

SIEGE WARFARE IN THE 21ST CENTURY FROM THE PERSPECTIVE OF INTERNATIONAL HUMANITARIAN LAW

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Professor Karol Wolfke was an expert in many areas of public international law, including the sources of law, and in particular international custom. His flagship publication in this field was recognized and quoted internationally¹. Therefore it was not surprising that the International Committee of the Red Cross (hereinafter referred to as the ICRC) invited Professor Karol Wolfke to contribute to the completion of the Study on Customary International Humanitarian Law, the purpose of which was to identify customary rules of international humanitarian law applicable in international and non-international armed conflicts². He reviewed some parts of the Study and also advised during experts' meetings convened in Geneva by the ICRC³. Therefore it seems very appropriate to reflect in Professor Wolfke's commemorative book on a topic proving the important role of customary law in filling gaps in international treaties. The topic that has been chosen – siege warfare – unfortunately belongs to very hot issues in today's international relations and law. In recent years Aleppo in Syria has become a symbolic example of political and legal controversies about siege tactics in contemporary armed conflicts.

INTRODUCTION

The term “siege” derives from a Latin word “*sedere*” (“to sit”) and means military encirclement of a village, town, city or just military

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¹ K Wolfke, *Custom in Present International Law* (1964).

² JM Henckaerts, L Doswald-Beck, *Customary International Humanitarian Law* (2005). The Study identifies 161 customary IHL rules on the basis of thousands of examples of practice and *opinio iuris*. It is available and regularly up-dated on the website of the International Committee of the Red Cross: <http://www.icrc.org/customary-ihl/eng/do>, last access 1st December 2016.

³ Professor Karol Wolfke shared his personal reflections on his work on the Study in K Wolfke, ‘Kilka wstępnych refleksji w związku z artykułem JM Henckaerts’ in *Studium poświęcone zwyczajowemu międzynarodowemu prawu humanitarnemu: wkład w zrozumienie i poszanowanie zasad prawa dotyczącego konfliktu zbrojnego* (2006) 3-4.

installations or an area of land⁴ in order to impose isolation, to prevent the enemy from having contact with the outside world and thus reduce his resistance and enforce surrender. Siege has been known as a tactic of war since time immemorial. From the Biblical Battle of Jericho and the Homeric Trojan War to Syrian cities of Homs, Ghouta, Idlib, Deir Ezzor or – the best known - Aleppo besieged in the 21st century⁵, the history of human civilization is full of accounts of sieges⁶. Whenever an attacker could not take a fortress or an urban area by force or simply did not want to enter into an urban area⁷ and its defenders refused to surrender, he was encircling them preventing any provision of logistical supplies and reinforcement or the escape of troops. Traditionally a siege had tragic humanitarian consequences for civilians in besieged areas, mainly starvation and diseases⁸. Attacking armed forces would often wait until supplies inside the fortifications were exhausted or diseases had weakened the defenders to the extent that they decided to surrender.

Siege evolved with the emergence of new military technologies, the development of modern air power, artillery and general changes in the modes of battle. The concept of a siege was addressed briefly by the International Criminal Tribunal for the Former Yugoslavia in the case *Prosecutor v. Dragomir Milošević* relating to the siege of Sarajevo (the capital of Bosnia-Herzegovina) by the armed forces of Republika Srpska in 1992 – 1996. The Trial Chamber found that Sarajevo was effectively besieged despite the fact that there were some very limited possibilities to leave the city. “[T]his was not a siege in the classical sense of a city being surrounded, it was certainly a siege in the sense that it was a military operation, characterized by a persistent attack or campaign (...) during which the civilian population was denied regular access to food, water, medicine and other essential supplies, and

⁴ Area of land with a military base was sieged in Diên Biên Phu in rural district of Vietnam in 1954 during the First War in Indochina – see C Rey-Schryr, *De Yalta à Diên Biên Phu. Histoire du Comité international de la Croix-Rouge 1945-1955* (2007) 375-399.

⁵ See reports prepared by Pax - the Syria Institute, available at: siegewatch.org/wp-content/uploads/2015/10/PAX-TSI-Syria-SiegeWatch-report-4.pdf, last access 1st December 2016.

⁶ T Jaques, *Dictionary of Battles and Sieges: a Guide to 8500 Battles from Antiquity through the Twenty-first Century*, 3 Volumes, (2006); PN Stearns, *The Encyclopedia of World History: ancient, medieval, and modern* (6th ed. 2001); C Townshend, *The Oxford History of Modern War* (2000).

⁷ Conducting military operations in an urban area is always dangerous, consuming more resources than other methods of combat – see the discussion on different aspects of urban warfare in: *Collegium*, Nr 46, Autumn 2016: Proceedings of the Bruges Colloquium “Urban Warfare”, 16th Bruges Colloquium, 15-16 October 2015, available at: https://www.coleurope.eu/sites/default/files/uploads/page/collegium_46_1.pdf, last access 1st December 2016.

⁸ Relatively recent disastrous sieges, apart from encirclements of Syrian cities, were those of Grozny (1994-95) that resulted in the death of some 35 thousands of the city’s inhabitants as well as the siege of Sarajevo in the Bosnian War (1992-96) that resulted in the death of some 10 thousands of the city inhabitants and many more wounded and injured – see the Indictment in the case before the ICTY *The Prosecutor v S. Galić*, No. IT-98-29-1, available at: <http://www.icty.org/x/cases/galic/ind/en/gal-ii990326e.pdf>, last access 1st December 2016 and the Judgment of the International Court of Justice in the case *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, (Judgment) [2007] ICJ Rep 43, paras. 323 – 328.

deprived of its right to leave the city freely at its own will and pace⁹. It means a total encirclement is not necessary any more in order to qualify a given situation as a siege – this requirement is replaced today by the requirement of a total control.

In the 21st century traditional prolonged sieges seem not be an option because of the huge costs in terms of not only financial resources, but also time and – first and foremost – civilian lives¹⁰. However, the recent experience of the sieges of Syrian towns and cities shows that unfortunately this type of warfare has not been abandoned; it is still sometimes necessary for military purposes and does occur although today's urban context is very different from the one when soldiers attacked fortified cities with catapults or installed ladders at city walls.

I. THE LEGAL FRAMEWORK OF SIEGE – GENERAL REMARKS

The legal framework that is most relevant in the situation of siege is provided by International Humanitarian Law (hereinafter referred to as IHL). It is also supplemented by International Human Rights Law standards, but the focus of this article is first and foremost on the IHL perspective.

There are two fundamental sources of IHL: international custom¹¹ and treaties. From among more than 100 international treaties that have been adopted in this field¹², the four conventions on the protection of war victims adopted in Geneva in 1949 (hereinafter referred to as the Geneva Conventions or GC I, GC II, GC III and GC IV)¹³ are the most significant ones. They are universally applicable, having been ratified by 196 states, i.e. all sovereign territorial organizations recognized as states by the international community. In 1977, the Geneva Conventions were supplemented with two Additional Protocols (hereinafter: AP I and AP II)¹⁴. The protocols are applicable quite

⁹ Case No. IT-98-29/1-T, *Prosecutor v. Dragomir Milošević*, Judgement of 12 December 2017, para. 751, pp. 250 – 251, available at http://www.icty.org/x/cases/dragomir_milosevic/tjug/en/071212.pdf, last access 1st December 2016.

¹⁰ “Sieges are time consuming, resource-intensive, and static” - S Watts, ‘Siege in contemporary doctrine: how does it work?’ (2016) 46 *Collegium* (n 7) 95.

¹¹ See n 2.

¹² Their comprehensive list is posted on the website of the International Committee of the Red Cross <https://www.icrc.org/IHL>, last access 1st December 2016.

¹³ GC I - Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 75 UNTS 970; GC II - Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 75 UNTS 971; GC III - Geneva Convention relative to the Treatment of Prisoners of War, 75 UNTS 972; GC IV - Geneva Convention relative to the Protection of Civilian Persons in Time of War, 75 UNTS 973. They are also available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%2075/volume-75-I-970-English.pdf>, last access 1st December 2016.

¹⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 UNTS 17512; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the

broadly, but not universally: 174 states are parties to AP I Relating to the Protection of Victims of International Armed Conflicts and 168 states are parties to AP II Relating to the Protection of Victims of Non-International Armed Conflicts¹⁵.

There is also another document vital in determining the legal framework of a siege in a situation of an armed conflict, namely the Regulations annexed to the Convention (IV) Respecting the Laws and Customs of War on Land adopted in The Hague in 1907 (hereinafter referred to as the Hague Regulations or HR)¹⁶. Formally there are 38 states parties to this treaty¹⁷, but it is widely recognized that the HR are “declaratory of the laws and customs of war”¹⁸.

In the above mentioned documents there are only four provisions that specifically mention sieges: Art. 27 HR, Art. 15 GC I, Art. 18 GC II and Art. 17 GC IV. The Hague Regulations provide for the protection of civilian buildings and other objects during a siege, while the Geneva Conventions relate to the evacuation of some categories of most vulnerable persons from a besieged area, and for passage of medical and religious personnel and equipment to that area.

However, there are many other rules of IHL, contained mainly in the Additional Protocols of 1977, that are applicable to sieges as they are to any other method of combat, even though they do not mention sieges specifically.

This article discusses the legality of different aspects of siege in international armed conflicts (hereinafter IACs) and non-international armed conflicts (hereinafter NIACs) both from the perspective of the rules on the conduct of hostilities, contained mainly in HR, AP I and AP II, and the rules on the protection of civilians who find themselves in enemy hands, contained mainly in GC IV.

Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 UNTS 17513. They are also available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%201125/volume-1125-I-17512-English.pdf>, last access 1st December 2016.

¹⁵ On 1st December 2016 – see the status of ratifications on the website of the International Committee of the Red Cross: <https://www.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountry.xsp>

¹⁶ They replaced earlier, almost identical Hague Regulations of 1899. Their text is available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=4D47F92DF3966A7EC12563CD002D6788&action=openDocument>, last access 1st December 2016

¹⁷ See n 15.

¹⁸ In 1946 the Nuremberg International Military Tribunal stated with regard to the IV Hague Convention of 1907: "The rules of land warfare expressed in the Convention (...) by 1939 (...) were recognized by all civilized nations and were regarded as being declaratory of the laws and customs of war", International Military Tribunal, *Case of the Major War Criminals*, Judgement, 1st October 1946, I Official Documents 253-254. The International Court of Justice reached the same conclusions in the following cases: *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 256, para.75; *Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 172, para. 89; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* (Judgement) [2005] ICJ Rep 243, para 217.

II. SIEGE AND THE RULES ON THE CONDUCT OF HOSTILITIES

The earliest obligations relating to the conduct of hostilities in land warfare are contained in the Hague Regulations of 1899 and 1907¹⁹. Their Article 27 para. 1 provides that “[i]n 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”. Para. 2 adds that “[i]t is a 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”. On the one hand, this provision is based on the fundamental principle of distinction²⁰ between military objectives and civilian objects ensuring immunity from attacks during sieges to some (not all) categories of civilian buildings. On the other hand, the obligation to spare some objects is diluted by the expression “as far as possible” leaving at the discretion of the besieging forces the practical application of this rule. It also depends on the earlier fulfilment of the duty of besieged forces to mark protected buildings and to notify their presence to the besieging party.

It is worthwhile mentioning another provision of the HR that indirectly regulates the after-siege situation, namely Article 28 “The pillage of a town or place, even when taken by assault, is prohibited”. It was considered to reflect a great progress in comparison with earlier siege practice during which a besieged place was spared only once it was surrendered voluntarily to besieging forces. If, however, besieged forces rejected the demands to surrender, they were regarded as “entirely liable for damage and suffering (...) inflicted, including indiscriminate destruction of property, pillage and deprivation, or even murder of civilians”²¹.

As mentioned above, the Additional Protocols of 1977 do not mention sieges specifically, but they apply fully to such operations as they apply to any other method of combat. It is clearly confirmed, among others, by *The Joint Service Manual of the Law of Armed Conflict* issued in 2004 by the Ministry of Defence of the United Kingdom: “[t]he principles of the law of armed conflict, particularly the rules relating to attacks, apply equally to situations of siege or encirclement”²².

Among the principles that place significant restraints on the conduct of siege operations, one should mention not only the principle of distinction

¹⁹ N 16.

²⁰ Today this principle is defined in Articles 48, 51 (2) and 52 (2) API and in Rules 1 – 10 of the Study on *Customary International Humanitarian Law*, supra note 2, applicable both in IACs and NIACs.

²¹ S Watts, ‘Under Siege: International Humanitarian Law and Security Council Practice concerning Urban Siege Operations’ *Research and Policy Paper, Counterterrorism and Humanitarian Engagement Project* (2014) 5, available at: <http://blogs.harvard.edu/cheproject/files/2013/10/CHE-Project-IHL-and-SC-Practice-concerning-Urban-Siege-Operations.pdf> last access 1st December 2016

²² Cited after Watts (n 21) 7.

referred to above²³, including also the prohibition of using indiscriminate means and methods of attack like carpet-bombing or explosives-filled oil barrels used in urban areas²⁴, but also the principle of proportionality²⁵ and the obligation to undertake precautionary measures that lies both with besieging and besieged forces²⁶. The Study on Customary International Humanitarian Law confirms that all these rules are equally binding in international and non-international armed conflicts ensuring the parity between the requirements relating to the conduct of siege operations, whether they take place in IAC or in NIAC.

Among the provisions regarding means and methods applicable in hostilities, the most relevant seems to be the prohibition of starvation of civilians as a method of warfare. It is provided for in Articles 54 AP I and 14 AP II and additionally reinforced by the protection of objects indispensable to the survival of the civilian population “such as foodstuffs, agricultural areas (...), crops, livestock, drinking water installations and supplies”. It is considered also to be a customary norm of IHL applicable both in IACs and NIACs.²⁷ The Rome Statute of the International Criminal Court (hereinafter referred to as the ICC) provides in Article 8(2)(b)(xxv) that “[i]ntentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Convention”²⁸ is a war crime in an international armed conflict. Furthermore, if the conditions specified in Article 7(1)(k) and Article 6 of the Rome Statute are met, using starvation could be considered a crime against humanity or genocide²⁹.

Some authors emphasize, however, that what is prohibited by AP I and AP II is not a starvation as such, but only starvation as a method of combat³⁰. What is more, starvation is not listed at all among grave breaches (that means “war crimes”) of AP I – a treaty that is more broadly ratified than the Statute of the ICC³¹. The latter document qualifies starvation as a war crime only in international armed conflicts³², therefore starvation in non-international

²³ Supra n 20.

²⁴ Article 51 para 4 AP I and Rules 11 - 13 of the Study on *Customary International Humanitarian Law* (n 2), applicable both in IACs and NIACs.

²⁵ Article 51 para 5 b) and 57 para. 2 a) (iii) AP I and Rule 14 of the Study on *Customary International Humanitarian Law*, supra note 2, applicable both in IACs and NIACs.

²⁶ Articles 57 and 58 AP I, respectively and Rules 15 – 24 of the Study on *Customary International Humanitarian Law*, supra note 2, applicable both in IACs and NIACs. It should however be noted that siege conditions sometimes render infeasible precautions that would otherwise be applicable, e.g. advance warnings of attacks provide not only to civilians, but also to besieging forces an opportunity to evade their effects.

²⁷ Rules 53 and 54 of the Study on *Customary International Humanitarian Law*, supra note 2, applicable both in IACs and NIACs.

²⁸ The Rome Statute of the International Criminal Court, 2187 UNTS 38544.

²⁹ C Rottensteiner, ‘The denial of humanitarian assistance as a crime under international law’ (1999) 81(835) *International Review of the Red Cross* 555–582.

³⁰ APV Rogers, *Law on the battlefield* (2004) 102 - 103.

³¹ On 1st December 2016 there were 124 states parties to the Statute of the ICC as compared to 174 states parties to AP I – supra n 15.

³² Definitely it is not an omission taking into account that there has been a considerable amount of lobbying for its inclusion in the list of crimes committed in NIACs as well - see Rottensteiner (n 29) 568.

armed conflicts remains an ordinary violation of IHL. Other authors interpret Article 54 AP I and Article 14 AP II as preventing any isolation of civilians that would result in any civilian starvation³³. Finally, there is also an approach relying heavily on proportionality. Namely, a new American Law of War Manual prohibits 'excessive' civilian starvation in relation to the direct military advantage that would be gained by starving the forces collocated with the civilians at a given moment³⁴.

Independently of legal qualifications, there is no doubt that hardships experienced by civilians under a siege and their humanitarian needs raise the issue of humanitarian assistance to, and evacuation of, such persons. These questions are regulated mainly in the Geneva Conventions of 1949 and, to a lesser extent, the Additional Protocols of 1977. With regard to evacuation it should be taken into consideration that apart from humanitarian, there are also military considerations to be taken into account. Besieged forces may prevent civilians from leaving a besieged area to "make it more difficult for the besieging force to target legitimate military objectives in the besieged city", while the besieging forces "may want to leave them where they are because that complicates the life of the besieged forces"³⁵. In one of the Nuremberg cases initiated after the World War II, German commanders were brought up on charges of firing artillery shells at civilians who were attempting to leave a besieged area of Leningrad but they were acquitted: "We might wish the law was otherwise, but we must administer it as we find it. Consequently, we hold no criminality attaches on this charge"³⁶. A few years later, in 1956, the US Field Manual on the Law of Armed Conflict was adopted according to which, civilians attempting to escape the besieged area were liable to be fired upon³⁷.

With regard to humanitarian assistance, the main concern of states is about using it as a pretext to interfere in the internal affairs of another state, particularly an armed conflict affecting its vital interests, and sometimes its very existence. External actors, claiming to be humanitarian, neutral and independent, are going to operate in the territory of that state and in contact with its population³⁸.

³³ Y Dinstein, 'Siege warfare and the starvation of civilians' in AJM Delissen, GJ Tania (eds), *Humanitarian Law of Armed Conflict, Challenges Ahead* (1991) 146.

³⁴ S Watts, 'IHL and Sieges: What are the Applying Rules?' (2016) 46 *Collegium* (n 7) 97-98.

³⁵ F Hampson, Besieged civilian population: is there any right to evacuation and humanitarian assistance? (2016) 46 *Collegium* (n 7) 100.

³⁶ *The United States of America vs. Wilhelm von Leeb et al.*, US Military Tribunal Nuremberg, Judgment, 27th October 1948 in XII *Law Reports of Trials of War Criminals*, Selected and Prepared by the United Nations War Crimes Commission (1949) 84.

³⁷ S Watts (n 34) 97.

³⁸ These dilemmas are discussed below under subchapter No. 4.

III. SIEGE AND THE RULES ON THE TREATMENT OF PROTECTED PERSONS, PARTICULARLY CIVILIANS

Three out of four IHL provisions specifically mentioning sieges are contained in the Geneva Conventions of 1949 and deal with evacuation of some categories of persons from a besieged area and with humanitarian assistance delivered to that area.

Article 15 GC I provides that “local arrangements may be concluded between Parties to the conflict for the removal or exchange of wounded and sick from a besieged or encircled area, and for the passage of medical and religious personnel and equipment on their way to that area”. Article 18 GC II contains almost identical provision for the “removal of the wounded and sick by sea”, while Article 17 GC IV regulates the evacuation of “wounded, sick, infirm, and aged persons, children and maternity cases”.

A limitation that is clear at the first reading of these provisions concerns the categories of persons qualified for evacuation. A healthy adult civilian who is not pregnant does not qualify for the removal from the besieged area³⁹. Another limitation is less clear, but also very significant. It is only Article 18 GC II that requires that the parties to the conflict “shall conclude” arrangements regarding evacuation. The language of Article 15 GC I is much more cautious – “local arrangements may be concluded between parties to the conflict”, while Article 17 GC IV is even more general – “[t]he parties to the conflict shall endeavor to conclude local agreements”. It means a quite limited obligation with respect to a narrow class of besieged civilians.

Despite this vague language, evacuation could be considered a precautionary measure both by a besieging and a besieged party to a conflict. However, neither Article 57 nor Article 58 AP I on precautions in attack and precautions against the effects of attacks explicitly mention evacuation as one of potential measures undertaken in order to spare civilians and civilian objects.

In non-international armed conflicts evacuation of civilians may be prevented by a prohibition of forced movements provided for in Article 17 AP II, but there are exceptions that could be invoked in the situation of siege, namely “the security of the civilians involved or imperative military reasons”.

When evacuation is not possible or feasible, a party to an armed conflict must allow humanitarian relief action. Article 17 GC IV (and Articles 15 GC I and 18 GC II) provides for humanitarian access, but is strictly limited in obligation and scope. First, parties to a siege need merely endeavour to conclude passage for relief supplies. Second, Article 17 covers only a limited circle of beneficiaries (wounded, sick, infirm, and aged persons, children and maternity cases) and donors (medical and religious personnel and equipment).

Art. 23 GC IV broadens somewhat the scope of supplies, requiring parties to admit passage of “foodstuffs, clothing, and tonics”, but only to the benefit of “children under fifteen, expectant mothers and maternity cases”. The scope

³⁹ According to S Watts (n 7) 103, there is a logic behind this provision: evacuation could be an opportunity for the besieged force to sneak some persons out, particularly high-value targets or symbolic leaders: Besieged civilian population: is there any right to evacuation and humanitarian assistance?

of relief and the groups entitled to it are such that the civilians, collectively, have the right to receive only medical and sanitary items. The focus is therefore on the sick. Foodstuffs and clothing are referred to only in the context of children, expectant mothers, and “maternity cases”. Civilians over the age of 15 who are healthy (or, more precisely, who have no need for medication) are not covered by Article 23. Furthermore, Article 23(2) specifies that even the sick, the expectant mothers, the women who have just given birth and the minors may be deprived of the right to relief if the state that is allowing the free passage of the consignments has serious reasons for fearing “that a definite advantage may accrue to the military efforts or economy of the enemy through the substitution of the above-mentioned consignments for goods which would otherwise be provided or produced by the enemy”.

Art. 70 AP I significantly broadens both the scope of beneficiaries⁴⁰ and the scope of humanitarian relief⁴¹ and access based on IHL. It refers to the contemporary principles of providing relief (humanitarian and impartial in character, conducted without any adverse distinction) and explicitly articulates that “relief shall not be regarded as interference in the armed conflict or as unfriendly acts”. Yet it also reinforces the need to obtain the consent of the states, noting that relief actions may only be undertaken “subject to the agreement of the Parties concerned”.

This concession to sovereignty of the states in Article 70 AP I is much stronger than the stipulation of Article 23 GC IV specifying the right to prohibit shipments in certain situations that undermine the interest of the state⁴². Under Article 70 AP I, the decision-making power of the state is greater, because the issue at stake requires the permission for external actors to operate in the territory of that state and in contact with its population. However, commentaries on the APs tend to note that the right to withhold consent is not completely discretionary. The state may not withhold consent if the conditions specified in Article 70 are met, i.e. the population is inadequately supplied with foodstuffs, medical supplies, clothing, or other articles specified in Article 69⁴³. However, the commentaries are not legally binding and the question remains of what is “discretionary” and what are the consequences of an arbitrary withdrawal of consent.

In the context of non-international armed conflicts, the key provisions are Article 3 common to the four Geneva Conventions of 1949 and Article 18 of Additional Protocol II of 1977.

Article 3 refers to humanitarian aid only indirectly, by invoking the general

⁴⁰ Mention of some categories of civilians, such as children, expectant mothers, maternity cases, and nursing mothers serves merely the purposes of establishing priorities of relief.

⁴¹ It comprises not only food and medical supplies, but also clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population and objects necessary for religious worship (by reference to Art. 69 on occupied territories).

⁴² J Pejic, ‘The right to food in situations of armed conflict: The legal framework’ (2001) 83(844) *International Review of the Red Cross* 1103.

⁴³ Y Sandoz, C Swinarski, B Zimmermann (ed.), *Commentary on the Additional Protocols of 8 June 1977* (1987) 819–820.

principle of humanity: “Persons taking no active part in the hostilities [...] shall in all circumstances be treated humanely”. Humane treatment is understood as a prohibition of intentionally depriving civilians of necessary supplies, and in consequence a prohibition of causing severe physical and psychological suffering⁴⁴. Article 3 also stipulates that “[a]n impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict”. This offer of services in the situation of a siege has no implications for the party’s legal standing.

AP II provides a less ambiguous regulation of humanitarian aid in non-international armed conflict. Its Article 18 para. 2 reads as follows: “[i]f the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned”.

This regulation is not universally binding and is applicable only to an armed conflict in which a state is involved as at least one of the forces; it is not applicable to conflicts where all actors are non-state parties. The effectiveness of Article 18 AP II is further diminished by the requirement of consent of the state (rather than just a party or parties to the conflict, in line with Article 3 GCs).

Analogically to the regulation of Article 70 AP I, a balance must be found between the relief action for the benefit of besieged population and the requirement of consent of the concerned state. This decision must always take into account the individual facts of each case.

Commentaries on Article 18 AP II and Article 70 AP I emphasize that a state may not withhold consent to the provision of aid arbitrarily⁴⁵, noting that in draft versions of both APs of 1977 accepting aid was mandatory as long as the relief was purely humane and impartial. The diplomatic conference held in 1974-1977 resulted in the insertion of the requirement of consent, but it was openly argued at the same time that this consent is not fully discretionary⁴⁶. However, no criteria have been specified in international law that could unequivocally guide the assessment of whether the withholding of consent is arbitrary.

With regard to customary law it is worthwhile mentioning that the Rule 55 of the Study on Customary International Humanitarian Law⁴⁷ provides that the parties to the conflict “must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need”. It notes that the passage

⁴⁴ See the definition of inhuman treatment provided by the International Criminal Tribunal for the Former Yugoslavia (ICTY) in the case *Prosecutor v Zejnir Delalić et al.*, case No. IT-96-21-T, Judgment, para 543.

⁴⁵ Y Sandoz, C Swinarski, B Zimmermann (n 42) 1479. See also F Schwendimann, ‘The legal framework of humanitarian access in armed conflict’ (2011) 93(884) *International Review of the Red Cross* 998, 1005.

⁴⁶ *Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, 1974–1977*, CDDH/II/SR.87, paras. 27–30.

⁴⁷ N 2.

of this relief is subject to the parties' right of control, but makes no mention of the requirement of the state's consent to such relief. Rule 56 affirms that the parties to the conflict must ensure the freedom of movement of authorized humanitarian relief personnel essential to the exercise of their functions, with the only permissible limitation of this right being "imperative military necessity"⁴⁸. This restriction pertains to a temporary limitation in a specific area for reasons of specific military operations, and not to general restrictions.

Rules 55 and 56 apply both to international and non-international armed conflict.

Other soft law documents, i.e. documents that are not formally binding but that nonetheless either reflect the existence of certain regulations or express a desire for a certain outlook in international law, point to an interpretation of the obligations of states towards civilians in non-international armed conflict that is broader than what is contained in treaty law. The UN Security Council has passed several resolutions on the protection of the population in the situation of sieges⁴⁹. The best known are the resolutions on Syria, starting with the resolution 2139 of February 2014 calling for the lifting of sieges of populated areas (at that time there were 175 000 civilians encircled by government forces and 45 000 – by rebel forces) and authorizing the United Nations aid operations in Syria without requiring the consent of the Syrian government⁵⁰. In view of these resolutions, intentionally preventing victims' access to relief is considered a violation of IHL and even a crime against humanity⁵¹.

CONCLUSIONS

Siege warfare is legally allowed and is likely to remain a feature of future armed conflicts. Nevertheless today, in the 21st century, the possibility of siege operations is very much limited by International Humanitarian Law – by its letter in direct and indirect references to sieges in IHL treaties and by its spirit expressed particularly in numerous international customary rules. Such restrictions are binding both in international and non-international armed conflicts. Considering also recent decisions of the United Nations

⁴⁸ N 2.

⁴⁹ For example the resolutions on the conditions of siege in Bosnia and Herzegovina: SC Res 761, UN Doc S/RES/761 (June 21, 1992), SC Res 859, UN Doc S/RES/859 (August 24, 1993).

⁵⁰ Resolution 2139 of February 2014 of the United Nations Security Council was followed by similar Resolutions 2165 of July 2014 and 2191 of December 2014. The last one was the Resolution 2258 of 2015. The involvement of the Russian Federation – one of the five permanent members of the Security Council – in the Syrian conflict had a negative impact on the decisions of this organ with regard to the situation in Syria, including sieges of Syrian cities.

⁵¹ UN Security Council Resolution 2139 of 2014 and the *Report of the Secretary-General on the Implementation of the Security Council Resolution 2139 (2014)*, UN Doc S/2014/365 of 20.05.2014, particularly para 49.

Security Council, traditional urban siege operations may become impractical from the strategic viewpoint. The developments in Aleppo in 2016 proved that international community has less and less patience in situations of human suffering involved in urban sieges.

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