva 1974 -1977, Vol. X) U.N. Doc. CDDH/215/Rev. 1.

UN Office of the High Commissioner for Human Rights (OHCHR), *Fact Sheet No. 34, The Right to Adequate Food*, April 2010, No. 34, available at: <https://www.refworld.org/docid/4ca460b02.html> [accessed 10.1.2023].

UN News ‘*Ukraine: Second UN Convoy Reaches Sumy, Mariupol Access Thwarted*’ (31 March 2022) available at: <https://news.un.org/en/story/2022/03/1115252> [accessed 4.4.2023].

UNOCHA ‘*UN and Partners Deliver Aid to the Encircled City of Sumy*’ (31 March 2022) available at: <https://www.unocha.org/story/ukraine-un-and-partners-deliver-aid-encircled-city-sumy> [accessed 12.3.2023].

WFP ‘*Hunger Hotspots*’, (2022) available at: <https://www.wfp.org/global-hunger-crisis> [accessed 20.1.2023].

World Food Programme ‘*War in Ukraine drives global food crisis* (Rome, June 2022), available at: https://docs.wfp.org/api/documents/WFP-0000140700/download/?_ga=2.93838493.1870052977.1682357439-62066767.1669675284 [accessed 21.1.2023].

Media Articles

Al Jazeera ‘*How did the Russia-Ukraine war trigger a global food crisis?*’ (June 2022) available at: <https://www.aljazeera.com/economy/2022/6/18/explainer-how-did-russia-ukraine-war-trigger-a-food-crisis> [accessed 20.1.2023].

Business Insider ‘*Putin Said He Wants The War in Ukraine to End, Acknowledging For The First Time It’s More than Just a Military Operation*’ (23 December 2022) available at: <https://www.businessinsider.com/putin-calls-fighting-ukraine-war-first-time-special-military-operation-2022-12?r=US&IR=T> [accessed 15.2.2023].

CBS News ‘*How Russia is Using Hunger as a Weapon in Ukraine*’ (May 2022) available at: <https://www.cbsnews.com/news/ukraine-farms-wheat/> [accessed 15.1.2023].

Financial Times ‘*Hell on earth’: Survivors Recount the Assault on Mariupol*’ (20 March 2022) available at: <https://www.ft.com/content/af7996a9-8c16-4421-a5b3-390315d3c7dc> [accessed 15.3.2023].

France 24 ‘*As it Happened: Russia Forces Encircle Kyiv and Continue Mariupol Siege*’ (12 March 2022) <https://www.france24.com/en/europe/20220311-live-russia-expands-its-offensive-to-western-ukraine> [accessed 2.4.2023].

France24 The Observers '*Fears of Food Shortages After Russian Attacks on Grocery Stores in Ukraine*' (21 March 2022) <https://observers.france24.com/en/europe/20220321-ukraine-kharkiv-kyiv-supermarkets-grocery-stores-russian-attacks-shortages> [accessed 19.1.2023].

France24: The Observers '*Russian Attacks on Farms and Silos 'deliberately trying to destroy the Ukrainian economy'*' (6 May 2022) available at: <https://observers.france24.com/en/europe/20220506-russian-attacks-on-farms-and-silos-deliberately-trying-to-destroy-the-ukrainian-economy> [accessed 16.1.2023].

France24 '*Russian Blockade of Ukraine's Ports Puts Global Food Supply at Risk*' (12 May 2022) available at: <https://www.france24.com/en/europe/20220512-russian-blockade-of-ukraine-s-ports-puts-global-food-supply-at-risk> [accessed 10.1.2023].

Forbes '*Russia's War on Ukraine: News and Information From Ukraine*' (1 May 2022) available at: <https://www.forbes.com/sites/katyasoldak/2022/05/01/sunday-may-1-russias-war-on-ukraine-news-and-information-from-ukraine/?sh=6762b7536912> [accessed 15.1.2023].

The Guardian '*Mariupol Officials Say Russians Blocking Aid Reaching Besieged Ukrainian City*' (1 April 2022) available at: <https://www.theguardian.com/world/2022/apr/01/ukraine-russia-peace-talks-continue-amid-fresh-bid-to-help-mariupol-residents-flee> [accessed 21.4.2023].

The Guardian '*Russia Accused of Shelling Mariupol Humanitarian Corridor*' (26 April 2022) available at: <https://www.theguardian.com/world/2022/apr/26/russia-accused-of-shelling-mariupol-humanitarian-corridor> [accessed 20.1.2023].

Independent '*Russian Forces 'shoot and kill 10 people queuing for bread' in Chernihiv, US claims*' (16 March 2022) available at: <https://www.independent.co.uk/news/world/europe/russia-ukraine-war-deaths-chernihiv-b2037094.html> [accessed 16 March 2023].

Politico, *The Starvation of a Nation: Putin Uses Hunger as a Weapon in Ukraine* (1 April 2022) available at: <https://www.politico.eu/article/the-starvation-of-a-nation-how-putin-is-using-hunger-as-a-weapon-in-ukraine/> [accessed 12.1.2023].

Reuters '*Ukraine Blames Russia After Mariupol Humanitarian Corridor Fails*' (24 April 2022) available at: <https://www.reuters.com/world/europe/ukraine-blames-russia-after-mariupol-humanitarian-corridor-fails-sunday-2022-04-24/> [accessed 13.1.2023].

Washington Post '*Ukraine says Russia is stealing grain, which could worsen food crisis*' (5 May 2022) available at: <https://www.washingtonpost.com/world/2022/05/05/ukraine-grain-theft-russia-hunger-war/> [accessed 22.1.2023].

Washington Post '*Ukraine says Russia is stealing grain, which could worsen food crisis*' (5 May 2022) available at: <https://www.washingtonpost.com/world/2022/05/05/ukraine-grain-theft-russia-hunger-war/> [accessed 22.1.2023].