

Article

SIEGE WARFARE IN SYRIA: PROSECUTING THE STARVATION OF CIVILIANS

*Susan Power**

ABSTRACT

This article examines the law governing siege warfare and its application to sieges enforced by parties to the Syrian conflict. In doing so, the article considers the classification of the conflict and questions whether the conflict has crystallized into an international armed conflict. It critically applies the laws of armed conflict to the ongoing sieges and examines the obligations of parties to the conflict in relation to humanitarian assistance and evacuation of civilians in sieged areas. In the event that humanitarian assistance is denied, this article explores the criminalization of the resulting starvation of civilians as war crimes, crimes against humanity and genocide. There is compelling evidence to conclude that the war crime of starvation and the crime against humanity of extermination have been committed during siege warfare. These crimes ideally should be prosecuted by international judges through the establishment of an *ad hoc* international criminal tribunal or immediately through universal jurisdiction.

Introduction

The five year armed conflict in Syria has resulted in what Amnesty International has described as “the worst humanitarian crisis of our time”.¹ Although the conflict broke out in 2011,² the precise point when the armed conflict began is less clear. There were two major military assaults by the Syrian army on protestors, first in *Dar’a* in April 2011, resulting in the establishment of the Free Syrian Army (FSA) in July 2011.³ A second military offensive followed in February 2012, which resulted in the mobilization of opposition forces.⁴ Certainly by 2012, the rapid escalation of deaths on the battlefield (at the time, estimated at 15,055) coupled with the intensity of fighting meant the conflict was

**The author holds a PhD in International Humanitarian Law from Trinity College Dublin. She lectures law in Griffith College Dublin and works as an independent legal researcher for Palestinian NGO, Al-Haq. This paper was developed from a presentation delivered at Trinity College Dublin on “The Humanitarian Response in Syria” (9 March 2016) hosted by DSA Ireland. In particular, the author wishes to thank Dr. Walt Gilroy, Dr. James Gallen, Dr. Paola Rivetti, Will Holden and Dr. Andrea Breslin and special thanks to the peer reviewers for insightful comments.*

¹ “Syria, The Worst Humanitarian Crisis of Our Time” *Amnesty International*, 7 April 2015 at <https://www.amnesty.org.nz/syria-worst-humanitarian-crisis-our-time> (accessed on 31 May 2016).

² For a comprehensive overview of the classification of conflict see, L. Arimatsu & M. Choudhury, ‘The Legal Classification of the Armed Conflicts in Syria, Yemen and Libya’, *Chatham House* March 2014.

³ “Death from the Skies, Deliberate and Indiscriminate Air Strikes on Civilians” *Human Rights Watch*, 10 April 2013 at <https://www.hrw.org/report/2013/04/10/death-skies/deliberate-and-indiscriminate-air-strikes-civilians> (accessed on 31 May 2016).

⁴ *Idem*.

considered among the five most intense conflicts since the post-Cold War period.⁵ A number of States have since become parties to the conflict. In September 2015, Russia deployed forces in support of President Bashar Al-Assad.⁶ This was followed by the deployment of United States ground forces to support the Kurdish forces in their fight against Islamic State of Iraq and Syria (ISIS).⁷ While in November 2015, France and the United Kingdom engaged in missile strikes against ISIS.⁸ In February 2016, a cessation of hostilities was negotiated in Syria under the Munich agreement, however to date a ceasefire has not been agreed upon.⁹ By March 2016, Russia began to remove its forces from Syria marking a turning point in the conflict.¹⁰ By May 2016, the United Nations Office for the Coordination of Humanitarian Affairs reported that over a quarter of a million Syrians had been killed and a further one million injured.¹¹

This paper will examine one particularly heinous aspect of the war in Syria, that of starvation during siege warfare. There are approximately 250,000 civilians trapped in besieged areas.¹² By enforcing sieges throughout Syria, combatants have deliberately impeded the delivery of food and humanitarian supplies from entering besieged territory. The resulting starvation, malnutrition and deaths of civilians have arguably been deliberately inflicted as a weapon of war.

The aim of this paper is to identify the various violations of international humanitarian law arising from the use of siege warfare, resulting in the starvation of the civilian population. It further examines whether potential criminal liability arises under international criminal law. Section I of this paper outlines the contextual background of sieges in Syria. Section II of the the paper questions whether the armed conflict in Syria represents an international or non-international armed conflict for the purposes of assessing whether starvation in Syria can be prosecuted at the International Criminal Court in the event of a potential Security Council referral. Section III argues that while sieges may be lawful, combatants have significant legal obligations to the civilian population under international humanitarian law. Section IV examines the law governing humanitarian access to besieged areas including the obligation to deliver relief consignments and the evacuation of civilians. Section V considers whether starvation of civilians during siege warfare can be prosecuted as a war crime, a crime against humanity or potentially as genocide.

I. Background to Sieges in Syria

⁵ L. Themnér & P. Wallensteen, 'Armed Conflicts, 1946-2012' *Journal of Peace Research* 1 July 2013 – 50(4), pp. 509, 510.

⁶ Council on Foreign Relations, Global Conflict Tracker < <http://www.cfr.org/global/global-conflict-tracker/p32137#!/conflict/civil-war-in-syria>> (accessed on 21 July 2016).

⁷ *Idem*.

⁸ *Idem*.

⁹ "Syria war: Powers agree on 'cessation of hostilities'" *Aljazeera*, 12 February 2016 at <http://www.aljazeera.com/news/2016/02/syria-war-powers-agree-cessation-hostilities-160211225153800.html> (accessed on 16 March 2016).

¹⁰ A. Osborn, "Russia flies out almost half Syria strike force: Reuters analysis" *Reuters*, 16 March 2016 at <http://www.reuters.com/article/us-mideast-crisis-russia-syria-idUSKCNOWIOG3> (accessed on 16 March 2016).

¹¹ Office for the Coordination of Humanitarian Affairs, Syrian Arab Republic at <http://www.unocha.org/syria> (accessed on 31 May 2016).

¹² "Syria, The Worst Humanitarian Crisis of Our Time" *Amnesty International*, 7 April 2015 at <https://www.amnesty.org.nz/syria-worst-humanitarian-crisis-our-time> (accessed on 31 May 2016).

Syria represents one of the most brutal civil wars of the 21st century marked by horrific siege warfare employed by parties to the conflict in the *Rif Damascus*, *Idlib* and *Dayr az-Zawr* provinces.¹³ In 2015, the United Nations submitted forty-eight requests to enter hard to reach and besieged areas, twenty of which were approved by the Ministry of Foreign Affairs.¹⁴ This left 486,700 civilians trapped in densely populated districts with little access to food, water, medicine and electricity in fifteen besieged areas.¹⁵ Employing the military tactic of encirclement,¹⁶ government forces in the *Rif Damascus* mountain town of *Madaya* imposed a complete blockade on goods entering *Madaya*, *Zabadani*, *Bqine* and other areas around *Damascus*.¹⁷ Meanwhile, civilians were prevented from leaving *Madaya* and government forces further restricted civilian access to agricultural land.¹⁸ In addition, government forces besieged *Ghouta* and parts of the southern *Damascus* countryside trapping more than 173,000 people.¹⁹ Early on in the siege, older persons and merchants were permitted to cross the checkpoints to areas where no fighting was taking place to purchase food supplies from *Damascus*.²⁰ However civilians and humanitarian convoys are now frequently prevented from crossing into *Ghouta*.²¹ Notably, in August 2013, Eastern *Ghouta* was subjected to horrific chemical attacks but government checkpoints in Western *Ghouta* and *al-Muadhamiya* prevented injured civilians from leaving and humanitarian convoys entering.²²

Yarmouk, a Palestinian refugee camp where approximately 18,000 people remain trapped has been dropped and then added again from the website of the United Nations Office for the Coordination of Humanitarian Affairs as one of the areas held under siege. The UN Secretary General Ban Ki-Moon depicted atrocities perpetrated by ISIS inside the *Yarmouk* “death camp” as the “deepest circle of hell”.²³ Despite relentless aerial bombardments of the territory, Syrian government forces prevented civilian evacuation to hospitals outside the sieged areas. Nevertheless, there have been pauses in the hostilities to

¹³ United Nations, Office of the High Commissioner of Human Rights, ‘Almost five years on, Syria is a country destroyed with civilians paying the biggest price: UN Commission of Inquiry on Syria’ (22 February 2016) at

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=17078&LangID=E#sthash.hkfjKXMs.dpuf> (accessed on 13 March 2016).

¹⁴ S/2015/468, Report of the Secretary-General on the implementation of Security Council resolutions 2139 (2014), 2165 (2014) and 2191 (2014) (23 June 2015), at 10.

¹⁵ A/HRC/31/68, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (11 February 2016) p. 17; OCHA Syrian Arab Republic: Overview of Hard to Reach and Besieged Places, at http://reliefweb.int/sites/reliefweb.int/files/resources/acc-11_syr_overview_of_hard_to_reach_areas_and_besieged_locations_as_jan_2016_160131.pdf (accessed on 13 March 2016); Akkad, D. “UN aid agency downplayed Syrian sieges as Madaya starved” *Middle East Eye*, 15 January 2016, at <http://www.middleeasteye.net/news/silencing-sieges-81246827#sthash.khVUoRpt.dpuf> (accessed on 16 March 2016).

¹⁶ N. Quénivet & S. Shah-Davis, *International Law and Armed Conflict: Challenges in the 21st Century*, T.M.C Asser Press 2010, p. 33.

¹⁷ A/HRC/31/68, p. 17, para. 120.

¹⁸ *Ibid.*

¹⁹ Office of the High Commissioner for Human Rights, “Living Under Siege: The Syrian Arab Republic” (February 2014) p. 4.

²⁰ *Idem* 5.

²¹ *Ibid.*

²² A/HRC/25/65, Report of the Independent Commission of Inquiry on the Syrian Arab Republic (12 February 2014) p. 20.

²³ UN News Centre, ‘Opening remarks at press encounter, Secretary-General Ban Ki-moon, UN Headquarters’, (09 April 2015) at http://www.un.org/apps/news/infocus/speeches/statments_full.asp?statID=2562#.VuV-pYQXTIR (accessed on 13 March 2016).

permit the distribution of aid in *Homs* and the *Damascus* countryside, although these have been far from adequate.²⁴

In 2014, ISIS encircled the government held neighborhoods of *Dayr az-Zawr* blocking humanitarian aid and commercial access to the city.²⁵ There are currently 26,500 people besieged by non-State armed groups and 228,000 people besieged by ISIS in the Government-controlled western neighborhoods of *Dayr az-Zawr* city.²⁶ In March 2015, anti-government rebel forces imposed a siege of *Fu'ah* and *Kafraya*. By September 2015, although rebels permitted the limited entry of humanitarian supplies, these were not sufficient to feed the population and people were reportedly forced to survive eating “grass, leaves and cats”.²⁷

II. Conflict Classification

International humanitarian law alongside international human rights law provide the legal framework governing the armed conflict with international humanitarian law operating as the *lex specialis*.²⁸ According to the International Commission of Inquiry on Darfur, “whilst human rights law protects the individual at all times, international humanitarian law is the *lex specialis* which applies only in situations of armed conflict.”²⁹ What provisions of international humanitarian law apply depend on whether the conflict in Syria is classed as an international or a non-international armed conflict. An international armed conflict is a conflict between States. A non-international armed conflict is a conflict between State and non-State actors or between non-State actors and other non-State actors.

A. International Armed Conflict

Put simply, an international armed conflict is conducted whenever there is a resort to armed force between two or more States.³⁰ International armed conflict is governed by common Article 2 to the four Geneva Conventions which applies to cases of declared war or armed conflict “between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them”.³¹ The classification of an international armed conflict is not dependent on the intensity of hostilities rather an armed conflict exists

²⁴ A/HRC/31/68, p. 6.

²⁵ S/2015/468, supra note 3, p. 10.

²⁶ *Ibid.*

²⁷ A/HRC/31/68, p. 18.

²⁸ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, [1996] ICJ Rep. 226, at 240, para. 25; *Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, [2004] ICJ Rep. 136, at 177-178 paras. 104-106; *Case Concerning Armed Activity on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment of 19 December 2005, paras. 216-220. J. Romer, *Killing in a Grey Area Between Humanitarian Law and Human Rights: How Can the National Police of Columbia Overcome the Uncertainty of Which Branch of International Law to Apply*, Springer 2010, p. 34; O. de Schutter, *International Human Rights Law*, Cambridge University Press 2010, p. 4.

²⁹ *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General* (25 January 2005), at § 143.

³⁰ International Committee of the Red Cross, “How is the Term ‘Armed Conflict’ Defined in International Humanitarian Law?” (Opinion Paper, March 2008) at <https://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf> (accessed on 31 May 2016).

³¹ Common Article 2, Four Geneva Conventions (1949).

“whenever there is a resort to armed force between States”.³²

Although numerous States have been involved in the conflict on the territory in Syria, among them the United States,³³ Canada, Turkey, United Kingdom, Australia, France and Russia, it is difficult to say with certainty whether the conflict represents overall an international armed conflict.³⁴ To date the States are waging war primarily against non-State actors on Syrian territory. For example, Canada, Turkey, United Kingdom, United States, Australia and France are waging war against ISIS,³⁵ while Russia was invited by the Syrian government to fight non-State actors in rebel held territory.³⁶ Likewise, Qatar and Saudi Arabia have financed and supplied weapons to the Free Syrian Army.³⁷

Significantly, a non-international armed conflict may become internationalised where a State holds overall control over the paramilitaries or militias operating in the conflict. In relation to Syria, there are strong grounds to indicate that a proxy war is being waged. For example, the control for proxy warfare must be “more than mere provision of financial assistance or military equipment or training” but may exist when the State “has a role in organising, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group”.³⁸ In 2015, the United Nations Commission of Inquiry hesitantly suggested:

“While fought mostly by Syrians and largely contained within Syrian territory, the war is increasingly driven by international and regional powers, primarily in accordance with their respective geostrategic interests. Syrian stakeholders, on all sides of the conflict, have gradually lost control over the course of events due to a variety of external factors that have *obscured the internal dimension of the war*. As the war endures, it displays worrying signs of *becoming internationalised*.”³⁹ (emphasis added)

Meanwhile in February 2016, the United Nations Commission of Inquiry into Syria indicated that:

“spillover effects, including border insecurity and the outflow of refugees, have spread beyond neighbouring countries, affecting other regions of the world and *confirming the risk of the internationalisation of the conflict*”.⁴⁰ (emphasis added).

“

³² ICTY, *The Prosecutor v Dusko Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A, 2 October 1995, para. 70.

³³ U.S Department of State, *The Global Coalition to Counter ISIS* (10 September 2014). The US State Department lists 62 countries as members of the “global coalition to degrade and defeat ISIL” at <http://www.state.gov/s/seci/> (accessed on 13 March 2016).

³⁴ For a comprehensive overview of the classification of conflict see, L. Arimatsu & M. Choudhury, ‘The Legal Classification of the Armed Conflicts in Syria, Yemen and Libya’, *Chatham House* March 2014.

³⁵ S/2014/695, Letter dated 23 September 2014 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General (23 September 2014).

³⁶ “Russia joins war in Syria: Five key points” *BBC News*, 1 October 2015 at <http://www.bbc.com/news/world-middle-east-34416519> (accessed on 13 March 2016).

³⁷ “Saudi Arabia and Qatar Funding Syrian Rebels” *Reuters*, 23 June 2012 at <http://www.reuters.com/article/us-syria-crisis-saudi-idUSBRE85M07820120623> (accessed on 31 May 2016).

³⁸ *Prosecutor v Tadic*, Appeals Chamber Judgment, Case No. IT-94-1-A. 15 July 1999, paras 131-140, 145.

³⁹ A/HRC/30/48, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (13 August 2015), p. 4, para 9.

⁴⁰ A/HRC/31/68, p. 5.

While the Commission of Inquiry is cautious in designating the conflict as international in character, some aspects of the conflict such as the Turkish cross border shelling and Israeli incursions are arguably international.⁴¹ For example, during an Israeli incursion in November 2013, Israeli warplanes directly attacked a Syrian military base in *Latakia*.⁴² Meanwhile Turkey and Syria have exchanged mortar fire across the Turkish-Syrian border on a number of occasions.⁴³ According to the ICRC, Commentary to Common Article 2 to the four Geneva Conventions “any difference arising between two States and leading to the intervention of armed forces is an armed conflict...it makes no difference how long the conflict lasts, or how much slaughter takes place”.⁴⁴ The Turkish and Israeli attacks represent direct attacks against the Syrian military, distinct from the proxy warfare conducted by the United States, Canada, Turkey, United Kingdom, Australia, France against non-State actors who are funded and equipped by third States such as Saudi Arabia, Qatar and Kuwait.

In addition, Israel occupied the Syrian Golan Heights in June 1967 and this nearly 50-year belligerent occupation certainly represents an international armed conflict between Israel and Syria in the occupied Golan Heights.⁴⁵ For example, common Article 2 of the Geneva Conventions provides that an armed conflict “shall also apply to all cases of partial or total occupation of the territory of a High Contracting party, even if the said occupation meets with no armed resistance”.⁴⁶ However, whether the internationalisation of the conflict in one part of a territory is enough to designate the entire conflict in the territory internationalised is open to debate. For example, some commentators controversially argue that since Israel’s 2005 disengagement, Gaza is no longer occupied territory and therefore represents a non-international armed conflict, despite the continued occupation and international armed conflict in the West Bank.⁴⁷ Likewise, in *Prosecutor v Lubanga* (2012), the International Criminal Court considered the conflict in the Democratic Republic of Congo a non-international armed conflict, despite the ongoing occupation of *Ituri* representing an international armed conflict and the presence of Ugandan and Rwandan forces on the territory.⁴⁸

The conflict may also be considered internationalised should it fall for consideration under Article 1(4) of the First Additional Protocol to the Geneva Conventions (1977) which finds that situations “in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination” amount to an international armed conflict.⁴⁹ Arguably, the Syrian uprising may represent an exercise of the right to self-determination for this purpose. At a minimum, there are a number of international armed conflicts ongoing in the territory,

⁴¹ “Syria: Turkish incursion is ‘flagrant aggression’” *AlJazeera*, 23 February 2015; Zitun, Y. “IDF troops prepare for possible incursion into Syria” *ynet*, 17 August 2015.

⁴² Starr, B “Israeli Planes Strike Syrian Military Base U.S Official Says” *CNN*, 1 November 2013.

⁴³ ICRC, “How Does Law Protect in War, Syria/Turkey/Lebanon” (1 December 2015) at <https://www.icrc.org/casebook/doc/case-study/syria-turkey-lebanon.htm> (accessed on 31 May 2016).

⁴⁴ ICRC Commentary to Article 2 of the First Geneva Convention (Jean Pictet (ed.), 1952).

⁴⁵ Y. Dinstein, *The International Law of Belligerent Occupation*, Cambridge University Press, 2009, p.19.

⁴⁶ Article 2, Fourth Geneva Convention (1949).

⁴⁷ S. Casey-Maslen, *The War Report*, Oxford Scholarly Authorities on International Law, 2013; K. J Heller, ‘Why Is Israel’s Blockade of Gaza Legal? (Updated)’ *Opinion Juris*. For a more detailed explanation of why the Gaza Strip still remains occupied and therefore represents an international armed conflict see, E. Wilmshurst, *International Law and the Classification of Conflicts*, Oxford University Press, 2012, p. 280; S. Power, N. Kiswanson van Hoooydonk, ‘Divide and Conquer, A Legal Analysis of Israel’s 2014 Military Offensive Against the Gaza Strip’ *Al-Haq* 2015, p. 13.

⁴⁸ *Situation in the Democratic Republic of the Congo in the Case of the Prosecutor v Thomas Lubanga Dyilo* ICC-01/04-01/06, 14 March 2012, p. 586.

⁴⁹ Article 1(4), Additional Protocol 1 (1977).

between Syria and Turkey, and between Syria and Israel. It is also increasingly likely that the non-international aspects of the conflict have now also become internationalized.

B. Non-International Armed Conflict

A non-international armed conflict is a conflict which takes place between government forces and non-State actors or is an armed conflict between two or more groups of non-State actors. There are two classifications of a non-international armed conflict deriving from common Article 3 to the four Geneva Conventions (1949) and the definition provided in Article 1 of Additional Protocol II (1977). Common Article 3 to the four Geneva Conventions (1949) governs “armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties”. This includes conflicts, which occur between government forces and non-State actors or between two or more groups of non-State actors. Generally the hostilities will reach a certain threshold of intensity, more than a mere sporadic internal disturbance or riot.⁵⁰ Accordingly, a non-international armed conflict takes place when there is “protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.”⁵¹ The non-State forces must have a certain command structure and be capable of sustaining military operations in order to be considered “parties to the conflict”.⁵² A narrower definition of non-international armed conflict is contained in Article 1 of Additional Protocol II (1977), applying to armed conflicts:

“which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol”.⁵³

The Protocol applies to conflict carried out between States and other organized groups or dissident armed forces. However distinct from common Article 3, Additional Protocol II does not apply to armed conflict occurring between non-State armed groups only. In addition, the Article relates to armed force which takes place between dissident armed forces and other non-State actors that have sufficient territorial control requisite to “enable them to carry out sustained and concerted military operations”.⁵⁴

At a minimum, the conflict and in particular the sieges between government forces and rebel held territory represent a non-international armed conflict.⁵⁵ This means that a narrow legal framework of Common Article 3 to the Four Geneva Conventions applies alongside Additional Protocol II and customary international law. Syria is a party to the

⁵⁰ ICTY, *The Prosecutor v Fatmir Limaj*, Judgment, IT-03-66-T, 30 November 2005, para 135-170.

⁵¹ ICTY, *Prosecutor v Tadic*, Decision on the Defence Motion for Interlocutory Appeal, 2 October 1995, IT-94-1, para. 70.

⁵² International Committee of the Red Cross, “How is the Term ‘Armed Conflict’ Defined in International Humanitarian Law” (Opinion Paper, March 2008) at <https://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf> (accessed on 31 May 2016).

⁵³ Article 1, Additional Protocol II (1977).

⁵⁴ Article 1(1), Additional Protocol II (1977).

⁵⁵ ‘Syria: ICRC and Syrian Arab Red Crescent maintain aid effort amid increased fighting’, ICRC Operational Update, (17 July 2012) at <http://www.icrc.org/eng/resources/documents/update/2012/syria-update-2012-07-17.htm>. (accessed on 13 March 2016); *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, A/HRC/21/50, 15 August 2012, Annex II, para 12.

four Geneva Conventions of 1949 and Additional Protocol I (1977) but has not ratified Additional Protocol II (1977).⁵⁶

There is relatively little difference between the provisions of international and non-international armed conflict in terms of regulating siege warfare. The general principles governing conduct of hostilities enumerated in Additional Protocol I and repeated in Additional Protocol II represent customary international law and as such, apply to non-state actors. For example, both International Committee of the Red Cross (ICRC) Rule 5 Definition of Civilians and Article 13(2) of Additional Protocol II prohibit acts making civilians the target of attack or spreading terror among the civilian population.⁵⁷ ICRC Rule 53 prohibiting Starvation as a Method of Warfare and Article 14 of Additional Protocol II (1977) prohibit starvation as a method of combat and destruction or removal of “objects indispensable to the survival of the civilian population.”⁵⁸ Similarly, Rule 55 governing Access for Humanitarian Relief to Civilians in Need is enshrined in Article 18 of Additional Protocol II (1977) on Relief Societies and Relief Action.⁵⁹ Classification of conflict as non-international armed conflict or international armed conflict assumes particular significance *post bellum*, when prosecuting war crimes committed during siege warfare.

Certainly the armed conflict taking place between the Syrian State and the Free Syrian Army (FSA) represents at a minimum, a non-international armed conflict under common Article 3 to the Geneva Conventions. Since the FSA was established in July 2011, the hostilities have advanced to a state of protracted armed violence and have reached the intensity of armed hostilities. One criteria for engaging the intensity of armed violence is whether “the conflict has attracted the attention of the United Nations Security Council, and whether any resolutions on the matter have been passed.”⁶⁰ Since 2011, there have been a number of United Nations Security Council resolutions on Syria, for example UNSC Res 242 (2012) called for an end to the “implementation of a full cessation of armed violence in all its forms by all parties.”⁶¹ However the UN Commission of Inquiry did not apply IHL in its first report on 22 February 2012 arguing:

⁵⁶ ICRC, State parties to Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, at https://www.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=475 (accessed on 13 march 2016).

⁵⁷ ICRC Customary IHL, Rule 5. Definition of Civilians; Article 13, Additional Protocol II (1977).

⁵⁸ ICRC Customary IHL, Rule 53. Starvation as a Method of Warfare; Article 14, Additional Protocol II (1977).

⁵⁹ ICRC Customary IHL, Rule 55. Access for Humanitarian Relief to Civilians in Need; Article 18, Additional Protocol II (1977).

⁶⁰ ICTY, *Prosecutor v Boskoski and Tarculovski*, IT-04-82-T (10 July 2008). “[T]he seriousness of attacks and whether there has been an increase in armed clashes, the spread of clashes over territory and over a period of time, any increase in the number of government forces and mobilisation and the distribution of weapons among both parties to the conflict, as well as whether the conflict has attracted the attention of the United Nations Security Council, and whether any resolutions on the matter have been passed. Trial Chambers have also taken into account in this respect the number of civilians forced to flee from the combat zones; the type of weapons used, in particular the use of heavy weapons, and other military equipment, such as tanks and other heavy vehicles; the blocking or besieging of towns and the heavy shelling of these towns; the extent of and the number of casualties caused by shelling or fighting; the quantity of troops and units deployed; existence and change of front lines between the parties; the occupation of territory, and towns and villages; the deployment of government forces to the crisis area; the closure of roads; cease fire orders and agreements, and the attempt of representatives from international organisations to broker and enforce cease fire agreements.”

⁶¹ S/RES/2042 (2012). The call for an end to hostilities was repeated in S/RES/2268 (2016)

“While the commission is gravely concerned that the violence in certain areas may have reached the requisite level of intensity, it was unable to verify that the Free Syrian Army (FSA), local groups identifying themselves as such or other anti-Government armed groups had reached the necessary level of organization.”⁶²

In the following report which covered the period from 22 February 2012 to 16 August 2012, the Commission of Inquiry found that both the intensity and duration of the conflict alongside the “increased organizational capabilities of anti-Government armed groups” met the legal threshold for a non-international armed conflict.⁶³ Within this context both Syrian, rebel forces and ISIS have employed siege warfare.

III. Legality of Sieges in International Humanitarian Law

While sieges are particularly controversial they remain legal so long as they do not target the civilian population. Article 27 of the Hague Regulations (1907) provides for siege warfare:

“In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.”⁶⁴

Article 27 permits sieges as a method of warfare in international armed conflict while also emphasizing implicitly the application of the principles of distinction, military necessity and proportionality.⁶⁵ There is no law governing siege warfare in non-international armed conflict but it would appear from State practice that siege warfare is not prohibited.⁶⁶ Notwithstanding, the principles governing the conduct of hostilities apply to the besieged area.

Sieges are employed as a tactic of warfare to “induce the defended locality to surrender”.⁶⁷ However, total warfare on the civilian population is prohibited under the laws of armed conflict.⁶⁸ The prohibition of attacks on civilians and the principles of distinction represent “intransgressible principles of customary international law” and “incontrovertibly form the basis of international humanitarian law”.⁶⁹ Nevertheless,

⁶² A/HRC/19/69, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (22 February 2012), para. 13.

⁶³ A/HRC/21/50, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (16 August 2012) 1.

⁶⁴ Article 27, Hague Regulations (1907).

⁶⁵ W.H Boothby, *The Law of Targeting*, Oxford University Press, 2012, p. 216; R. Bernhardt, *Encyclopedia of Public International Law, Volume 4*, North-Holland, 2000 p. 415.

⁶⁶ Croatia, District Court of Zadar, *Perišić and Others case*, Judgment (1997). There the *Žugoslovenska Narodna Armija*, or JNA under the direction of *Perišić*, besieged the area of Zadar, inflicting heavy shelling and causing starvation. In this case the District Court of Zadar in Croatia applied the Croatian Penal Code and found that starvation during armed conflict was prohibited although the siege itself was lawful.

⁶⁷ Y. Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, Cambridge University Press, 2010, p. 222.

⁶⁸ See generally, T. Meron, ‘The Humanisation of Humanitarian Law’ *The American Journal of International Law* 2000 - 94 (2) pp. 239-278.

⁶⁹ In its Advisory Opinion on the Legality of Nuclear Weapons, the International Court of Justice

Darcy warns that “civilians have very often been used as an instrument to pressure parties to an armed conflict into certain concessions”.⁷⁰ As such, the employment of siege is a military tactic to maintain constant pressure on the opposing force.⁷¹ Nevertheless, Article 13(2) of Additional Protocol II provides that “the civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited”.⁷²

The protection is repeated in Article 6 of the 1990 Turku Declaration of Minimum Humanitarian Standards⁷³ On this basis, in *Prosecutor v Galic*, the ICTY found that attacks on the civilian population during the siege of *Sarejevo* included both direct and disproportionate attacks, which amounted to “unlawfully inflicting terror upon civilians”.⁷⁴ There *Galic* had orchestrated acts amounting to terrorism during siege warfare through:

“a plan of terrorising and mistreating the civilians”, “open[ing] fire from infantry arms [...] with only one goal to terrorise and expel the remaining civilians”, “open[ing] fire from howitzers, machine guns, automatic rifles, anti-aircraft missiles only to create the atmosphere of fear among the remaining farmers”, and “carrying out the orders of their commanders with the goal to terrorise and threaten with the demolishing of the *Peruća* dam”.⁷⁵

Moreover, Article 51(3) of Additional Protocol I (1977) reaffirms civilians’ general protection from targeting but withdraws that protection from civilians “for such time as they take a direct part in hostilities”. The provision derives from the wording contained in common Article 3 to the four Geneva Conventions of “persons taking no active part in the hostilities” governing non-international armed conflict.⁷⁶ Additionally and specifically to non-international armed conflict, persons who have a “continuous combat function” will be considered combatants for the purposes of targeting.⁷⁷

(“ICJ”) described the principle of distinction and the principle of protection of the civilian population as “the cardinal principles contained in the texts constituting the fabric of humanitarian law” and stated that “States must never make civilians the object of attack.” *Nuclear Weapons Case*, para. 78; The principle of distinction is further set out, among other places, in Article 48 of Additional Protocol I, which states that the warring parties must “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”. *Nuclear Weapons Case*, para. 78. See also *Kordić and Čerkez Appeal Judgement*, para. 54.

⁷⁰ S. Darcy, *Judges, Law and War: The Judicial Development of International Humanitarian Law*, Cambridge Studies in International and Comparative Law, 2014, p. 211.

⁷¹ S. Watts, ‘Under Siege: International Humanitarian Law and Security Council Practice concerning Urban Siege Warfare’ *Research and Policy Paper Harvard Law School* 2014, 7.

⁷² Article 13(2), Additional Protocol II (1977).

⁷³ Declaration of Minimum Humanitarian Standards, reprinted in Report of the Sub Commission on Prevention of Discrimination and Protection of Minorities on its Forty-sixth Session, Commission on Human Rights, 51st Sess., Provisional Agenda Item 19, at 4, U.N. Doc. E/CN.4/1995/116 (1995) (Turku Declaration). “Acts or threats of violence the primary purpose or foreseeable effect of which is to spread terror among the population are prohibited.”

⁷⁴ *Prosecutor v Galic*, Appeals Chamber Judgment, Case. No. IT-98-29-A, 30 November 2006, paras. 87-90.

⁷⁵ *Idem*, p. 49, para. 97.

⁷⁶ ICRC, Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949. Conflicts not of an International Character at <https://www.icrc.org/ihl/WebART/375-590006> (accessed on 13 March 2016).

⁷⁷ N. Melzer, *Interpretative Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, ICRC, 2009, p. 45.

Civilians will lose protection from attack, so as long as they engage in “continuous combat function”.⁷⁸ The parameters of continuous combat function are less clear. Nevertheless, the ICRC Directive Guidance ensures that civilian “production and supply of weapons, equipment, food, and shelter, or through economic, administrative, and political support” does not constitute civilian direct participation in hostilities.⁷⁹ As such, a distinction may be drawn between the conduct of hostilities and war sustaining activities.⁸⁰ Accordingly, civilians must be protected from attack during siege warfare and civilian efforts to sustain a besieged force through food, shelter and the supply of equipment will not amount to direct participation.⁸¹

Taken together, all the sieges enforced by Syrian forces, rebel forces and ISIS are lawful regardless of whether the conflict is classified as an international or non-international armed conflict. Nevertheless, direct attacks on civilians, and disproportionate attacks carried out without consideration of military necessity and due precaution are undoubtedly unlawful. In 2015, the UN Commission of Inquiry outlined that “combat tactics employed by all sides to the armed conflict, such as the use of siege warfare, indiscriminate shelling and use of air power have resulted in mass civilian casualties, destruction of Syria’s cultural heritage and displacement of Syrian civilians on a massive scale”.⁸² Similarly, attacks perpetrated on civilians such as “relentless aerial bombardment and shelling by Syrian government forces” during siege warfare may amount to terrorism.⁸³ For example, the indiscriminate barrel bombing of besieged *Daraya* by Syrian government forces violates not only the prohibition of attacking civilians, but also the principles of proportionality and necessity. According to Amnesty International a video of the attack “conveys the sheer terror experienced by besieged civilians coming under relentless pummeling by the Syrian government’s barrel bombs”.⁸⁴

A. Civilian Objects and Military Objectives in Non-International Armed Conflict

The combatant must not only distinguish between civilians and combatants during attacks on besieged territory, but must also distinguish between civilian objects and military objectives. Although the protection was originally dropped from Additional Protocol II, it undoubtedly applies as a norm of customary international law.⁸⁵ Furthermore, the distinction appears once more in Amended Protocol II to the

⁷⁸ *Idem*, 21.

⁷⁹ *Idem*, 15.

⁸⁰ *Idem*, 52.

⁸¹ E. Crawford, *Identifying the Enemy: Civilian Participation in Armed Conflict*, Oxford University Press, 2015, p. 200. Although the United States argues that civilian objects connected to war sustaining activities may be subject to attack, this is not a universally accepted position.

⁸² United Nations Office of the High Commissioner, “UN Commission of Inquiry on Syria: No end in sight for Syrian civilians”, 3 September 2015 at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16377#sthash.R2Ju5x0U.dpuf> (accessed on 31 May 2016).

⁸³ Amnesty International, ‘Syria: War crimes amplify suffering of Eastern Ghouta’s bombed and besieged civilians’ (12 August 2015) at <https://www.amnesty.org/en/latest/news/2015/08/syria-war-crimes-amplify-suffering-of-eastern-ghoutas-bombed-and-besieged-civilians/> (accessed on 17 March 2016).

⁸⁴ Amnesty International, “Syria: Terrifying Eyewitness Video of life Under Siege and Barrel Bombs Must Spur Humanitarian Lifeline” 19 April 2016 at <https://www.amnesty.org/en/press-releases/2016/04/syria-terrifying-eyewitness-video-of-life-under-siege-and-barrel-bombs/> (accessed on 31 May 2016).

⁸⁵ ICRC Customary IHL, Rule 7. The Principle of Distinction between Civilian Objects and Military Objectives.

Convention on Certain Conventional Weapons and Protocol III to the Convention on Certain Conventional Weapons,⁸⁶ which, in turn, both apply to non-international armed conflict, although Syria unfortunately has not ratified either Protocol.⁸⁷ The distinction is further provided for in the Second Protocol to the Hague Convention for the Protection of Cultural Property, which Syria ratified without reservation in 1999.⁸⁸ In this regard, attacks on besieged areas may only be directed at military objectives and not against civilian objects.⁸⁹

In terms of targeting and ‘area bombardment’, the whole besieged area cannot be treated as a single military objective. Rule 13 of the ICRC codification of international humanitarian law prohibits:

“attacks by bombardment by any method or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects”.⁹⁰

Again this provision is not as readily identifiable in the treaties on non-international armed conflict signed by Syria. However, an attack on an entire town would represent an ‘indiscriminate attack’, which is manifestly unlawful under customary international law as determined by the international tribunals.⁹¹ To date, the ongoing sieges in Syria have been characterized by indiscriminate attacks on the civilian population. In *Eastern Ghouta*, Amnesty International documented evidence of chemical weapons and cluster bomb munitions employed by government forces indiscriminately targeting the civilian population.⁹² Briefing the Security Council, the Assistant Secretary-General for Humanitarian Affairs and Deputy Emergency Relief Coordinator further condemned the use of landmines in densely populated besieged areas, which have been a hallmark of the conflict.⁹³

Both Rule 22 of the ICRC codification of customary international humanitarian law and Article 13(1) of Additional Protocol II require that parties to the conflict “take all feasible precautions to protect the civilian population and civilian objects under their control

⁸⁶ Protocol III to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, at http://disarmament.un.org/treaties/t/ccwc_p3 (accessed on 14 March 2016).

⁸⁷ Protocol II to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects at http://disarmament.un.org/treaties/t/ccwc_p2 (accessed on 14 March 2016).

⁸⁸ Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict 1999, at http://portal.unesco.org/en/ev.php-URL_ID=15207&URL_DO=DO_TOPIC&URL_SECTION=201.html#SIGNATURE (accessed on 14 March 2016).

⁸⁹ ICRC Customary IHL, Rule 7. The Principle of Distinction between Civilian Objects and Military Objectives.

⁹⁰ ICRC Customary IHL, Rule 13. Area Bombardment.

⁹¹ ICRC Customary IHL, Rule 13. Area Bombardment, Commentary at https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter3_rule13 (accessed on 14 March 2016); ICTY, *Tadić case*, Interlocutory Appeal, para. 134; *Prosecutor v Kordić and Čerkez case*, Decision on the Joint Defence Motion, 2 March 1999 para. 136; *Prosecutor v Kupreškić case*, Judgment, Case No. IT-95-16, 14 January 2000, para. 137.

⁹² Amnesty International, ‘Left to Die under Siege: War Crimes and Human Rights Abuses in Eastern Ghouta, Syria’ (Amnesty International, 2015) 19.

⁹³ ‘Starvation by Siege Now ‘Systematic’ in Syria, Assistant Secretary-General Tells Security Council, amid Warnings that Tactic Could Be War Crime’ (15 January 2016) at <http://www.un.org/press/en/2016/sc12203.doc.htm> (accessed on 14 March 2016).

against the effects of attacks”.⁹⁴ The principle of precaution requires that civilians be given advance warning when planned attacks on military objectives may harm them, unless the tactical situation does not permit it. The principle of precaution applies not only to the planning of an attack but right up until the very moment the decision is made to launch the attack.⁹⁵ Where there is a risk that civilians may be located near a military objective, then advance warning where feasible should be given. State practice has evolved where the military issue written and telephone warnings to civilians prior to attack. For example, in 2007 during the United States offensive in Afghanistan, leaflets were dropped from planes onto the Afghan mountains warning civilians of impending attacks on the Taliban.⁹⁶ This practice was repeated in 2015 by United States Air Force during attacks on ISIS held territory in Syria.⁹⁷ However Syrian government forces have indiscriminately attacked densely populated civilian areas under siege using barrel bombs, shelling and aerial strikes in *Yarmouk* and the *Al-Waer* neighbourhood of Homs city without giving advance warning. This may constitute a breach of the requirement for precautions under international humanitarian law.⁹⁸

IV. Humanitarian Access to Besieged Areas

Although the employment of siege warfare is lawful during armed conflict, combatants still have humanitarian obligations to the civilian population within besieged areas. This includes ensuring the provision of humanitarian assistance such as the passage of relief consignments into the territory and providing where possible, for the evacuation of civilians.

A. Relief Consignments

Under Article 23 of the Fourth Geneva Convention (1949) parties to the conflict are obliged to ensure the passage of consignments of foodstuff and medicines intended for children under the age of fifteen and pregnant women.⁹⁹ However, even these consignments may be prevented from entering the besieged area where the military commander believes (a) that the consignments may be diverted from their destination, (b) that the control may not be effective, or (c) that a definite advantage may accrue to the military efforts or economy of the enemy through the substitution of the consignments for goods.¹⁰⁰ Notably this provision has been largely superseded by Article 70 Additional Protocol I, which bridges the *lacuna* in protection to the general population arising in the above mentioned Article 23 of the Fourth Geneva Convention and importantly is also a

⁹⁴ ICRC Customary IHL, Rule 22. Principle of Precautions against the Effects of Attacks; Article 13(1), Additional Protocol II of 1977.

⁹⁵ J.F. Queguiner, ‘Precautions under the law governing the conduct of hostilities’ *International Review of the Red Cross* 2006 - 88 (864).

⁹⁶ S. C. Tucker, *The Encyclopedia of Middle East Wars: The United States in the Persian Gulf*, ABC-CLIO, 2010, p. 15.

⁹⁷ “US Air Force bombs 238 ISIS oil trucks in Syria but is forced to defend tactic of dropping leaflets beforehand to warn civilians after claims that it tipped off jihadists” *Daily Mail*, 24 November 2015, at <http://www.dailymail.co.uk/news/article-3331503/US-military-drops-leaflets-warning-civilian-truck-drivers-45-minutes-airstrike.html#ixzz42uTY50hx> (accessed on 14 March 2016).

⁹⁸ Statement by Mr. Paulo Sérgio Pinheiro Chair of the Independent International Commission of Inquiry on the Syrian Arab Republic, “The use of barrel bombs and indiscriminate bombardment in Syria: The need to strengthen compliance with international humanitarian law” (Geneva, 12 March 2015).

⁹⁹ Article 23, Fourth Geneva Convention (1949).

¹⁰⁰ *Ibid.*

norm of customary international law.¹⁰¹ Article 70 of Additional Protocol I ensures that priority is given to the distribution of relief consignments to pregnant women and children, but in addition, parties to the conflict must “allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel...even if such assistance is destined for the civilian population of the adverse Party.”¹⁰² Notably in *Al-Bassiouni v Prime Minister of Israel* [2008], the Israeli High Court of Justice accepted the application of Article 70 Additional Protocol I together with Article 54 Additional Protocol I as customary international law.¹⁰³ In a similar vein, Common Article 3 to the Geneva Conventions applicable to non-international armed conflict encourages parties to conclude supplementary relief agreements.

It is imperative, then, that planning for military operations includes the planning of food allocation to the civilian population. For example, in *Physicians for Human Rights et al. v. IDF Commander in Gaza* [2004], an issue arose concerning the Israeli Occupying Force obligations to supply *inter alia* water, food, electricity and medical supplies to combat areas in Rafah in the besieged Gaza Strip. There, the Israeli High Court of Justice determined that as part of the normative obligation to provide the food requirements of the local inhabitants under the military commander’s control, “the question of food must be part of the advance planning for a military operation”.¹⁰⁴ As such, full responsibility lay with the IDF to make advance plans with assistance from international organisations in the distribution of food aid.

In 2014, the United Nations Human Rights Council published a damning report “Living under Siege”, detailing violations of international law by the Syrian government forces.¹⁰⁵ In response, the Permanent Mission of the Syrian Arab Republic reported to the Human Rights Council that:

“aid deliveries to the Old City of *Homs*, *Barzeh*, *Ghezlanieh*, *Jdyedet Shebani* and the *Yarmouk* Camp in cooperation with the United Nations is the clearest evidence showing that the Government of the Syrian Arab Republic does not impede aid, but always stands ready to facilitate humanitarian aid delivery whenever it is possible to those in need in any area of Syria without discrimination”.¹⁰⁶

The deposit of letters with the Human Rights Council by the Syrian government and its response highlights the gravity of the charges leveled against the Syrian government in blocking the delivery of humanitarian aid. Notably, the Syrian government had obligations to plan for the delivery of aid, at the planning stage of the siege. The denial of aid by the Syrian government represents a gross violation of both Article 54 and Article 70 of Additional Protocol I. It effectively means that the installation of the checkpoints and barriers to enforce the siege have prevented the free movement of civilians from the territory and the delivery of aid into the territory. The failure to ensure the delivery of

¹⁰¹ HCJ 9132/07 *Jaber Al-Bassiouni v Prime Minister et al* (2008), para. 12.

¹⁰² Article 70, Additional Protocol I (1977).

¹⁰³ *Al-Bassiouni* (2008), supra note 65, para. 12.

¹⁰⁴ *Physicians for Human Rights et al. v. IDF Commander in Gaza* [2004] para. 20.

¹⁰⁵ Office of the High Commissioner for Human Rights, ‘Living Under Siege: The Syrian Arab Republic’ (February 2014).

¹⁰⁶ Permanent Mission of the Syrian Arab Republic to the United Nations, at <http://www.ohchr.org/Documents/Countries/SY/SyrianCommentsPaperOnSiege.pdf> (accessed on 16 March 2016).

relief provisions has led to the unlawful starvation and malnutrition of the besieged population, which may amount to a war crime.¹⁰⁷

B. Evacuation of Civilians

The 1949 Fourth Geneva Convention specifically protects civilian victims of sieges during international armed conflict. It is clear that where provision of food is not possible to parts of the population that is already weak, the evacuation of the population is required under Article 17 of the Fourth Geneva Convention. Article 17 states that Parties “*shall endeavor to conclude local agreements for the removal from besieged or encircled areas*” of protected persons. In a mark of discord, military practice has placed qualifications on the evacuation of civilians under certain circumstances. According to the United Kingdom Military Manual:

“The military authorities of the besieged area *might decide not to agree to the evacuation of civilians* or the civilians themselves might decide to stay where they are. In those circumstances, so long as the besieging commander left open his offer to allow civilians and the wounded and sick to leave the besieged area, *he would be justified in preventing any supplies from reaching that area*”.¹⁰⁸ (emphasis added)

Notably this position is echoed in the recent 2015 Military Manual of the United States:

“Concluding such agreements is not compulsory. A commander of an encircling force is not required to agree to the passage of medical or religious personnel, supplies, and equipment if he or she has legitimate military reasons denying such requests (e.g., if denying passage may increase the likelihood of surrender of enemy forces in the encircled area). Nonetheless, commanders should make reasonable, good-faith efforts to do so when possible.”¹⁰⁹

In contradistinction, the ICRC Commentary to the First Additional Protocol underlines that “the possibility of refusing a relief action or a relief consignments is not a matter of discretion; such refusals should thus remain exceptional”.¹¹⁰ Significantly, United Nations Security Council Resolution 2139 (2014) bridges this gap in protection in the context of Syria by requiring all besieging parties in Syria to facilitate relief activities by:

“*condemning all cases of denial of humanitarian access* and recalling that arbitrary denial of humanitarian access and depriving civilians of objects indispensable to their survival, including willfully impeding relief supply and access, can constitute a violation of international humanitarian law...

Urges all parties, in particular the Syrian authorities, to take all appropriate steps to facilitate the efforts of the United Nations, its specialised agencies, and all humanitarian actors engaged in humanitarian relief activities, *to provide immediate humanitarian assistance to the affected people in Syria, including by promptly facilitating safe and unhindered humanitarian access* to populations in need of assistance in all areas under their control”¹¹¹ (emphasis added)

¹⁰⁷ E. Graham Harrison, K. Shaheen, ‘Madaya Again Facing Starvation as Report Warns of Extent of Sieges’ *The Guardian*, 9 February 2016.

¹⁰⁸ Ministry of Defence, *The Manual of the Law of Armed Conflict* (2004), pp. 220-221, para 9.12.1.

¹⁰⁹ United States, Department of Defence, *Law of War Manual* (June 2015) p. 290, para. 5.19.2.

¹¹⁰ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.(ICRC, Commentary of 1987) p. 820.

¹¹¹ S/RES/2139 (2014).

V. Prosecuting Starvation

Starvation may be prosecuted as a war crime, an act of extermination comprising a crime against humanity or potentially as an act of genocide by “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part”.¹¹²

A. The War Crime of Starvation

At Nuremberg the Military Tribunal had ruled in *Von Leeb* that the military commander may cut off sustenance to the civilian population under siege and legitimately “reduce it by starvation”.¹¹³ However, this less than palatable precedent has since been superseded by Article 54 of Additional Protocol I and Article 14 of Additional Protocol II containing a customary international law prohibition against the starvation of the civilian population, thus prohibiting total warfare.¹¹⁴ Moreover, the starvation of the civilian population is a war crime. Article 8(2)(b)(xxv) of the Rome Statute provides for the war crime of “intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions”.¹¹⁵ In *Perišić and others*, the Croatian District Court of Zadar prosecuted starvation of civilians during the siege of Zadar under the Croatian Penal Code as a war crime.¹¹⁶ The question is what constitutes starvation for the purposes of the war crime? Does malnutrition or hunger amount to starvation?

Starvation during armed conflict is used as a “weapon to annihilate or weaken the population”.¹¹⁷ Applying a literal interpretation, the Commentary to API references the Shorter Oxford English Dictionary on starvation as “the action of starving or subjecting to famine, i.e., to cause to perish of hunger; to deprive of or “keep scantily supplied with food”.¹¹⁸ However the Rome Statute more broadly refers to the crime of starvation of civilians “by depriving them of objects indispensable to their survival”. Correspondingly, the Elements of Crimes to the Rome Statute provide that “the perpetrator deprived civilians of objects indispensable to their survival”.¹¹⁹ The “deprivation of objects indispensable to survival” is derived from customary international law. Rule 54 of the ICRC codification of customary international law explicitly prohibits “attacking, destroying, removing or rendering useless objects indispensable to the survival of the

¹¹² Article 6, Statute of the International Criminal Court (1998).

¹¹³ *US v Von Leeb*, 11 Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10, (1950) 563.

¹¹⁴ Article 54, Additional Protocol I (1977); D. Butler, ‘Enforced Starvation: Exploring Individual Criminal Responsibility for State-Induced Famines’ section 4 at <https://www.nottingham.ac.uk/hrlc/documents/publications/hrlcommentary2007/enforcedstarvation.pdf> (accessed on 9 January 2016).

¹¹⁵ Article 8(2)(b)(xxv), Statute of the International Criminal Court (1998).

¹¹⁶ Croatia, District Court of Zadar, *Prosecutor v Perišić*, Judgment (24 April 1997).

¹¹⁷ Protocol Additional To The Geneva Conventions Of 12 August 1949, And Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Commentary of 1987, Protection of Objects Indispensable to the Survival of the Civilian Population, para. 2090; K.J Riordan, ‘Shelling, Sniping and Starvation: The Law of Armed Conflict and the Lessons of the Siege of Sarajevo’ *VUWLR* 2010 – 4, p. 168.

¹¹⁸ *Ibid*, footnote 3; On types of interpretation see Report of Mr. Justice John L. Murray, President of the Supreme Court and Chief Justice of Ireland, ‘Methods of Interpretation – Comparative Law Method’, *Actes du colloque pour le cinquantième anniversaire des Traités de Rome*.

¹¹⁹ Elements of Crimes at <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf> (accessed on 15 March 2016).

civilian population”.¹²⁰

Objects indispensable to survival include, but are not limited to, foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water, installations and supplies and irrigation works.¹²¹ The negotiations to the Elements of Crimes considered items indispensable to survival broadly include not only food and water but also other items such as blankets and medicines and non-food items.¹²² Similarly in Article 69(1) of Additional Protocol I the Occupying Power is obliged to ensure the provision of “clothing, bedding, means of shelter, [and] other supplies essential to the survival of the civilian population”.¹²³

Element 2 of the Elements of Crimes establishes the *mens rea* whereby “the perpetrator intended to starve civilians as a method of warfare”. Again, the concept of ‘starvation’ as previously outlined is broader than lack of access to food and water, but includes items indispensable to survival. The intent is limited to the starvation of the civilian population, as some measure of starvation is arguably permissible against combatants as a method of war.¹²⁴ In 2013, a Presidential Statement by the United Nations Security Council outlined that “arbitrarily depriving civilians of objects indispensable to their survival, including willfully impeding relief access, can constitute a violation of IHL.”¹²⁵ Even in cases where some relief is admitted into siege areas, the later starvation of civilians to gain the upper hand in hostilities is absolutely prohibited. For example, early on in the siege of *Ghouta* and *Rif Damascus*, humanitarian aid was permitted into besieged territory, but was routinely denied later on in hostilities.¹²⁶ This left the civilian population with an inadequate supply of food. Notably, the anti-government rebel forces have placed *Fu’ah* and *Kafraya* under siege since March 2015. While the ICRC and Syrian Arab Red Crescent were granted limited access in September 2015, this was far from adequate and people were later reportedly forced to survive eating “grass, leaves and cats”.¹²⁷

Element 3 of the Elements of Crimes limits the jurisdiction of the International Criminal Court to prosecute conduct which took place “in the context of and was associated with an international armed conflict”. The fourth Element of the Crime requires that “the perpetrator was aware of factual circumstances that established the existence of an armed conflict”.¹²⁸ Given the web of non-international armed conflicts in Syria and the reluctance to classify these as ‘internationalised’ or international armed conflicts, there is a possibility that crimes of starvation committed in the context of a non-international armed conflict will not be prosecuted at the International Criminal Court. Notwithstanding, the UN Commission of Inquiry has determined that

“Shortages of food, water and medicine in *Madaya* have led to moderate or acute malnutrition and deaths in vulnerable groups, including children and the elderly”

¹²⁰ ICRC Customary IHL, Rule 54, Attacks against Objects Indispensable to the Survival of the Civilian Population.

¹²¹ Article 54(2), Additional Protocol 1.

¹²² ICRC Customary IHL, Rule 54, Attacks Against Objects Indispensable to the Survival of the Civilian Population.

¹²³ Article 69, Additional Protocol 1 (1977).

¹²⁴ United States Department of Defense, ‘Law of War Manual’ Office of General Consul Department of Defense (June 2015) para. 17.9.2.1 at <http://www.defense.gov/Portals/1/Documents/pubs/Law-of-War-Manual-June-2015.pdf> (accessed on 9 January 2016).

¹²⁵ SC/AAA38, Security Council, Appalled at Deteriorating Humanitarian Situation in Syria, Urges Eased Access for Relief Workers, Including Across Conflict Lines (2 October 2013).

¹²⁶ *Ibid.*

¹²⁷ A/HRC/31/68, p. 18, para 123.

¹²⁸ Elements of Crime, *supra* note 86.

while “in *Rif Damascus* government forces have used starvation as a weapon of war”.¹²⁹

Critically, the UN Security Council Resolution 2258 (2015) also identified that “starvation of civilians as a method of combat, including by the besiegement of populated areas” had been employed by parties to the conflict.¹³⁰

B. Starvation as a Crime Against Humanity

The starvation of civilians in besieged areas may also be prosecuted as a crime against humanity of extermination. Article 7 of the Rome Statute outlines that “for the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”, with extermination listed as an act in Article 7(b).¹³¹ Element 1 of the Elements of Crimes for extermination requires that “the perpetrator killed one or more persons, including by inflicting conditions of life calculated to bring about the destruction of part of a population.” In a footnote to Element 1, inflicting conditions of life explicitly includes “the deprivation of access to food and medicine”.¹³² To date, the jurisprudence of the *Ad Hoc* International Criminal Tribunals has concerned ‘mass killing’ as a crime against humanity as distinct from situations “concerning conditions of life”.¹³³ The Human Rights Council has pronounced the treatment of detainees at the hands of Syrian government forces as amounting to a crime against humanity of extermination in Syria. However it has refrained from a similar determination on starvation as a crime against humanity.¹³⁴ As an aside, the Commission of Inquiry into North Korea has documented that “crimes against humanity entail extermination...and the inhumane act of knowingly causing prolonged starvation”.¹³⁵ This suggests that there is the possibility that the Commission could expand and include starvation in Syria as an act of extermination within this paradigm.

However Element 2 considers that “the conduct constituted, or took place as part of, a mass killing of members of a civilian population”.¹³⁶ While Element 4 provides that “the perpetrator knew that the conduct was part of or intended the conduct to be part of a

¹²⁹ A/HRC/31/68, p. 18, para 124 and p. 17, para. 120.

¹³⁰ UNSC/RES/2258 (2015).

¹³¹ Article 7, Statute of the International Criminal Court (1998)

¹³² Elements of Crimes < <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>> accessed 15 March 2016.

¹³³ W. Schabas, *The International Criminal Court: A Commentary on the Rome Statute*, Oxford University Press, 2010, p. 160.

¹³⁴ A/HRC/31/CRP.1, Out of Sight, Out of Mind: Deaths in Detention in the Syrian Arab Republic (3 February 2016) p. 17, para. 97. At

http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A-HRC-31-CRP1_en.pdf (accessed on 15 March 2016).

¹³⁵ “These crimes against humanity entail extermination, murder, enslavement, torture, imprisonment, rape, forced abortions and other sexual violence, persecution on political, religious, racial and gender grounds, the forcible transfer of populations, the enforced disappearance of persons and the inhumane act of knowingly causing prolonged starvation”... “Crimes against humanity are ongoing in the Democratic People’s Republic of Korea because the policies, institutions and patterns of impunity that lie at their heart remain in place.” Commission of Inquiry, North Korea. United Nations Human Rights Office of the High Commissioner, ‘North Korea: UN Commission documents wide-ranging and ongoing crimes against humanity, urges referral to ICC (17 February 2014) at http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14255&LangID=E#sthas_h.tiitt9nu.dpuf (accessed on 15 March 2016).

¹³⁶ Elements of Crimes at <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf> (accessed on 15 March 2016).

widespread or systematic attack directed against a civilian population”.¹³⁷ As such, the starvation and deprivation of conditions of life will have taken place within the context of the mass killing of members of the civilian population.

While the numbers of deaths from starvation alone during the ongoing sieges have been relatively low in Syria, the deaths from indiscriminate bombing and violations of the means and methods of war have been alarmingly high. For example, by January 2015, there were twenty-three siege related deaths recorded in *Hajar al-Aswad*.¹³⁸ By January 2016, there were thirty-six documented deaths of starvation recorded in *Madaya*.¹³⁹

According to Element 3 of the Elements of Crimes, the “conduct was committed as part of a widespread or systematic attack directed against a civilian population”. Notably, the United Nations Commission of Inquiry into Syria has already found that “crimes against humanity continue to be committed by government forces and by Islamic State in Iraq and *Al-Sham* (ISIS)”.¹⁴⁰ This position was recently restated in a Security Council Meeting by the Assistant Secretary-General for Humanitarian Affairs and Deputy Emergency Relief Coordinator, who emphasised using the language of crimes against humanity that the “siege and starvation [in *Madaya*] had become *routine and systematic*, and their barbarity could not be overstated”.¹⁴¹ (emphasis added)

C. Starvation as Genocide

Article 6 of the Rome Statute governs the crime of genocide outlining “for the purpose of this Statute, ‘genocide’ means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such” and Article 6(c) includes as an act of genocide “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part”.¹⁴² The Commentary to Article 14 of Additional Protocol II prohibiting the starvation of civilians during armed conflict clearly outlines that actions aimed at causing starvation may amount to the crime of genocide if committed with the intention to destroy in whole or in

¹³⁷ *Ibid.*

¹³⁸ The Syria Institute, ‘Siege Watch: First Quarterly Report on Besieged Areas in Syria’ (February 2016) 30. According to Siegewatch “In many of these areas, civilians have died from malnutrition due to the severity with which the blockades are enforced. In all of these areas, civilians with diseases, chronic conditions, and injuries have died as a result of the lack of access to medical care. Other recorded causes of siege-related deaths include hypothermia due to the lack of heating oil in the winter, and poisoning after eating something toxic while scavenging for food. Poor sanitation conditions in the besieged areas have resulted in frequent outbreaks of infectious diseases” (p. 16) at <http://siegewatch.org/wp-content/uploads/2015/10/PAX-RAPPORT-SIEGE-WATCH-FINAL-SINGLE-PAGES-DEF.pdf> (accessed on 15 March 2016).

¹³⁹ “Madaya: ‘Another 16 starve to death’ in besieged Syrian town” *BBC News*, 30 January 2016, at <http://www.bbc.com/news/world-middle-east-35449107> (accessed on 15 March 2016)

¹⁴⁰ A/HRC/31/68, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic (11 February 2016) p. 1.

¹⁴¹ United Nations Security Council 7605th Meeting, “Starvation by Siege Now ‘Systematic’ in Syria, Assistant Secretary-General Tells Security Council, amid Warnings that Tactic Could Be War Crime” (15 January 2016). “Our requests have mostly gone unanswered,” with people living in a nightmarish reality that obeyed no laws, she said. In *Madaya*, the world had seen harrowing images of malnutrition and hunger. Siege and starvation had become routine and systematic, and their barbarity could not be overstated. Parties to the conflict had launched a war against men, women and children with ‘callous indifference’ to their lives”. Security Council Meeting, Assistant Secretary-General for Humanitarian Affairs and Deputy Emergency Relief Coordinator, 15 January 2016 at <http://www.un.org/press/en/2016/sc12203.doc.htm> (accessed on 15 March 2016).

¹⁴² Article 6, Statute of the International Criminal Court (1998).

part, a national, ethnical, religious or racial group.¹⁴³ It is unlikely that the attacks by government or rebel forces reach the *mens rea* of the crime to destroy in whole or in part, a national, ethnical, religious or racial group.¹⁴⁴ The Elements of Crimes introduce a contextual element whereby the conduct takes place within the “context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction”.¹⁴⁵ In Syria the conflict is divided along political rather than national, ethnical or sectarian lines.¹⁴⁶ For this reason, it would be difficult to argue that the perpetrators targeted a particular national, ethnical, religious or racial ‘group’ with the intent to destroy that ‘group’. Notably ‘political groups’ were purposely left out of the definition of genocide in the Convention on the Prevention and Punishment of the Crime of Genocide (1948) as they lacked stability and permanence.¹⁴⁷

However, the starvation of civilians by ISIS in sieged areas arguably could reach the threshold of genocide, provided the crime is perpetrated with the intent to wipe out in whole or in part a specific group. For the purposes of prosecution, it is irrelevant whether the conduct posed a “concrete threat to the existence of the targeted group, or part thereof”.¹⁴⁸ There has been some indication that the targeted attacks against the *Yezidi* as a group by ISIS might reach this threshold although the targeting of Christians¹⁴⁹ and Shia groups is less clear.¹⁵⁰ That being said establishing the *mens rea* for genocide is notoriously difficult to prove.¹⁵¹ The *dolus specialis* or special intent for genocide requires that the perpetrator knowingly commits acts such as killing in order to destroy the group in whole or in part, rather than the lesser *dolus eventualis* of intending to kill a member of the group.¹⁵² Notably, in its June 2016 report the United Nations Commission of Inquiry found that ISIS had committed acts of genocide against the Yazidis in Syria.¹⁵³

¹⁴³ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977. Commentary of 1987, p.1456. “Common Article 3, paragraph 1, sub-para (1)(a) infine. It should also be noted that starvation may entail the total or partial disappearance of whole groups of people, which could amount to genocide, if brought about intentionally. Genocide is a crime against humanity, prohibited and punishable under the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, which applies to any form of genocide, including that a government in its own territory against its own nationals. See ‘The United Nations and Human Rights’, New York, 1973, p. 16”.

¹⁴⁴ See generally, K. Ambos, ‘What does ‘intent to destroy’ in genocide mean?’ *International Review of the Red Cross* 2009-91(876).

¹⁴⁵ Article 6, Elements of Crimes to the Rome Statute.

¹⁴⁶ I. Black, “Sunni v Shia: why the conflict is more political than religious” *The Guardian* 5 April 2015; C. Philips, ‘Sectarianism and Conflict in Syria’ *Third World Quarterly* 2015 - 36(2), pp. 357-376.

¹⁴⁷ M. Boot, *Nullem Crimen Sine Lege and the Subject Matter Jurisdiction of the International Criminal Court: Genocide, Crimes Against Humanity, War Crimes* (Intersentia, 2002) 426.

¹⁴⁸ ICC-02/05-01/09, *Prosecutor v Omar al-Bashir*, Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir (4 March 2009), para 120.

¹⁴⁹ M. Boorstein, “The U.S. House just voted unanimously that the Islamic State commits ‘genocide.’ Now what?” *The Washington Post*, 15 March 2016 at <https://www.washingtonpost.com/news/acts-of-faith/wp/2016/03/15/the-u-s-house-just-voted-unanimously-that-the-islamic-state-commits-genocide-now-what/> (accessed on 16 March 2016).

¹⁵⁰ A/HRC/28/18, “Report of the Office of the United Nations High Commissioner for Human Rights on the human rights situation in Iraq in the light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups” (13 March 2015) p. 15, para 76.

¹⁵¹ L. May, *Genocide: A Normative Account*, Cambridge University Press, 2010, p. 184.

¹⁵² K. Goldsmith, “The Issue of Intent in the Genocide Convention and its Effect on the Prevention and Punishment of the Crime of Genocide: Toward a Knowledge Based Approach” *Genocide Studies and Prevention: An International Journal* 2010 – 5(3), p. 6.

¹⁵³ A/HRC/32/CRP.2, Human Rights Council, “They Came to Destroy: ISIS Crimes Against the Yazidis” (15 June 2016) at

VI. Conclusion

This article sought to examine the violations of international humanitarian law in the context of siege warfare in Syria, which resulted in the starvation of the civilian population. It further examined associated potential criminality. In consideration of the abovementioned, there is compelling evidence that the war crime of starvation and crime against humanity of extermination may have been committed during siege warfare in the territory. Given the complex web of non-international armed conflicts in Syria and the reluctance to classify these as ‘internationalised’ or international armed conflicts, there is a possibility that crimes of starvation committed in the context of a non-international armed conflict will not be prosecuted at the International Criminal Court. Problematically, Syria is not a party to the Rome Statute.¹⁵⁴ Nevertheless, the Commission of Inquiry has recommended on numerous occasions that the Security Council either refer the situation in Syria to the International Criminal Court or establish an *Ad hoc* international tribunal.¹⁵⁵ Potentially this might take the form of a hybrid criminal tribunal, which would be a welcome and most suited development.¹⁵⁶ Ideally a Statute for a new *Ad hoc* criminal tribunal for Syria would remove the artificial characterizations of crimes arising from either international or non-international armed conflict. Nevertheless, there are strong grounds to conclude that the conflict taking place in Syria represents an international armed conflict.

15 March 2016 marked ten years of the establishment of the Human Rights Council and five years to the day of the beginning of the Syrian civil war. In an address to the Human Rights Council, the Chair of the Commission of Inquiry into Syria urged international and national proceedings, which should begin immediately even as hostilities are ongoing.¹⁵⁷ Accordingly, States that have ratified the Rome Statute may prosecute crimes domestically within the jurisdiction of the ICC under the principle of complementarity.¹⁵⁸ Additionally, States may apply universal jurisdiction over crimes representing grave breaches of the Four Geneva Conventions. Although that being said, States traditionally open to universal jurisdiction have been narrowing the grounds for establishing jurisdiction in recent years.¹⁵⁹

In particular deaths by starvation may amount to willful killing under the grave breaches

http://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_32_CRP.2_en.pdf (accessed on 22 July 2016).

¹⁵⁴ The State Parties to the Rome Statute at https://www.icc-cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx#S (accessed on 16 March 2016).

¹⁵⁵ A/HRC/31/68, p. 23, para 161.

¹⁵⁶ Human Rights Watch, ‘Syria: Criminal Justice for Serious Crimes under International Law’ (17 December 2013) at <https://www.hrw.org/news/2013/12/17/syria-criminal-justice-serious-crimes-under-international-law#II-NatProsec> (accessed on 16 March 2016).

¹⁵⁷ At <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=17230&LangID=E> (accessed on 16 March 2016).

¹⁵⁸ For detailed analysis of prosecuting crimes committed in Syria see, M. Lattimer, S. Mojtahedi, L.A. Tucker, ‘A Step Towards Justice: Current Accountability Options for Crimes under International Law Committed in Syria’ (Syria Justice and Accountability Center, 2014) at <https://syriaaccountability.org/wp-content/uploads/A-Step-towards-Justice1.pdf> (accessed on 16 March 2016).

¹⁵⁹ See more generally, Human Rights Watch, ‘Belgium: Universal Jurisdiction Law Repealed’ (1 August 2003) at <https://www.hrw.org/news/2003/08/01/belgium-universal-jurisdiction-law-repealed> (accessed on 22 July 2016).

regime.¹⁶⁰ The Commentary to the Fourth Geneva Convention gives by way of example, the illustration of “persons who gave instructions for the food rations of civilian internees to be reduced to such a point that deficiency diseases causing death occurred among the detainees would be held responsible”.¹⁶¹ In this vein, the deliberate denial of food and other conditions of life with the intent to cause death will amount to willful killing and thereby can be prosecuted universally. Likewise the targeting and destruction of civilian objects may be prosecuted as the war crime of destruction under the grave breaches regime. Bearing this limited jurisdiction in mind, individual States need to forge ahead and prosecute the perpetrators of crimes committed in Syria, *inter alia* crimes of starvation during siege warfare.

¹⁶⁰ Article 147, Fourth Geneva Convention (1949).

¹⁶¹ Commentary, Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949 (ICRC, 1958) 597.