

PROTECTING CIVILIANS IN THE RUSSIA-UKRAINE WAR: THE OBLIGATION TO RESPECT BASIC PRINCIPLES OF INTERNATIONAL HUMANITARIAN LAW

Anita Nwotite¹

ABSTRACT

Records, as of 26th June 2022 show that at least 4,731 civilians have lost their lives, 5,900 civilians injured, more than 12.8 million civilians displaced, and many towns and cities leveled in the Russia-Ukraine war. This is a large-scale violation of the basic principles of International Humanitarian Law (IHL) that facilitate the protection of the civilian population. The situation raises serious concern for IHL against the backdrop that IHL exists to among other things protect the civilian population against the effects of armed conflicts. Adopting doctrinal methodology and the review of relevant literature, this paper examines the protection of the civilian population in the Russia-Ukraine war and the obligation of the parties in effecting this protection; with the view of making recommendations geared towards strengthening the protection of the civilian population. This paper identifies the principles of distinction, proportionality and precaution as important means of ensuring human protection. It posits that these basic principles are being fragrantly violated in the Russia-Ukraine war. The paper argues that the protection of the civilian population is an obligation imposed on the parties to the Russia-Ukraine war under IHL. The paper further argues that this obligation can be discharged through respect for these basic principles. Thus, the extent to which the parties to the conflict respect these basic principles, determines the extent to which the civilian population will be protected in the said war.

Keywords: International Humanitarian Law, Civilian population, Armed Conflict, Protection, Russia-Ukraine War

INTRODUCTION

The international community has at various times in history explored the option of peaceful resolution of international disputes rather than going to war. This is given the fact that war brings with it some unpleasant experiences, particularly to the civilian population. The World Wars I and II remain perfect examples of these experiences.

¹ Lecturer in the Department of Public and Private Law, Faculty of Law, Nnamdi Azikiwe University, Awka, Nigeria. She holds a PhD in International Humanitarian Law. Email: am.nwotite@unizik.edu.ng

The World War I (WW I) also known as the Great War, was among other reasons occasioned by the assassination of Archduke Franz Ferdinand of Austria.² It was one of the deadliest wars in human history, fought between the Central and Allied Powers from 1914 -1918, although the Allied Powers claimed victory.³ The experiences of the war was horrific, devastating and unprecedented given the level of loss of human lives. To that effect, more than 16 million lives were lost including civilians’.

In order to negotiate various settlement on the defeated Powers, the Paris Peace Conference was convened from 1919-1920. Remarkable among these peace negotiations is the Treaty of Versailles. The Peace Conference also established the League of Nations in 1920 as the first international organizations to effect peaceful settlement to end the WW I.⁴

The Covenant of the League of Nations came into effect in 1919 with the primary functions of ensuring collective security, disarmament, and settlement of international disputes through negotiation and arbitration. In fact, Article 8 of the Covenant specifically empowers the League to reduce ‘armament to the lowest point consistent with national safety and the enforcement by common action of international obligations.’ It also restricted the rights of states to go to war except where peaceful resolution of international disputes fails.⁵ Despite these moves, League members continued re-arming instead of disarming. Hence, the World War II.

The World War II erupted on 1 September 1939 following Nazi Germany’s invasion of Poland.⁶ Subsequently, Britain and France declared war against Germany, and so it continued. However, the inability of the League to address this issue of aggression, including the aggression of Japan against China in 1931, and that of Italy against Abyssinia in 1935-6, escalated the problems and culminated in the collapse of the League of Nations in 1946.⁷ The WW II was a total war that involved more than 100 million personnel from more than 30 countries which lasted from 1939-1945.⁸ It was by far deadlier than the WW

² History.Com Editors ‘World War I’, < <https://www.history.com/topics/world-war-i/world-war-i-history> > accessed 15 November 2022

³ Ibid

⁴ UO Umozurike, *Introduction to International Law* (3rd edn Spectrum Books, Ibadan, 2005) 230

⁵ Covenant of the League of Nations, 1919, Article 12(1)

⁶ ‘Causes of World War II’ < https://en.wikipedia.org/wiki/Causes_of_World_War_II > accessed 1 November 2022

⁷ Umozurike, 230-231

⁸ ‘Causes of World War II’ < https://en.wikipedia.org/wiki/Causes_of_World_War_II > accessed 1 November 2022

It resulted in 70-85 fatalities mostly among civilians.⁹ The eruption of the WW II was an evidence that the League of Nations failed to achieve its primary purpose of disarmament. However, the WW II marked a turning point in the history of the international community as it led to political and social restructuring including the formations of the United Nations Organization and the Nuremberg Tribunal.¹⁰

The United Nations Organization (UN) was established in 1945 with five permanent Security Council members comprising of China, France, the Soviet Union, the United Kingdom and the United States of America.¹¹ The UN was an attempt to establish a permanent institutional framework for the international community to forestall future conflicts among states.¹²

The UN Charter reaffirms faith in fundamental human rights¹³ and the development of friendly relations among States.¹⁴ Thus, Article 2(3) of the Charter requires UN member-states to settle their disputes in a manner that international peace and security, and justice will not be jeopardized. On the other hand, Article 2(4) prohibits the threat or use of force against the territorial integrity or political independence of any state, or any other act that is inconsistent with the purposes of the United Nations.

In an attempt to humanize war, the Geneva Conventions (comprising of Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (GC I); Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (GC II); Geneva Convention relative to the Treatment of Prisoners of War (GC III); and Geneva Convention relative to the Protection of the Civilian Persons in Time of War (GC IV), were adopted in 1949 at a Diplomatic Conference. The decision to adopt these Conventions was informed by the atrocities committed during WW II.¹⁵ The Conventions were meant to fill the gaps in law exposed by the war. Suffice to say that the Geneva Conventions were built on the foundation laid by the 1864 Geneva Convention for the Amelioration of the Wounded and Sick in the Armies

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid

¹² Umozurike, 233

¹³ Articles 1, 55, 62(2) and 76(e)

¹⁴ UN Charter, Arts 1(2) and (3)

¹⁵ International Committee of the Red Cross 'The Geneva Conventions of 1949: Origins and Current Significance'

< <https://www.icrc.org/en/doc/resources/documents/statement/geneva-conventions-statement-120809.htm>

> accessed 15 November 2022

in the Field, championed by Henry Dunant, following his experience during the horrific Battle of Solferino in 1859.

The Geneva Conventions of 1949 have universal applicability with almost 194 ratifications and have remained the bedrock of contemporary IHL.¹⁶ The Conventions embody the basic rules for the protection of persons not taking active part in hostilities, particularly the civilian population.¹⁷ The adoption of the Geneva Convention relative to the Protection of the Civilian Persons in Time of War, 1949 was ground breaking against the backdrop that, for the very first time, the Convention extends protection to the civilian population thereby filling the gap made obvious by the WW II.¹⁸

The year 1977 was also remarkable as it witnessed the adoption of the Additional Protocols to the Geneva Conventions, 1949. While the first Protocol applies to the victims of international armed conflict, the second Protocol applies to victims of non-international armed conflicts. The adoption of these Protocols marked the unification of The Hague and Geneva regimes.

Central to the Geneva Conventions is the protection of persons not taking active part in hostilities, especially the civilian population.¹⁹

The protection of the civilian population is imperative in any armed conflict.²⁰ It occupies a place of pride in contemporary discourse²¹ and in fact constitutes one of the underlying goals of IHL²² and of Military Operations.²³ This is because the civilian population often bears the greatest brunt of any armed conflict. This is despite the general protection accorded the civilian population and the individual civilians not taking active part in hostilities

¹⁶ International Committee of the Red Cross 'The Geneva Conventions of 1949: Origins and Current Significance'
< <https://www.icrc.org/en/doc/resources/documents/statement/geneva-conventions-statement-120809.htm>
> accessed 15 November 2022

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Geneva Conventions, 1949, common Art 3; AP I, Art 51; AP II Art 13

²⁰ CC Wigwe, *International Humanitarian Law* (Readwide Publishers, 2010) 127

²¹ S Gorden, 'The Protection of Civilians: A Evolving Paradigm?' [2013] 2 2 *International Journal of Security & Development* 1, 1

²² N Melzer, *International Humanitarian Law-A Comprehensive Introduction* (first published 2016, International Committee of the Red Cross, 2019)16-17

²³ MK and AW Beadle, 'Operationalizing Protection of Civilians in NATO Operations,' [2017] 4 1 55 *International Journal of Security & Development*, 78, 79

against the effects of armed conflict.²⁴ Dinstein²⁵ rightly captures this thus: 'the hallmark of civilian status in wartime is that, in contrast to combatants, civilians - as well as civilian objects-enjoy protection from attack by the enemy.'

The protection of the civilian population is rooted in the fact that they do not constitute a threat to the military operations of the adverse party.²⁶ Thus, IHL exists to strike a balance between military necessity and concern for humanity by providing a set of rules that the parties must be bound to²⁷ once armed conflict ensues. By so doing, IHL ameliorates the hardship associated with armed conflicts.²⁸

The requirement to protect the civilian population is an obligation imposed on the parties to a conflict under IHL.²⁹ The obligation flows from the general obligation to respect and ensure respect for IHL³⁰ which limits attacks to military objectives.³¹ The obligation to limit attacks to military objectives is discharged by among other things respecting the fundamental principles of IHL. The aim of these principles is to ensure the feasibility of the protection of the disarmed man.³² To that effect, IHL prohibits certain types of attacks such as those not directed against any specific objects and/or which cannot strike civilians and civilian objects and military objectives without distinction (principle of distinction).³³ It further requires that even where the target is a military objective, that the collateral damage must nevertheless not outweigh the concrete and direct military advantage anticipated (principle of proportionality).³⁴ Additionally, parties to the conflict are obliged to take all feasible measures to limit incidental loss of civilian life and objects (precautions).³⁵ These principles together constitute the bedrock and the obligation of the parties towards ensuring the

²⁴ AP I, Art 51

²⁵Y Dinstein, 'Distinction and Loss of Civilian Protection in International Armed Conflicts,' in Michael D Carsten (eds), *International Law Studies-International Law and Military Operations*, (Naval War College Press, 2008), 183,184

²⁶ AP I, Art 51(3)

²⁷ N Melzer, 18

²⁸ EA Oji, 'The Problem with International Humanitarian Law: Distinguishing Targets in Armed Conflict,' [2013] NAUJILJ, 1, 1

²⁹ Geneva Conventions of 12 August, 1949, 75 U.N.S.T. 287, common Art 1

³⁰ Geneva Conventions, common Art 1

³¹ AP I, Arts 48 & 52(2)

³² MH Mohd Kamal, 'The Principle of Distinction, Proportionality and Precautions under the Geneva Conventions: The Perspective of Islamic Law,' in Bhuiyan, Jahid Hossain; Khan, Borhan Uddin (eds), *Revisiting The Geneva Conventions: 1949-2019*, (Brill Nijhoff 2019) 244, 244

³³AP I Arts 48 & 51(4) & (5)

³⁴ Ibid, Art 51(5)(b)

³⁵ Ibid, Art 57

protection of the civilian population, particularly in the Russia-Ukraine war. Unfortunately, the Russia-Ukraine war witnesses large scale violation of these basic principles of IHL with civilians suffering the cost of the war.

Records as at 26th June 2022 show that at least 4,731 civilians have lost their lives; 5,900 civilians injured;³⁶ and more than 12.8 million civilians displaced since the commencement of the war.³⁷ The situation challenges the whole essence of IHL and raises serious concern given the level of violations. It is against this background that this paper examines the protection of the civilian population in the Russia-Ukraine war and the obligation of the parties to the Russia-Ukraine war in facilitating this protection, with the aim of strengthening the protection of the civilian population in times of hostilities. The paper identifies the principles of distinction, proportionality and precautions as indispensable to facilitating the protection of the civilian population in the Russia-Ukraine war. It however observes that these basic principles are being flagrantly violated. The paper argues that the protection of the civilian population is an obligation imposed on the parties to the Russia-Ukraine. The paper further argues that this obligation can be discharged through respect for these principles. Thus, the extent to which the parties to the conflict respect these principles determines the extent to which the civilian population will be protected in the on-going war.

BRIEF BACKGROUND TO THE RUSSIA-UKRAINE WAR

Russia and Ukraine were two former republics of the defunct Soviet Union.³⁸ However, in 1991, Ukraine became independent following the collapse of the Union.³⁹ Ironically, rather than uniting Ukraine, the independence resulted in disagreements between the western and eastern regions of Ukraine.⁴⁰ Hence, the eastern region of Ukraine, which shares border with Russia became more inclined to Russia given its historical and linguistic links with it.⁴¹

³⁶ Statista Research Department, 'Number of Civilian Casualties during the War in Ukraine 2022'

<<https://www.statista.com/statistics/1293492/ukraine-war-casualties> > accessed 30 June 2022

³⁷P Kenny, '12.8 People Displaced in Ukraine since Russia Launched War: UN Human Rights Experts'

< <https://www.aa.com.tr/en/russia-ukraine-war/12.8-people-displaced-in-ukraine-sinc...> > accessed 30 June 2022

³⁸ Bigg, 'A History of the Tensions between Ukraine and Russia'

< <https://www.nytimes.com/2022/03/26/world/europe/ukraine-russia-tensions-timeline.amp.h...> > accessed 10 June 2022

³⁹ Ibid

⁴⁰ Ibid

⁴¹ Ibid

In 2014, a pro-Russian protest erupted in some parts of Ukraine and unmarked Russian armed forces invaded Crimea.⁴² In furtherance of the said invasion, Russia organized a controversial referendum in which it succeeded annexing Crimea.⁴³

Another pro-Russian protest took place in April 2014 and culminated into a full fledged war between the Ukrainian armed forces and the pro-Russian separatists.⁴⁴ Following this war, some parts of Donbas (south-east region of Ukraine) were seized by the pro-Russian separatists.⁴⁵ All attempts to achieve a ceasefire failed.⁴⁶ However, in 2015, a further attempt for ceasefire was made through the instrumentality of the Minsk II agreements, signed by both Russia and Ukraine. This too could not be implemented for some reasons.⁴⁷

In late 2021, Russia started a huge military build-up, with up to 19,000 troops, at its border with Ukraine.⁴⁸ NATO viewed the military build-up as a threat and accordingly accused Russia of planning an invasion, although Russia debunked the accusation.⁴⁹ On the other hand, President Vladimir Putin accused NATO of posing a threat to Russia following NATO's military build-up.⁵⁰ The President further questioned the right of Ukraine to exist and claimed that Ukraine had never had real statehood but rather exists as an integral part of Russia.⁵¹ To that effect, Putin requested that Ukraine be barred from the membership of the military alliance.

To worsen the tension between Russia and Ukraine, Russia recognized the two separatists' controlled states of Donetsk People's Republic and the Luhansk People's Republic in

⁴² Ibid

⁴³ United Nations, 'Russia's Indiscriminate Actions in Ukraine may amount to War Crimes: UN Rights Chief' <<https://www.aa.com.tr/en/europe/russias-indiscriminate-actions-in-ukraine-may-amount-t...>> accessed 1 June 2022

⁴⁴ Ibid

⁴⁵ United Nations, 'Russia's Indiscriminate Actions in Ukraine may amount to War Crimes: UN Rights Chief' <<https://www.aa.com.tr/en/europe/russias-indiscriminate-actions-in-ukraine-may-amount-t...>> accessed 1 June 2022

⁴⁶ Ibid

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ 'How Putin's Denial of Ukraine's Statehood Rewrites History' <<https://time.com/6150046/ukraine-statehood-russia-history-putin/>> accessed 1 June 2022

Donbas;⁵²and deployed troops into the separatist's controlled regions on 21st February 2022.⁵³ Unfortunately, on February 24th 2022, Russia invaded Ukraine⁵⁴against the clear of international law.⁵⁵

It is pertinent to observe here that since the commencement of the Russia-Ukraine war on 24th February 2022 till date, civilians have continued to bear the cost of the war as the basic principles of IHL particularly those facilitating the protection of the civilian population are being flagrantly violated.⁵⁶ As such, there have been civilian casualties, destruction of civilian objects, and forceful displacement of the civilian population, among other violations.⁵⁷

PROTECTION OF THE CIVILIAN POPULATION IN INTERNATIONAL HUMANITARIAN LAW

The Geneva Convention relative to the Protection of the Civilian Persons in Time of War of 12 August 1949 (GC IV), the AP I, and the Rome Statute of the International Criminal Court of 1998, all constitute the primary legal framework for the regulation of the conduct of international armed conflict and applies with full force to the Russia-Ukraine war.

The abovementioned laws protect the civilian population in specific and general ways. Specifically, the GC IV protects all categories of civilians such as children,⁵⁸ the wounded and sick,⁵⁹ refugees,⁶⁰and detainees. It also protects civilians who find themselves in specific situations such as in occupied territories;⁶¹ internment;⁶² and those requiring evacuation. Hence, Brown⁶³ opines that the 'GC IV contains an elaborate set of rules governing civilian protection.'

⁵² 'Why Luhansk and Donetsk are key to Understanding the latest Escalation in Ukraine' <
<https://www.wabe.org/why-luhansk-and-donetsk-are-key-to-understanding-the-latest-escalation-i...> >
accessed 23 May 2022

⁵³ Ibid

⁵⁴ Ibid

⁵⁵ Rome Statute of the International Criminal Court, 1998, Article 8bis³(2)(a)

⁵⁶ United Nations High Commission for Refugees, 'Ukraine Refugee Situation'
<<https://data.unhcr.org/en/situations/ukraine>> accessed 1 June 2022

⁵⁷ Ibid

⁵⁸ Arts 24 & 50

⁵⁹ Art 16

⁶⁰ Art 44

⁶¹ Arts 47-78

⁶² Arts 37, 83-88

⁶³ B Brown 'The Proportionality Principle in the Humanitarian Law of Warfare: Recent Efforts at Codification,'
[1976] 10 1 5 Cornell International Law Journal, 134, 134

Article 4⁶⁴ defines protected persons within the meaning of the Convention as “those who at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.” For instance, this provision applies to protect the civilian population in the four Ukrainian oblasts - Luhansk, Donetsk, Zaporizhzhia and Kherson annexed by Russia.⁶⁵

The GC IV recognizes the right of the civilian population to respect of their persons and honour, to family, and religious convictions.⁶⁶ The civilian population is further protected against inhumane treatment,⁶⁷ coercion,⁶⁸ hostage taking,⁶⁹ and punishment for an offence not committed personally by them.⁷⁰

As part of the protection accorded the civilian population under the GC IV, parties to the conflict are under obligation to establish hospitals and safety zones and localities;⁷¹ and neutralized zones to effect the protection of the wounded and sick and civilians not taking active part in the hostilities.⁷² The above provisions, for instance serves to protect the numerous civilians who have been wounded or sick and even displaced following the shellings, bombardments, airstrikes, and other indiscriminate attacks characterizing the Russia-Ukraine war.

The protection afforded under the GC IV also extends to civilian hospitals organized for the care of the wounded and sick, the infirm and maternity cases;⁷³ to medical personnel;⁷⁴ and means of transport exclusively dedicated to the transportation of the wounded and sick civilians.⁷⁵ Hence, the targeting of a hospital facilities in Mariupol,⁷⁶ and Vuhledar, in

⁶⁴ GC IV

⁶⁵ 'Putin Announces Russian Annexation of four Ukrainian Regions', (Aljazeera News, 30 September 2022) < www.aljazeera.com.cdn.ampproject.org > accessed 5 November 2022

⁶⁶ Art 27

⁶⁷ Art 27

⁶⁸ Art 31

⁶⁹ GC IV Art 34

⁷⁰ Art 33

⁷¹ Art 14

⁷² Art 15

⁷³ Art 18

⁷⁴ Art 20

⁷⁵ Art 22

⁷⁶ REF/RL 'Ukraine says Russia is Blocking Aid to Mariupol, Civilians still Trapped' <<https://www.rferl.org/amp/ukraine-russia-blocking-mariupol-aid/31781075.html> > Accessed 13 November 2022

Donetsk region of eastern Ukraine which resulted in the death of four civilians and six healthcare workers,⁷⁷ violates the rules of IHL.

Under the GC IV too, civilians in need of humanitarian assistance are entitled to unimpeded access to such assistance.⁷⁸ To that effect, parties to the conflict are bound to facilitate free passage of essential materials or relief supplies to civilian population in need of humanitarian assistance.⁷⁹ Hence, the blocking of relief supplies to the thousands of civilians in need of humanitarian assistance in the besieged city of Mariupol by Russia⁸⁰ is in violation of IHL.

The protection afforded under GC IV applies to the civilian population from the onset of war,⁸¹ and irrespective of the party they belong to.⁸² Over and above all, the civilian population may not in any circumstance renounce the rights available to it under this Convention or under any special agreement.⁸³

Article 1⁸⁴ requires High Contracting Parties to the Convention to respect and ensure respect for the provisions of the Convention by among other things, searching for persons alleged to have committed or who have ordered serious violations of the Convention, and to prosecute them accordingly.⁸⁵ As such, this provision applies to make all the violators of IHL in the Russia-Ukraine war criminally liable for their actions.

Complementing the GC IV is the AP I which also applies in situation of international armed conflicts. The AP I⁸⁶ first defines the civilian population as comprising of all persons who are civilians. On the other hand, the AP I considers civilians as persons not being members of the armed forces of a party to a conflict.⁸⁷ Like the GC IV, the AP I⁸⁸ also protects the

⁷⁷ Amnesty International, 'Russian Military Commits Indiscriminate Attack during the Invasion of Ukraine,' < <https://www.amnesty.org/en/latest/news/2022/02/russian-military-commits-indiscriminate-att...> > accessed 1 June 2022

⁷⁸ Art 23

⁷⁹ Ibid

⁸⁰ 'Ukraine says Russia is Blocking Aid to Mariupol, Civilians still Trapped'

<<https://www.rferl.org/amp/ukraine-russia-blocking-mariupol-aid/31781075.html>> Accessed 13 November 2022

⁸¹ GC IV Art 6

⁸² Ibid, Art 13

⁸³ Art 8

⁸⁴ GC IV (38)

⁸⁵ Art 146

⁸⁶ Art 50(2)

⁸⁷ Art 50(1)

⁸⁸ Art 51

civilian population against the effects of armed conflict. Thus, 'the civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations.'⁸⁹ Again, 'the civilian population as such, as well as individual civilians, shall not be made the object of attack. Acts or threat of violence the primary purpose of which is to spread terror among the civilian population are prohibited.'⁹⁰ Additionally, 'civilians shall enjoy the protection afforded by the section, unless and for such time as they take a direct part in hostilities.'⁹¹ For instance, the targeting of civilians in the southern port city of Mariupol;⁹² Ukrainian city of Kharkiv,⁹³ and the Chaplyne train station attacks which left many civilians dead and a score injured,⁹⁴ offend the above provisions.

To guarantee the protection afforded the civilian population under IHL, the AP I prohibits indiscriminate attacks;⁹⁵ attacks which are disproportionate in relation to the concrete and direct military advantage anticipated;⁹⁶ and attacks which do not take feasible precautions to limit collateral damage to civilian life and objects.⁹⁷ Such attacks include the use of explosives, landmines, airstrikes, bombardment, and shelling as witnessed in the Russia-Ukraine war. Thus, Russia's relentless bombardment of the residential neighbourhood of Kharkiv by the use of 9N210/9N235 cluster munitions and scatterable mines;⁹⁸ the employment of ballistic missiles, heavy artillery shells, and rockets as well as airstrikes⁹⁹

⁸⁹ Art 51(1)

⁹⁰ Art 51(2)

⁹¹ Art 51(3)

⁹² REF/RL 'Ukraine says Russia is Blocking Aid to Mariupol, Civilians still Trapped' <<https://www.rferl.org/amp/ukraine-russia-blocking-mariupol-aid/31781075.html> > accessed 13 November 2022

⁹³ Amnesty International, 'Anyone can Die at any time: Indiscriminate Attacks by Russia Forces in Kharkiv, Ukraine' < <https://reliefweb.int/report/ukraine/anyone-can-die-ant-time-indiscriminate-attacks-russian...> > accessed 13 November 2022

⁹⁴ Euro News, 'Ukraine War: More than 20 Dead in Russian Rocket Strike on Chaplyne Train Station' < <https://www.euronews.com/2022/08/24/russian-rockets-strike-train-station-in-central-ukraine-kill...> > accessed 14 November 2022

⁹⁵ Art 51(4)

⁹⁶ Art 51(5)(b)

⁹⁷ Arts 57 & 58

⁹⁸ Amnesty International, 'Anyone can Die at any time: Indiscriminate Attacks by Russia Forces in Kharkiv, Ukraine' < <https://reliefweb.int/report/ukraine/anyone-can-die-ant-time-indiscriminate-attacks-russian...> > accessed 13 November 2022

⁹⁹ Amnesty International, 'Russian Military Commits Indiscriminate Attack during the Invasion of Ukraine,' < <https://www.amnesty.org/en/latest/news/2022/02/russian-military-commits-indiscriminate-att...> > accessed 1 June 2022

and other explosive weapons, are against the principles of IHL given their indiscriminate and wide range impact.

Importantly, the violation of the above provisions shall not exonerate the parties to the conflict of their responsibility to protect the civilian population and of the precautionary measures required of them under Article 57. Hence, the parties to the Russia-Ukraine war will each be fully liable for acts amounting to the violation of IHL committed by them.

The protection afforded the civilian population under the AP I also applies to civilian objects; ¹⁰⁰ cultural objects, places of worship,¹⁰¹ and the natural environment.¹⁰² Civilian objects are also protected against reprisals.¹⁰³ However, where there is doubt as to whether an object is a civilian object or not, such doubt shall be resolved in favour of civilian objects.¹⁰⁴ In violation of these provisions, Russian forces targeted civilian infrastructures such as healthcare facilities, schools, cultural venues, civilian homes, and even ICRC International Committee of the Red Cross' warehouse in Mariupol,¹⁰⁵ Vuhledar,¹⁰⁶ and Kharkiv¹⁰⁷ areas of Ukraine.

The prohibition of attacks extends further to cover works or installations containing dangerous forces even where such objects are military objectives, if the attack will cause severe loss among the civilian population.¹⁰⁸ Under the AP I, it is a grave breach to make the civilian population or individual civilians the object of attack;¹⁰⁹ or to launch an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian

¹⁰⁰ Art 52(1)

¹⁰¹ Art 53

¹⁰² Art 55

¹⁰³ Art 54(4)

¹⁰⁴ Art 52(3)

¹⁰⁵ REF/RL 'Ukraine says Russia is Blocking Aid to Mariupol, Civilians still Trapped'
<<https://www.rferl.org/amp/ukraine-russia-blocking-mariupol-aid/31781075.html> > Accessed 13 November 2022.

¹⁰⁶ Amnesty International, 'Russian Military Commits Indiscriminate Attack during the Invasion of Ukraine,'
< <https://www.amnesty.org/en/latest/news/2022/02/russian-military-commits-indiscriminate-att...> >
accessed 1 June 2022

¹⁰⁷ Amnesty International, 'Anyone can Die at any time: Indiscriminate Attacks by Russia Forces in Kharkiv, Ukraine'
< <https://reliefweb.int/report/ukraine/anyone-can-die-ant-time-indiscriminate-attacks-russian...> > accessed
13 November 2022

¹⁰⁸ Art 56

¹⁰⁹ Art 85(3)(a)

objects, as defined in Article 57(2)(a)(iii).¹¹⁰ It is also prohibited to launch an attack against works or installations containing dangerous forces in the knowledge that it will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57(2)(a)(iii).¹¹¹ Thus, the Chaplyne train station¹¹² and Kharkiv attacks,¹¹³ which all witnessed excessive loss of civilian life, injury to civilians and damage to civilian objects constitute grave breaches.

The AP I also recognizes the right of civilians to unimpeded access to humanitarian assistance¹¹⁴ and imposes on States the obligation to facilitate humanitarian and impartial relief action in that regard.¹¹⁵ Hence, the blocking of humanitarian aid to the besieged city of Mariupol and the destruction of ICRC's warehouse in the southern port city of Mariupol¹¹⁶ violates the above provisions.

The Rome Statute of the International Criminal Court, 1998¹¹⁷ also complements the GC IV and AP I in the protection of the civilian population. Thus, the civilian population is protected against murder, extermination, enslavement, deportation, imprisonment, torture, rape, sexual slavery, persecution, enforced disappearance, and other inhumane acts. These acts are in fact considered as Crime against Humanity where they are committed as part of widespread or systematic attack directed against any civilian population. For the purposes of acts amounting to Crime against Humanity, Article 7(2) of the Rome Statute defines attacks directed against any civilian population as 'a course of conduct involving the multiple commission of acts referred to in paragraph(1) above against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.

¹¹⁰ Art 85(3)(b)

¹¹¹ Art 85(3)(c)

¹¹² Euro News, 'Ukraine War: More than 20 Dead in Russian Rocket Strike on Chaplyne Train Station' <<https://www.euronews.com/2022/08/24/russian-rockets-strike-train-station-in-central-ukraine-kill...>> accessed 14 November 2022

¹¹³ Amnesty International, 'Anyone can Die at any time: Indiscriminate Attacks by Russia Forces in Kharkiv, Ukraine' <<https://reliefweb.int/report/ukraine/anyone-can-die-ant-time-indiscriminate-attacks-russian...>> accessed 13 November 2022

¹¹⁴ Arts 69-70

¹¹⁵ Ibid

¹¹⁶ REF/RL 'Ukraine says Russia is Blocking Aid to Mariupol, Civilians still Trapped' <<https://www.rferl.org/amp/ukraine-russia-blocking-mariupol-aid/31781075.html>> accessed 13 November 2022

¹¹⁷ Art 7(1)

Article 8 of the Rome Statute considers grave breaches of the Geneva Conventions of 12 August 1949 as war crimes. Such grave breaches include: intentionally directing attacks against the civilian population not taking an active part in hostilities;¹¹⁸ intentionally directing attacks against civilian objects;¹¹⁹ intentionally launching an attack in the knowledge that such attacks will cause incidental loss of civilian life, destruction to the environment or the like;¹²⁰ attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives.¹²¹ The Russia-Ukraine war has characterized by these grave breaches featuring direct attacks against civilians,¹²² civilian objects,¹²³ and bombardments of civilian residential areas.¹²⁴

Article 8bis³ (2)(a) considers the invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof, a Crime of Aggression. Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State is also considered a Crime of Aggression.¹²⁵ It follows then that Russia's unprovoked invasion of Ukraine on the 24th day of February 2022, and the forceful annexation of four Ukrainian oblasts - Luhansk, Donetsk, Zaporizhzhia and Kherson on 30th September 2022,¹²⁶ are all in violation of IHL and constitute war crimes.

¹¹⁸ Art 8(2)(b)(i)

¹¹⁹ Art 8(2)(b)(ii)

¹²⁰ Article 8(2)(b)(iv)

¹²¹ Art 8(2)(b)(v)

¹²² REF/RL 'Ukraine says Russia is Blocking Aid to Mariupol, Civilians still Trapped'

<<https://www.rferl.org/amp/ukraine-russia-blocking-mariupol-aid/31781075.html> > Accessed 13 November 2022

¹²³ Amnesty International, 'Russian Military Commits Indiscriminate Attack during the Invasion of Ukraine,' < <https://www.amnesty.org/en/latest/news/2022/02/russian-military-commits-indiscriminate-att...> > accessed 1 June 2022

¹²⁴ Amnesty International, 'Anyone can Die at any time: Indiscriminate Attacks by Russia Forces in Kharkiv, Ukraine' < <https://reliefweb.int/report/ukraine/anyone-can-die-ant-time-indiscriminate-attacks-russian...> > accessed 13 November 2022.

¹²⁵ Rome Statute, Art 8bis³ (2)(b)

¹²⁶ 'Putin Announces Russian Annexation of four Ukrainian Regions', (Aljazeera News, 30 September 2022) < www.aljazeera.com.cdn.ampproject.org > accessed 5 November 2022

INDISCRIMINATE ATTACKS - A CHALLENGE TO PROTECTING THE CIVILIAN POPULATION IN THE RUSSIA-UKRAINE WAR

The protection of the civilian population is hinged on the prohibition against indiscriminate attacks¹²⁷ which draws from the principle of distinction. The AP I defines indiscriminate attacks as, 'those which are not directed at a specific military objective;¹²⁸ those which employ a method or means of combat which cannot be directed at a specific military objective;¹²⁹ or those which employ a method or means of combat which cannot be limited as required by this Protocol.'¹³⁰ Indiscriminate attack also includes, 'an attack by bombardment by any method or means or which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objectives.'¹³¹ It is also 'an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which may be excessive in relation to the concrete and direct military advantage anticipated.'¹³²

At any rate, indiscriminate attacks are those that do not distinguish between combatants and military objectives on the one hand,¹³³ and civilians and civilian objects on the other hand.¹³⁴ Unfortunately, the Russian-Ukraine war has been characterized by indiscriminate attacks affecting both civilians and civilian objects at an alarming rate.¹³⁵ The United Nations has decried the rate at which civilians are being killed in what appears to be indiscriminate attacks, with Russian forces using explosive weapons with wide area effects in and near populated areas.¹³⁶

The UN Human Rights Chief also remarked that 'Russian armed forces have indiscriminately shelled and bombed populated areas, killing civilians and wrecking hospitals, schools and other civilian infrastructure.'¹³⁷ Mores so, the Center for Civilians in

¹²⁷ AP I Art 51(4)(5)(a)(b)

¹²⁸ Ibid, Art 51 (4)(a)

¹²⁹ Ibid, Art 51 (4)(b)

¹³⁰ Ibid, Art 51 (4)(a) & (c)

¹³¹ Ibid, Art 51(5)(a)

¹³² Ibid, Art 51(5)(b)

¹³³ AP I, Art 52(2)

¹³⁴ Ibid, Art 51

¹³⁵ United Nations, 'Russian Attacks on Civilian Targets in Ukraine could be a War Crime: UN Rights Office'

<<https://news.un.org/en/story/2022/03/1113782> > accessed 1 June 2022

¹³⁶ Ibid

¹³⁷ Ibid

Conflict observed with dismay the rate at which Russian forces intentionally launch indiscriminate attacks resulting in civilian casualties.¹³⁸

As pointed out earlier, the Russian-Ukraine war features the use of means and methods of warfare with wide range effects such as cluster munitions and mines;¹³⁹ ballistic missiles, heavy artillery, rockets, bombardments, shelling, airstrikes,¹⁴⁰ and the like, in densely populated areas. Such means and methods of warfare are obviously indiscriminate and have caused unprintable consequences to both the civilian population and objects. These acts have also heightened humanitarian crisis and insecurity.¹⁴¹ Such indiscriminate means and methods of warfare were employed in the Ukrainian of cities of Kharkiv,¹⁴² Mariupol,¹⁴³ Kherson,¹⁴⁴ Chaplyne,¹⁴⁵ Kyiv, to mention but a few.

According to Human Rights Watch (HRW) report, Russia commenced a full scale attack against Ukraine on 24th February 2022 and first captured Kherson.¹⁴⁶ Since then, Russia has been conducting attacks that have caused civilian deaths and injuries, and damage to

¹³⁸ OCHA, *Russia's Indiscriminate Attacks Causing Civilian Deaths in Ukraine Must End*
<<https://reliefweb.int/report/ukraine/russia-s-indiscriminate-attacks-causing-civilian-deaths-u...>> accessed 1 June 2022

¹³⁹ Human Rights Watch 'Ukraine: Russian Strikes Killed Scores of Civilians in Chernihiv'
<<https://www.hrw.org/news/2022/08/16/ukraine-unlawful-russia-attacks-kharkiv>> accessed 14 November 2022

¹⁴⁰ Amnesty International, *Russian Military Commits Indiscriminate Attack during the Invasion of Ukraine*
<<https://www.amnesty.org/en/latest/news/2022/02/russian-military-commits-indiscriminate-att...>> accessed 1 June 2022

¹⁴¹ F O'Reilly, 'Ukraine under Attack: Documenting the Russian Invasion'
<<https://www.nytimes.com.cdn.ampproject.org/v/s/www.nytimes.com/article/russia-invades-...>> accessed 23 May 2022

¹⁴² Human Rights Watch 'Ukraine: Russian Strikes Killed Scores of Civilians in Chernihiv'
<https://www.hrw.org/news/2022/08/16/ukraine-unlawful-russia-attacks-kharkiv>> accessed 14 November 2022

¹⁴³ REF/RL 'Ukraine says Russia is Blocking Aid to Mariupol, Civilians still Trapped'
<<https://www.rferl.org/amp/ukraine-russia-blocking-mariupol-aid/31781075.html>> Accessed 13 November 2022.

¹⁴⁴ Daniel Boffey, 'Ukraine claims Gains near Kherson as Uk sends anti-aircraft Missiles'
<<https://amp.theguardian.com.world.2022/oct/12/ukraine-gains-kherson-air-defences-iris-t-ge...>> accessed 14 November 2022

¹⁴⁵ Euro News, 'Ukraine War: More than 20 Dead in Russian Rocket Strike on Chaplyne Train Station'
<<https://www.euronews.com/2022/08/24/russian-rockets-strike-train-station-in-central-ukraine-kill...>> accessed 14 November 2022

¹⁴⁶ Daniel Boffey, 'Ukraine claims Gains near Kherson as Uk sends anti-aircraft Missiles'
<<https://amp.theguardian.com.world.2022/oct/12/ukraine-gains-kherson-air-defences-iris-t-ge...>> accessed 14 November 2022

civilian infrastructure in Kherson and other parts of Ukraine.¹⁴⁷ On 24th February 2022 alone, Russia was said to have fired over 80 cruise missiles and 24 drones into Ukraine. These attacks were directed against important facilities such power, water and sewage.¹⁴⁸

Amnesty International has also reported widespread death of civilians and destruction of civilian infrastructures following relentless bombardment of residential areas in Kharkiv by Russia.¹⁴⁹ Extensive investigation by Amnesty International showed repeated employment of 9N210/9N235 cluster munitions as well as scatterable mines with wide range effects.¹⁵⁰

On 3rd March 2022, for example, about 47 civilians were reportedly killed when Russian airstrikes hit 2 schools, healthcare facilities and several apartment blocks in Chernihiv.¹⁵¹ On 24th March, 2022, at least 15 people were also reportedly killed following the explosion of cluster munitions at a parking lot near the Akademika Pavlova metro station where hundreds of people queued for humanitarian aid.¹⁵² On the whole, at least 606 civilians have been reportedly killed and 1,249 injured in Kharkiv as a result of indiscriminate attacks by Russia since the commencement of the invasion.¹⁵³ Again, on 15th April 2022, Russian forces fired cluster munitions in and around Mytru Street which left 9 civilians dead and 35 others injured.¹⁵⁴

On another attack in the southern port city of Mariupol, Russian forces struck a maternity hospital, fire department locations, cultural venues, civilian homes and even an ICRC warehouse.¹⁵⁵ In Avdiivka, at least 7 people were reportedly killed and 8 injured in an

¹⁴⁷ Human Rights Watch 'War' < <https://www.hrw.org/tag/russia-ukraine-war> > Accessed 14 November 2022

¹⁴⁸ Ibid

¹⁴⁹ Amnesty International, 'Anyone can Die at any time: Indiscriminate Attacks by Russia Forces in Kharkiv, Ukraine' < <https://reliefweb.int/report/ukraine/anyone-can-die-ant-time-indiscriminate-attacks-russian...> > accessed 13 November 2022

¹⁵⁰ Ibid

¹⁵¹ Human Rights Watch, 'Ukraine: Russian Strikes Killed Scores of Civilians in Chernihiv' (10 June 2022) < <https://www.hrw.org/news/2022/06/10/ukraine-russia-strikes-killed-scores-civilians-chernihiv> > accessed 15 November 2022

¹⁵² Amnesty International, 'Anyone can Die at any time: Indiscriminate Attacks by Russia Forces in Kharkiv, Ukraine' < <https://reliefweb.int/report/ukraine/anyone-can-die-ant-time-indiscriminate-attacks-russian...> > accessed 13 November 2022

¹⁵³ Ibid

¹⁵⁴ Ibid

¹⁵⁵ REF/RL 'Ukraine says Russia is Blocking Aid to Mariupol, Civilians still Trapped' < <https://www.rferl.org/amp/ukraine-russia-blocking-mariupol-aid/31781075.html> > accessed 13 November 2022

airstrike which struck in a densely populated market area.¹⁵⁶ On 24th August 2022, exactly six months that Russia invaded Ukraine and also the anniversary of the Independence of Ukraine from Russia, Russian forces launched a missile attack on a railway station in Chaplyne, Dnipropetrovsk Oblast which left not less than 25 people dead and 35 injured.¹⁵⁷

The violation is not limited to Russian forces. The UN Human Rights Monitoring Mission in Ukraine (HRMMU) has also reported the use of weapons with indiscriminate effects, causing civilian casualties and damage to civilian objects;¹⁵⁸ and launching of attacks from residential neighbourhood by Ukrainian forces.¹⁵⁹ The list of indiscriminate attacks in the Russia-Ukraine war is endless. Thus, from 24th February, 2022(when Ukraine was invaded by Russia) to 26th June 2022, the Office of the UN High Commissioner for Human Rights (OHCHR) has recorded 4,731 civilian deaths; and 5,900 civilian injuries.¹⁶⁰ Records also confirm that most of these casualties resulted from the use of explosive weapons with wide impact area, including shelling from heavy artillery and multiple launch rocket system, missile and airstrikes.¹⁶¹ This is clearly in violation of the principles of IHL prohibiting imprecise and disproportionate attacks;¹⁶² and invariably frustrates the protection of the civilian population.

¹⁵⁶ Daniel Boffey, 'Ukraine claims Gains near Kherson as Uk sends anti-aircraft Missiles' <<https://amp.theguardian.com/world/2022/oct/12/ukraine-gains-kherson-air-defences-iris-t-ge...> > accessed 14 November 2022

¹⁵⁷ Euro News, 'Ukraine War: More than 20 Dead in Russian Rocket Strike on Chaplyne Train Station' <<https://www.euronews.com/2022/08/24/russian-rockets-strike-train-station-in-central-ukraine-kill...> > accessed 14 November 2022

¹⁵⁸ OCHA, *Russia's Indiscriminate Attacks Causing Civilian Deaths in Ukraine Must End* <<https://reliefweb.int/report/ukraine/russia-s-indiscriminate-attacks-causing-civilian-deaths-u...> > accessed 1 June 2022

¹⁵⁹ Amnesty International, 'Anyone can Die at any time: Indiscriminate Attacks by Russia Forces in Kharkiv, Ukraine' <<https://reliefweb.int/report/ukraine/anyone-can-die-ant-time-indiscriminate-attacks-russian...> > accessed 13 November 2022

¹⁶⁰ Statista Research Department Number of Civilian Casualties during the War in Ukraine 2022' <<https://www.statista.com/statistics/1293492/ukraine-war-casualties> > accessed June 30 2022

¹⁶¹ Ibid

¹⁶² AP I, Art 51

OBLIGATION TO PROTECT THE CIVILIAN POPULATION AND RESPECT FOR THE BASIC PRINCIPLES OF INTERNATIONAL HUMANITARIAN LAW

Humane treatment underlies the main goal of IHL.¹⁶³ Hence, once the situation of armed conflict ensues, IHL requires the parties to a conflict to among other things respect the basic principles of IHL regulating the conduct of warfare.¹⁶⁴ Respect for these basic principles is even more imperative in contemporary armed conflicts (especially the Russia-Ukraine war) given the use of sophisticated weapons which makes the civilian population more vulnerable to attacks.¹⁶⁵

Respect for the basic principles of IHL is an obligation imposed on the parties to the conflict, which flows from the general obligation imposed on the High Contracting Parties and parties to the conflict 'to respect and ensure respect for the present Conventions in all circumstances.'¹⁶⁶ The obligation exists by virtue of State practice.¹⁶⁷ Thus, Rule 139 of Customary IHL clearly stipulates that 'each party to the armed conflict must respect and ensure respect for IHL by its armed forces and other persons or groups acting in fact or on its instructions, or under its direction or control.'¹⁶⁸ The obligation is further strengthened by AP I.¹⁶⁹

The obligation to respect and ensure respects for IHL is discharged through respect for the fundamental principles of distinction,¹⁷⁰ proportionality,¹⁷¹ and precautions¹⁷² as these ensure the feasibility of civilian protection.

¹⁶³ Y Sandoz, C Swinarski, and B Zimmermann (eds) *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (International Committee of the Red Cross, Martinus Nijhoff, 1987) 1389-1397

¹⁶⁴ MA Velasquez-Ruiz, 'The Principle of Distinction and Proportionality under the Framework of International Criminal Responsibility- Content and Issues', [2009] 14 *Int.Law.Rev.Colomb* 15, 18

¹⁶⁵ HM Mohd Kamal, 244

¹⁶⁶ Geneva Conventions common Art 1, 1949

¹⁶⁷ JM Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law Volume 1: Rules* (Cambridge, University Press 2005) 495-499

¹⁶⁸ Geneva Conventions common Art 1

¹⁶⁹ Arts 85-87

¹⁷⁰ AP I, Arts 48, 51(4) &(5) & 52

¹⁷¹ *Ibid*, Art 51(5)(b)

¹⁷² *Ibid*

Principle of Distinction

The principle of distinction exists by virtue of Customary IHL and is codified under the AP I.¹⁷³ Thus, Article 48¹⁷⁴ provides:

In order to ensure respect for and protection of the civilian population, and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.” Article 52(1)¹⁷⁵ further provides that attacks shall be limited to military objectives.

The principle of distinction is the cornerstone of IHL¹⁷⁶ around which civilian protection revolves.¹⁷⁷ It recognizes only two classes of persons (combatants and civilians) and objects (military objectives and civilian objects).¹⁷⁸ The principle imposes an obligation on the parties to a conflict to discriminate between legitimate targets (combatants and military objectives) and protected persons and objects (civilians and civilian objects) for the purpose of limiting attacks to legitimate targets.¹⁷⁹ The principle has been described as a ‘gatekeeper of target selection.’¹⁸⁰ Thus, the principle abhors indiscriminate attacks¹⁸¹ as witnessed in the Russia-Ukraine war where ballistic missiles; explosive weapons, heavy artillery, rockets

¹⁷³ Art 48

¹⁷⁴ AP I

¹⁷⁵ Ibid

¹⁷⁶ Nuclear Weapon Case, ICJ Advisory Opinion (1996) ss 78-79; Vincent Chetail, ‘The Contribution of the International Court of Justice to International Humanitarian Law’, (2003) 85 850 *International Review of the Red Cross* 235-253

¹⁷⁷ AP I Art 48

¹⁷⁸ Kasher, A, ‘The Principle of Distinction’ (2007) 6 2 *Journal of Military Ethics* 152, 152

¹⁷⁹ W J Fenrick, ‘The Law Applicable to Targeting and Proportionality after Operating Allied Force: A View from the Outside’ *Year Book of International Humanitarian Law* [2009] 3 53, 66

<<https://www.cambridge.org/core/journals/yearbook-of-international-humanitarian-law/arti...> > accessed 25 June 2022

¹⁸⁰ G Sweney, 734

¹⁸¹ AP I, Arts 48, 52(2)

and airstrikes were employed in densely populated areas,¹⁸² against the clear provisions of IHL.¹⁸³

Proportionality

The only object which parties to any armed conflict must endeavor to achieve is to weaken the military strength of the adversary.¹⁸⁴ Therefore, IHL consists in striking a balance between two competing interests - humanitarian concern and military necessity.¹⁸⁵ This is encapsulated in the principle of proportionality. To that effect, IHL requires parties to the conflict to avoid attacks, '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.'¹⁸⁶ In other words, even where a target is a lawful one (military objective), attacks must nevertheless not outweigh the direct and concrete military advantage anticipated. Brown recognizes the principle of proportionality as a basic norm of the law of warfare;¹⁸⁷ and a viable tool for the protection of the civilian population when military decisions are being taken.¹⁸⁸

The principle of proportionality is closely related to other fundamental principles of IHL such as military necessity and distinction.¹⁸⁹ This is because, attacks that fail to discriminate between civilians and military objectives will result in disproportionate loss of civilian life in relation to the anticipated military advantage.¹⁹⁰ For instance the relentless bombardment of residential areas as witnessed in Kharhiv area of Ukraine;¹⁹¹ and the employment of 9N210/9N235 cluster munitions as well as scatterable mines with wide range effects,¹⁹² offend the principle of proportionality. Again, the use of ballistic missiles and other explosive

¹⁸² Amnesty International, *Russian Military Commits Indiscriminate Attack during the Invasion of Ukraine* < <https://www.amnesty.org/en/latest/news/2022/02/russian-military-commits-indiscriminate-att...> > accessed 1 June 2022

¹⁸³ AP I, Art 48.

¹⁸⁴ St. Petersburg Declaration, (1868) Preamble

¹⁸⁵ HM Mohd Kamal, 252; *The Public Committee against Torture in Israel v Government of Israel*, (2006) HCJ 769/02, [22]

¹⁸⁶ AP I, Art 57(2)(b)

¹⁸⁷ Brown, 136

¹⁸⁸ Ibid 146

¹⁸⁹ Ibid

¹⁹⁰ Brown, 146

¹⁹¹ Amnesty International, 'Anyone can Die at any time: Indiscriminate Attacks by Russia Forces in Kharkiv, Ukraine'

< <https://reliefweb.int/report/ukraine/anyone-can-die-ant-time-indiscriminate-attacks-russian...> > accessed 13 November 2022

¹⁹² Ibid

weapons with wide range effects in densely populated areas¹⁹³ were also unlawful since they are indiscriminate and as such are expected to result in disproportionate loss of civilian life and objects. Little wonder then 60 civilians were killed and 111 others injured in an attack on railway with sub-munitions.¹⁹⁴The principle proportionality therefore requires parties to the conflict to consider all options when making targeting decisions. Such considerations will include, verifying the target, timing of the attacks, choice of weapons, and warnings and evacuations for the civilian populations.¹⁹⁵ However, the principle of proportionality complements rather than prohibits attacks on civilians.¹⁹⁶

Principle of Precautions

The principle of precautions requires parties to the conflict to avoid or at least minimize civilian harm.¹⁹⁷ In that regard, IHL provides that 'in the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.'¹⁹⁸ Precautions with respect to attacks require those deciding upon an attack to first do everything feasible to verify that the target is a military objective (that is, it is neither a civilian nor a civilian object) within the meaning of Article 52(2) of AP I.¹⁹⁹ It also requires the parties to be discrete in their choice of means and methods of attacks so as to avoid and minimize incidental loss of civilian life, injury to civilians and damage to civilian objects.²⁰⁰ Attacks that are expected to result in incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to concrete and direct military advantage anticipated, as in the case of the Chaplyne train station attack;²⁰¹ and the bombardment of residential areas in Kharhiv²⁰² are prohibited.²⁰³ As part

¹⁹³ United Nations, 'Russian Attacks on Civilian Targets in Ukraine could be a War Crime: UN Rights Office' <<https://news.un.org/en/story/2022/03/1113782> > accessed 1 June 2022

¹⁹⁴ Ibid

¹⁹⁵ HM Mohd Kamal, 251

¹⁹⁶ Ibid

¹⁹⁷ Ibid 257

¹⁹⁸ AP I, Art 57(1)

¹⁹⁹ AP I, Art 57(2)(a)(i)

²⁰⁰ Ibid, Art 57(2)(a)(ii)

²⁰¹ Euro News, 'Ukraine War: More than 20 Dead in Russian Rocket Strike on Chaplyne Train Station' <<https://www.euronews.com/2022/08/24/russian-rockets-strike-train-station-in-central-ukraine-kill...>> accessed 14 November 2022

²⁰² Amnesty International, 'Anyone can Die at any time: Indiscriminate Attacks by Russia Forces in Kharkiv, Ukraine' <<https://reliefweb.int/report/ukraine/anyone-can-die-ant-time-indiscriminate-attacks-russian...> > accessed 13 November 2022

²⁰³ AP I, Art 57(2)(b)

of this precaution, parties are further required to give effective advance warning before launching an attack.²⁰⁴ Again, where a choice is possible between several military objectives containing a similar military advantage, the one whose attack will be expected to result in least danger to civilians and civilian objects is to be chosen.²⁰⁵ However, Article 57(5)²⁰⁶ is to the effect that 'no provision of this Article may be construed as authorizing any attacks against the civilian population, civilians or civilian objects. More so, parties to the conflict must endeavor to remove the civilian population, individual civilians and civilian objects under their control from the vicinity of military objectives.²⁰⁷ Importantly, parties must avoid siting military objectives within or near densely populated areas;²⁰⁸ and must take other necessary precautions to protect the civilian population, individual civilians and civilian objects under their control against the effects of military operations.²⁰⁹ For instance, the launching of attacks from civilian residential areas by Ukrainian forces, is in clear violation of the principle of precautions.²¹⁰

Conclusion

The situation of armed conflict makes the civilian population more vulnerable to attacks. This is well illustrated by the Russia-Ukraine war where the civilian population has remained at the forefront bearing the brunt of the war. The paper is informed by the flagrant violations of the basic principles of IHL characterizing the Russia-Ukraine. The situation raises serious concern for IHL given the fact that IHL exists to protect persons not taking active part in armed conflicts, particularly the civilian population. Against this background, the paper examined the protection of the civilian population in the Russia-Ukraine war and the obligation of the parties in effecting this protection, with the view to strengthening the protection of the civilian population in the war.

²⁰⁴ Ibid, Art 57(2)(c)

²⁰⁵ Michael Schmitt, 'Military Necessity and Humanity in International Humanitarian Law: Preserving the Delicate Balance,' [2010] 50 4 Virginia Journal of International Law, 795, 804

²⁰⁶ AP I

²⁰⁷ Ibid, Art 58(a)

²⁰⁸ Ibid, Art 58(b)

²⁰⁹ Ibid, Art 58(c)

²¹⁰ Amnesty International, 'Anyone can Die at any time: Indiscriminate Attacks by Russia Forces in Kharkiv, Ukraine'

< <https://reliefweb.int/report/ukraine/anyone-can-die-ant-time-indiscriminate-attacks-russian...> > accessed 13 November 2022

The paper found that civilians are increasingly suffering direct attacks in the Russia-Ukraine war. The paper further found that the parties to the conflict are not doing much to respect the basic principles of IHL facilitating the protection of the civilian population.

The paper argued that respect for the basic principles of IHL is imperative to protecting the civilian population in the Russia-Ukraine war. The paper also argued that respecting the basic principles of IHL is an obligation imposed on the parties to the conflict. The idea is that persons not constituting a threat to the military operations of an adverse party should be spared. Sparing them implies not making them targets of military operations. However, this is only feasible where the parties can clearly distinguish between lawful and unlawful targets and direct attacks accordingly. This finds expression in the principle of distinction which limits attacks to combatants and military objectives. It is nevertheless not enough to identify lawful targets, it is also important that even where the target is military, that the attack be proportionate and the necessary steps be taken by the parties to minimize incidental loss of civilian lives and objects. These find expression in the principles of proportionality and precaution respectively. It follows then that the obligation to protect the civilian population hinges so much on respect for the principles of distinction, proportionality and precaution. To that effect, the violators of these basic principles in the Russia-Ukraine must be held individually criminally liable for their acts amounting to the violation of IHL, through diligent investigation and prosecution.

Again, the principle of State responsibility where States are held liable for the acts of their armed forces or persons acting under their control or direction must be made to apply to the acts constituting a violation of the basic principles of IHL in the Russia-Ukraine war. This will compel the parties to rise up to their obligation of protecting the civilian population under IHL.

The international community must act collectively to investigate and bring the perpetrators of grave breaches of the Geneva Conventions in the Russia-Ukraine war, before the International Criminal Court for the purpose of prosecution.

Again, the International Committee of the Red Cross must also rise up to its duties by encouraging the parties to comply with basic principles of IHL so as to facilitate the protection of the civilian population in the Russia-Ukraine war. These will go a long way to deter future violators of the laws of war and invariably strengthen civilian protection.

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