

Winter 1-31-2024

Ukraine, Urban Warfare, and Obstacles to Humanitarian Access: A Predicament of Public International Law

Harriet Norcross Eppel

Follow this and additional works at: <https://digitalcommons.law.byu.edu/lawreview>



Part of the [Law Commons](#)

Recommended Citation

Harriet Norcross Eppel, *Ukraine, Urban Warfare, and Obstacles to Humanitarian Access: A Predicament of Public International Law*, 49 *BYU L. Rev.* 925 (2024).

Available at: <https://digitalcommons.law.byu.edu/lawreview/vol49/iss3/11>

This Comment is brought to you for free and open access by the Brigham Young University Law Review at BYU Law Digital Commons. It has been accepted for inclusion in *BYU Law Review* by an authorized editor of *BYU Law Digital Commons*. For more information, please contact hunterlawlibrary@byu.edu.

Ukraine, Urban Warfare, and Obstacles to Humanitarian Access: A Predicament of Public International Law

Harriet Norcross Eppel*

Humanitarian assistance is not carried out in a vacuum. As urban warfare historically complicates humanitarian aid's access to civilians in war zones, Ukraine, having suffered and still facing highly publicized violence in civilian-dense areas, has encountered dire obstacles in acquiring necessary resources for civilians' survival, including both direct and incidental attacks on humanitarian access. Thus, it is vital the international legal community take measures to mitigate current and future dangers of urban warfare, as well as design new solutions, such as strengthening current international law under which obstructing humanitarian access constitutes a violation of jus cogens principles, attempting to induce countries to move away from conflict in civilian-populated areas, supporting previously attempted alleviations such as "safe zones" and humanitarian corridors, and boosting the concrete legal status of NGOs' and other organizations' neutrality, to ensure easier access to humanitarian aid in present and future war zones.

In Part II (Part I being an introduction), this paper will first lay a foundation of the history of humanitarian assistance in armed conflict and civilians' rights to humanitarian assistance in armed conflict. Part III will introduce the history of urban warfare, then discuss common obstacles to humanitarian assistance (whether intentionally or unintentionally caused by States), specifically in situations of urban warfare. Part IV will examine how Ukraine has experienced and is currently experiencing humanitarian access issues, and the applicable obligations which involved States have

* Harriet Norcross Eppel is a 2024 J.D. candidate at Brigham Young University's J. Reuben Clark Law School. Harriet works in alternative dispute resolution for Title IX campus sexual assault cases and will continue in that field following graduation, though she hopes to engage more with humanitarian legal issues in the future, as humanitarian aid work is what originally prompted her to pursue a legal degree. She would like to thank Professor Eric Jensen for his support throughout the research, writing, and publication processes.

failed to uphold. Finally, Part V will discuss potential solutions to the difficulty facing aid workers in Ukraine and other urban armed conflict situations where civilians are impacted.

CONTENTS

INTRODUCTION	926
I. HUMANITARIAN ASSISTANCE	928
A. A Brief History of Humanitarian Assistance in Conflict	928
B. Civilians and Their Rights to Aid	932
II. URBAN WARFARE AND HUMANITARIAN ACCESS	937
A. History of Urban Warfare	937
B. Obstacles to Humanitarian Access in Urban War	938
III. IMPLICATIONS FOR UKRAINE	941
A. The War in Ukraine	942
B. State Obligations in Ukraine's Humanitarian Situation	946
IV. SOLUTIONS	948
A. Existing Principles: How Do We Enforce?	950
B. Urban Warfare	951
C. "De-Escalation Zones" and Humanitarian Corridors	954
D. Legal Neutrality of NGOs	956
CONCLUSION	960

INTRODUCTION

"You cannot help but think that John Lyly never saw the indiscriminate bombing of maternity hospitals, nor had to tell his children to flee their country while he stayed to defend it. Otherwise he would have known that *nothing* is fair in love and war[.]" wrote John Lyman Ballif in his March 25, 2022 newsletter from L'viv, Ukraine.¹ Ballif is one of the many individuals facilitating humanitarian assistance for civilians in Ukraine and raising awareness for the plight of the men, women, and children whose homes and lives have been wrenched from them by the invading Russian forces beginning in late February.² Ballif and his wife Polina's efforts have evolved into a nonprofit organization, the

1. John Lyman Ballif, *Friday, 25 March 2022. L'viv, Ukraine*, OCTOBER FLOWERS (Mar. 25, 2022), <https://www.octoberflowers.org/p/friday-25-march-2022-lviv-ukraine>.

2. See John Lyman Ballif, *8 June 2022, Kyiv, Ukraine*, OCTOBER FLOWERS (June 8, 2022), <https://www.octoberflowers.org/p/8-june-2022-kyiv-ukraine>.

Klyn Foundation, whose mission is to provide critical help to Ukrainian communities affected by the war.³

Following lengthy investigation of the events of February and March of 2022, the Independent International Commission of Inquiry on Ukraine uncovered an array of war crimes that were committed against Ukrainian civilians by Russian forces since Russia first invaded the country on February 24, 2022, including, but not limited to, attacks with explosive weapons in populated areas, attacks on fleeing civilians and locations of military forces near densely civilian-populated areas, summary executions, unlawful confinement, torture, rape and other sexual violence, detainment, and unlawful deportation.⁴ In some cases, family members—including children—have been compelled to witness these acts.⁵ Ukraine has also been implicated in two war crimes.⁶

As a result of this devastation, civilians from Ukrainian war zones are in great need of humanitarian assistance—as of October 17, 2022, recorded civilian casualties numbered 6,306 with an additional 9,602 wounded; the actual numbers are “likely to be much higher.”⁷ Millions have been forced to flee their homes and livelihoods; over six million civilians are internally displaced, while over seven million have left Ukraine to seek refuge elsewhere.⁸ Some, particularly the elderly, have remained in their homes and are now in critical need of food, water, and other resources.⁹ Thousands of buildings, including medical and educational facilities, have been seriously damaged or destroyed.¹⁰ It is clear, even before examining the finer details of the situation, that there is an immense need for humanitarian assistance both in and outside the conflict zones, but in the same report, the Independent UN Commission reported, “In most of the affected areas within Ukraine . . . there are access challenges for humanitarian assistance.”¹¹

3. *Id.*

4. U.N. Secretary-General, *Report of the Independent International Commission of Inquiry on Ukraine*, 2, U.N. Doc. A/77/533 (Oct. 18, 2022) [hereinafter *Inquiry on Ukraine*].

5. *Id.*

6. *Id.*

7. *Id.* ¶ 33.

8. *Id.*

9. *Id.* ¶ 34.

10. *Id.* ¶ 33.

11. *Id.*

Humanitarian assistance is not carried out in a vacuum. As urban warfare historically complicates humanitarian aid's access to civilians in war zones, Ukraine, having suffered and still facing highly publicized violence in civilian-dense areas, has encountered dire obstacles to necessary resources for civilians' survival, including both direct and incidental attacks on humanitarian access. Thus, it is vital that the international legal community take measures to mitigate current and future dangers of urban warfare, as well as design new solutions, such as strengthening current international law under which obstructing humanitarian access constitutes a violation of jus cogens principles, attempting to induce countries to move away from conflict in civilian-populated areas, supporting previously attempted alleviations such as "safe zones" and humanitarian corridors, and boosting the concrete legal status of NGOs' and other organizations' neutrality, to ensure easier access to humanitarian aid in present and future war zones.

In Part II, this paper will first lay a foundation by discussing the history of humanitarian assistance in armed conflict and civilians' rights to humanitarian assistance in armed conflict. Part III will introduce the history of urban warfare and discuss common obstacles to humanitarian assistance (whether intentionally or unintentionally caused by States), specifically in situations of urban warfare. Part IV will examine how Ukraine has experienced, and is currently experiencing, humanitarian access issues and the applicable obligations that involved States have failed to uphold. Finally, Part V will discuss potential solutions to the difficulty facing aid workers in Ukraine and other urban armed conflict situations where civilians are impacted.

I. HUMANITARIAN ASSISTANCE

A. *A Brief History of Humanitarian Assistance in Conflict*

The International Committee of the Red Cross describes humanitarian assistance protected by international humanitarian law as "food, medicines, medical equipment, or other vital supplies, to civilians in need."¹² The Institute of International Law defines it as "all acts, activities and human and material resources for the provision of goods and services of an exclusively humanitarian

12. MARCO SASSÒLI ET AL., HOW DOES LAW PROTECT IN WAR? ch. 9, at 46 (3d ed. 2011).

character, indispensable for the survival and the fulfillment of the essential needs of the victims of disasters.”¹³ Humanitarian assistance as we know it today is a relatively modern invention, having emerged in the latter half of the twentieth century.¹⁴

Humanitarianism in armed conflict has been evolving since the eighteenth century.¹⁵ Western humanitarianism in conflict made its entrance in the late 1700s and early 1800s with the French Revolution and Napoleonic Wars.¹⁶ The Duke of Wellington recognized the value of army surgeons who could preserve military power by enabling wounded soldiers to recover and return to battle more quickly. As a result, a new professionalism appeared for military medical personnel, followed by the 1819 publication of *The Army Medical Officer's Manual upon Active Service*.¹⁷ This manual was intended to serve as instructions for surgeons in future conflicts, foreseeing a time when future generations would require the guidance of those, long gone, who had learned from the war in the Iberian Peninsula.¹⁸ Yet when the forty years following were marked only by peace, these lessons were forgotten before the onset of the subsequent Crimean War.¹⁹

The second appearance of conflict humanitarianism came in 1859, when Swiss businessman Henri Dunant witnessed the neglect of wounded soldiers by both the Austrian and Italian sides of the Battle of Solferino, during the Second Italian War of Independence.²⁰ Dunant derived from this shock the motivation to create the International Committee of the Red Cross, or ICRC, which soon became an international organization composed of many national chapters, focused on the care of ill and injured soldiers.²¹ The ICRC

13. M. Budislav Vukas, *Sixteenth Commission. Humanitarian Assistance*, 42 *ARCHIV DES VÖLKERRECHTS* 347, 348 (2004).

14. Heather Rysaback-Smith, *History and Principles of Humanitarian Action*, 15 *TURKISH J. EMERGENCY MED.* 5, 5 (2015).

15. Anne Hardy, John Manton, Erin Lafferty & Karl Blanchet, *The Evolution of Humanitarianism Throughout Historical Conflict*, LONDON SCH. HYGIENE & TROPICAL MED. (Oct. 31, 2016), <https://www.lshtm.ac.uk/research/centres/centre-history-public-health/news/2017-2>.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

is considered one of the first international humanitarian aid organizations.²² Dunant also went on to play a role in the achievement of the first Geneva Convention in 1864, establishing protections for prisoners, wounded or sick soldiers, and civilians in conflict zones.²³

World War I prompted further development of humanitarianism in conflict. The style and scope of the combat, involving more countries than ever before, made it apparent that there was a need for neutral countries to administer humanitarian aid. The Danish State Serum Institute leapt into action with large quantities of vaccines and protective sera for the armies on both sides, and the Institute's director Thorvald Madsen partnered with the Russian Red Cross to ameliorate poor conditions in Russian prisoner of war camps.²⁴ After the war, the Treaty of Versailles established the League of Nations, precursor to the United Nations, the first permanent international organization whose mandate was to protect vulnerable populations and facilitate peace.²⁵

World War II found the world once again plunged into international armed conflict, and the same prior needs for humanitarian assistance grew alongside warfare technologies' potential for destruction. Following the end of the war, the number of humanitarian NGOs exploded, hand in hand with the establishment of the United Nations ("UN").²⁶ The United Nations' Universal Declaration of Human Rights was ratified in 1945, which for the first time established worldwide precedent for international intervention in conflict; in addition, UN organizations such as the UNICEF, WHO, and UNHCR were established to further those aims.²⁷

Events of the Nigerian Civil War, fought from 1967 to 1970, facilitated another step toward the type of humanitarian assistance we are familiar with today.²⁸ The war's impact on civilians, including a critical famine, resulted in a humanitarian emergency. From this situation emerged "a [combined effort by Irish Catholic

22. Rysaback-Smith, *supra* note 14, at 6.

23. Hardy et al., *supra* note 15.

24. *Id.*

25. Rysaback-Smith, *supra* note 14, at 6.

26. *Id.*

27. *Id.*

28. Hardy et al., *supra* note 15.

missionaries, . . . medical workers, . . . and the [local] regime [resulted in the influx of] unprecedented donations from publics across Europe and North America."²⁹ These donations, multiplied in efficacy by underlying pre-existing missionary administrative networks and new technologies making capturing and broadcasting film easier than ever, enabled a relief program which included an aid airlift and mass food distribution for people under siege in the Biafran territory.³⁰ The relief efforts enjoyed prominence in the media, leading to a new "galvani[zation] . . . of public and humanitarian opinion" in their favor.³¹

As new networks and methods took shape across this timeline of events, our contemporary humanitarian landscape was gradually transformed, including changes to general grammar and organizational principles.³² Furthermore, as noted by Anne Hardy and her colleagues in their research, each new crisis and conflict has helped promote components of the international humanitarian system. In the 1980s, humanitarian organizations wanting to support Khmer refugees from the Pol Pot regime began developing "guidelines and medium term strategies" to that end; the aftermath of the Rwandan genocide of 1994 taught the humanitarian world of "the link between politics and humanitarian response[,]" as well as "the importance of accountability and evaluation"; and in the 1990s, the Yugoslavia war pointed out the weakness of humanitarian organizations absent "strong political decisions."³³ In the modern age, the humanitarian environment is becoming increasingly complicated for aid workers due to political controversy and the sheer number of humanitarian assistance organizations.³⁴

Conflict-related humanitarian assistance has changed drastically in the past two hundred years. Whereas it was once run by governments and focused exclusively on the health and stability of armies, today it is nongovernmental, charity-oriented, and prioritizes protecting and caring for citizens affected by conflict. As each new conflict has resulted in new developments (as well as

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. Rysaback-Smith, *supra* note 14, at 7.

academic, political, and general perspective shifts) related to humanitarian assistance, one cannot help wondering what the international humanitarian aid community will learn from the Russia-Ukraine conflict.

B. Civilians and Their Rights to Aid

Mass needs and efforts beg structure. As humanitarian assistance operations have emerged, grown, and changed across eras, so has the law surrounding these efforts. Now, civilians and humanitarian workers benefit from law that focuses specifically on humanitarian assistance: civilians of States affected by armed conflict are entitled to humanitarian assistance, and that entitlement is, according to the ICRC, protected by international humanitarian law.³⁵

Who is a civilian? Under international law, civilians include those who, in an international armed conflict, are not part of any of the armed forces involved in the conflict.³⁶ Attacks that directly target civilians or civilian objects (their direct environment or property) are forbidden, and civilians are meant to enjoy protection from general dangers of warfare unless they decide to participate in hostilities.³⁷ They may be proportionally and incidentally affected by attacks on valid, lawful subjects, but the attacker is expected to take all feasible precautionary measures to prevent civilian harm.³⁸ In addition, civilians must be treated humanely.³⁹

Following the destruction of World War II, including a long list of atrocities committed against civilians, the international community crafted the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War to better protect civilians in conflicts to come.⁴⁰ Prior to World War II, conventions existed which, to a lesser extent, safeguarded civilians and humanitarian

35. MARCO SASSÒLI ET AL., *supra* note 12, at 46.

36. Int'l Comm. of the Red Cross, *Rule 5. Definition of Civilians*, IHL DATABASE, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule5#Fn_4C716F6B_00001 (last visited Oct. 18, 2023).

37. MARCO SASSÒLI ET AL., *supra* note 12, at 7.

38. *Id.* at 9.

39. *Civilians protected under international humanitarian law*, INT'L COMM. OF THE RED CROSS (Oct. 29, 2010), <https://www.icrc.org/en/doc/war-and-law/protected-persons/civilians/overview-civilians-protected.htm>.

40. *Id.*

aid organizations in war.⁴¹ For example, the 1864 Geneva Convention gave the Red Cross a formal mandate to disseminate neutral, impartial aid to both civilian and military victims of conflict, strengthening principles of neutrality.⁴² Overall, though, the earlier Geneva Conventions did little more than protect the wounded, sick, shipwrecked, and captured combatants of war.⁴³ It was only after the second World War that actors recognized, in an age of technological advances and changes, the heightened potential for destruction faced by civilians in zones of conflict.⁴⁴

Now, customary international humanitarian law protects civilians' access to humanitarian assistance; entry, passage, and distribution of humanitarian aid must be allowed by States party to a conflict.⁴⁵ The ICRC states that "parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control."⁴⁶ The Fourth Geneva Convention, adopted in 1949, includes the requirement that "[e]ach High Contracting Party shall allow the free passage of all consignments of medical and hospital stores . . . intended only for civilians of another High Contracting Party, even if the latter is its adversary."⁴⁷ The Commission likewise sets forth the permission for "free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases."⁴⁸ This free passage "must be as rapid as possible in the circumstances."⁴⁹

According to the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), "The requirement that passage

41. *Id.*

42. Rysaback-Smith, *supra* note 14, at 6.

43. INT'L COMM. OF THE RED CROSS, *supra* note 39.

44. *Id.*

45. Int'l Comm. of the Red Cross, *Rule 55. Access for Humanitarian Relief to Civilians in Need*, IHL DATABASE, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule55 (last visited Oct. 14, 2023).

46. *Id.*

47. Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 23, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter Fourth Geneva Convention].

48. *Id.*

49. Dapo Akande & Emanuela-Chiara Gillard, *Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict*, U.N. OFF. FOR THE COORDINATION OF HUMANITARIAN AFFS. 1, 27 (Oct. 27, 2016), <https://www.unocha.org/sites/unocha/files/dms/Documents/Oxford%20Guidance%20pdf.pdf>.

be unimpeded means that parties to an armed conflict must refrain from harassment and should reduce administrative procedures and other formalities as far as possible, dispensing with any that are superfluous.”⁵⁰ Parties to the conflict should pass on instructions to all persons acting on their behalf “to ensure that different, additional or more onerous requirements are not imposed at local level.”⁵¹ Moreover, according to the Fourth Geneva Convention, “the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal” and “[a]ll Contracting Parties . . . shall guarantee their protection.”⁵² The Occupying Power is prohibited from diverting in any way these relief consignments “from the purpose for which they are intended, except in cases of urgent necessity, in the interests of the population of the occupied territory and with the consent of the Protecting Power.”⁵³

The Additional Protocol I to the 1949 Geneva Convention, adopted in 1977, specifies that, when essential needs of civilians are not met, “relief actions which are humanitarian and impartial in character and conducted without any adverse distinction shall be undertaken Offers of such relief shall not be regarded as interference in the armed conflict or as unfriendly acts.”⁵⁴ The parties to the conflict are instructed to allow, facilitate, encourage, and protect relief efforts, including relief items and workers, in these situations.⁵⁵ Personnel engaged in humanitarian assistance should be “respected and protected”⁵⁶; States “may not direct attacks or commit other forms of violence against them or take them hostage.”⁵⁷ The protection laid out for civilians now also pertains to humanitarians assisting them, including medical units and relief bodies providing food, clothing, medical supplies, and other essentials.⁵⁸ Relief personnel’s movements and activities may be

50. *Id.*

51. *Id.*

52. Fourth Geneva Convention, *supra* note 47, at art. 59.

53. *Id.* at art. 60.

54. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 70, June 8, 1977, 1125 U.N.T.S. 3 [hereinafter Protocol I].

55. *Id.*

56. *Id.* at art. 71.

57. Akande & Gillard, *supra* note 49, at 32.

58. INT’L COMM. OF THE RED CROSS, *supra* note 39.

limited or restricted “[o]nly in case of imperative military necessity . . .”⁵⁹ Warring parties are now required to allow those organizations access to the populations they need to assist.⁶⁰

The Additional Protocol I also protects civilian objects necessary for survival.⁶¹ Starving civilians is prohibited, along with harming civilian objects “indispensable” to their survival, including “foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations[,] and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party,” no matter the motive.⁶² Though not specifically related to humanitarian access, this provision no doubt interacts with necessary elements of humanitarian aid.

As mandated by the 1991 United Nations General Assembly resolution 46/182 (“Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations”), humanitarian access “refers to a two-pronged concept” consisting of “[h]umanitarian actors’ ability to reach populations in need” and “[a]ffected populations’ access to assistance and services.”⁶³ According to the UNOCHA, “Access is . . . a fundamental prerequisite to effective humanitarian action. Full and unimpeded access is essential to establish operations, move goods and personnel where they are needed, implement distributions, provide health services and carry out other activities, and for affected populations to fully benefit from the assistance and services made available.”⁶⁴ The resolution contributed greatly to today’s system of international humanitarian aid, commemorating an international commitment to providing life-saving aid to vulnerable populations.⁶⁵

59. Protocol I, *supra* note 54, at art. 71.

60. INT’L COMM. OF THE RED CROSS, *supra* note 39.

61. Protocol I, *supra* note 54, at art. 54.

62. *Id.*

63. *Humanitarian Access*, RELIEFWEB, <https://reliefweb.int/topic/humanitarian-access> (last visited Oct. 14, 2023).

64. *Humanitarian Access*, U.N. OFF. FOR THE COORDINATION OF HUMANITARIAN AFFS., https://www.unocha.org/sites/unocha/files/dms/Documents/OOM_HumAccess_English.pdf.

65. Peter Thomson, 2016 *Global Humanitarian Policy Forum: “Meeting Need and Reducing Suffering: Humanitarian Action from GA Resolution 46/182 to the Present”*, U.N. GAOR, (Dec. 12, 2016), <https://www.un.org/pga/71/2016/12/12/2016-global-humanitarian-policy->

Though not binding law, the resolution established or otherwise reaffirmed guiding principles of humanitarian assistance.⁶⁶ Humanitarian assistance is “of cardinal importance[,]” and must be provided with “humanity, neutrality[,] and impartiality.”⁶⁷ Assistance should be conditional on the consent of the affected State (though States cannot arbitrarily withhold consent without a valid reason⁶⁸) and commensurate with the principle that States have the primary responsibility for caring for their own people.⁶⁹ However, international cooperation should address needs that extend beyond the capacities of affected States, in accordance with international and national law.⁷⁰ States with populations in need of humanitarian aid and States in proximity to such emergencies should all participate and advance international efforts to implement humanitarian assistance, including by facilitating the “transit of humanitarian assistance.”⁷¹ The resolution also laid out protocol for both prevention of and preparation for future humanitarian aid needs, as well as structure within the United Nations for greater support of humanitarian operations.⁷²

Beyond written instruments specific to humanitarian assistance and access, the principle of inviolability at the base of both humanitarian law and human rights law, along with human rights law assumptions such as the rights outlined in the Universal Declaration of Human Rights (UDHR), can supply derivation to a right of humanitarian assistance.⁷³ Civilians have the right to respect for their lives, physical safety, and other essential aspects of their wellbeing.⁷⁴ Based on these basic international law tenets concerning civilians, it logically follows that obstruction of humanitarian assistance is legally impermissible. At the very least,

forum-meeting-needs-and-reducing-suffering-humanitarian-action-from-ga-resolution-46182-to-the-present.

66. G.A. Res. 46/182, annex (Dec. 19, 1991).

67. *Id.* ¶¶ 1–2.

68. Akande & Gillard, *supra* note 49, at 21.

69. G.A. Res. 46/182, *supra* note 66, ¶¶ 3–5.

70. *Id.* ¶ 5.

71. *Id.* ¶ 7.

72. *Id.* ¶¶ 13–30.

73. JEAN PICTET, DÉVELOPPEMENT ET PRINCIPES DU DROIT INTERNATIONAL HUMANITAIRE 78 (Pedone ed., 1983).

74. *Id.*

implicitly, parties to an international armed conflict have a duty to allow humanitarian assistance to proceed.

Both Russia and Ukraine are party to the Fourth Geneva Convention and to the Additional Protocol I, and the situation between the two countries has officially been categorized as an international armed conflict.⁷⁵ Thus, and especially combined with pieces of customary human rights law and general *jus cogens* principles like the prohibition of hostilities directed toward civilians,⁷⁶ both States have a duty to provide humanitarian aid to even their adversary's civilian population under their control, or, if the State is unable to provide aid themselves, a duty to accept the required aid from third parties when offered.⁷⁷ Law exists that solves the problem of humanitarian aid access, but it is not being followed. Perhaps the law as it exists today is also not enough to provide the necessary support to ensure access to humanitarian aid.

II. URBAN WARFARE AND HUMANITARIAN ACCESS

A. History of Urban Warfare

As lines between military, political, and humanitarian operations have gradually blurred,⁷⁸ so have lines separating warfare from civilian life. Quickly evolving technology has not only softened the divides between work and home, but also blurred the lines between peace and conflict. Cyberwarfare is now possible across oceans via the internet, able to reach from the living room of one nation to that of another. In the same pervasive way, war wielding firearms and explosives does not halt at the borders of an adversary's cities.

According to United Nations Secretary-General António Guterres, when explosive weaponry is employed in cities, civilians account for ninety percent of those affected.⁷⁹ From terrorist attacks

75. *Inquiry on Ukraine*, *supra* note 4, ¶ 17.

76. Int'l Law Comm'n, Rep. on the Work of Its Seventy-First Session, U.N. DOC. A/74/10, at 205-06 (2019).

77. Ruth Abril Stoffels, *Legal Regulation of Humanitarian Assistance in Armed Conflict: Achievements and Gaps*, 86 INT'L REV. RED CROSS 515, 518-19 (2004).

78. Felix Schwendimann, *The Legal Framework of Humanitarian Access in Armed Conflict*, 93 INT'L REV. RED CROSS 993, 994 (2011).

79. *Urban Warfare Devastates 50 Million People Worldwide, Speakers Tell Security Council, Calling for Effective Tools to End Impunity, Improve Humanitarian Response*, U.N. MEETINGS COVERAGE & PRESS RELEASES (Jan. 25, 2022) [hereinafter *Meetings Coverage of the S.C.*]. <https://press.un.org/en/2022/sc14775.doc.htm>

to military operations in the Middle East and now Ukraine, urban warfare is employed more casually than ever. How did this devastating direction of attack become custom?

The earliest instances of urban warfare included, primarily, sieges.⁸⁰ A form of urban fighting that traces back to antiquity, siege warfare remained prominent through the Middle Ages and involved fighting that focused on a city's fortifications.⁸¹ Following a breach by its attackers, a city would capitulate or face brutal sacking.⁸² With the innovation of gunpowder weapons, however, siege warfare became a thing of the past.⁸³

For subsequent centuries, armies refrained from fighting in urban areas.⁸⁴ Urban warfare would not resurface until World War II, and even then, much of the urban fighting was supplemental to rural countryside-based campaigns.⁸⁵ As John W. Spencer, chair of urban warfare studies with the Modern War Institute at West Point and codirector of its Urban Warfare Project, stated, "Not only do few modern militaries have experience fighting in cities, urban fighting is not part of their corporate memories With surprisingly few exceptions, urban warfare is a modern phenomenon."⁸⁶

Could this be part of why urban warfare at this point in history is such an unwieldy, recklessly destructive tool of competing nations? Is it because we have had such little time thus far – merely eighty years up to this point – to grasp the ins and outs of managing such a fragile approach?

B. Obstacles to Humanitarian Access in Urban War

Experts agree that urban warfare is devastating. In a 2017 report, the ICRC found that "five times more civilians die" when offensives are carried out in cities as compared to other battles.⁸⁷

80. John Spencer, *The City is Not Neutral: Why Urban Warfare Is So Hard*, MOD. WAR INST. W. POINT (Mar. 4, 2020), <https://mwi.usma.edu/city-not-neutral-urban-warfare-hard>.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Iraq, Syria and Yemen: Five times More Civilians Die in City Offensives, New Report Finds*, INT'L COMM. OF THE RED CROSS (June 14, 2017), <https://www.icrc.org/en/document/iraq-syria-and-yemen-five-times-more-civilians-die-city-offensives-new-report-finds>.

“Over the past three years, our research shows that wars in cities accounted for a shocking [seventy percent] of all civilian deaths in Iraq and Syria,” Robert Mardini, the ICRC’s Regional Director for the Middle East, said.⁸⁸ “This illustrates just how deadly these battles have become A new scale of urban suffering is emerging, where no one and nothing is spared by the violence.”⁸⁹

When civilians are targeted, their means of survival are often destroyed.⁹⁰ In Ukraine, intense urban fighting and its destructive consequences have resulted in a dire lack of essential resources in civilian-populated areas.⁹¹ Humanitarian assistance is clearly even more urgently needed when actors war in population-dense areas. However, even as urban warfare makes aid more imperative, it also makes access to humanitarian aid more difficult than ever, introducing unique obstacles to aid workers’ access to those impacted. Multiple elements constrain humanitarian access, according to the UNOCHA, including “[b]ureaucratic measures that delay, stall, or interfere with humanitarian operations[,]” “[m]isinformation and disinformation discrediting humanitarian actors[,]” “[s]anctions and counter-terrorism measures that impede payments of fees, purchases of commodities or supplies of goods[,]” “[i]ntensity of hostilities and explosive ordnance that impede humanitarians’ movement[,]” and “[a]ttacks on humanitarian personnel and facilities, and theft of assets.”⁹² Though many violations of the law of war do not directly constitute violations of States’ obligations to provide humanitarian assistance, these war crimes can have widespread, incidental consequences for civilians’ ability to receive the aid they need and to which they are entitled.

The ICRC has identified six specific challenges to its mandate to provide humanitarian aid: (1) a “spiral of violence[,]” (2) “[c]hallenge[s] of [n]eutral and [i]ndependent [h]umanitarian [a]ction[,]” (3) the “diversity [and number] of humanitarian agencies today[,]” (4) the added access issues of natural disasters, (5) the “[p]oliticization of [h]umanitarian [a]id[,]” and (6) the

88. *Id.*

89. *Id.*

90. Int’l Comm. of the Red Cross, *supra* note 39.

91. *Inquiry on Ukraine*, *supra* note 4, at 7–8, ¶ 33.

92. *Humanitarian Access*, U.N. OFF. FOR THE COORDINATION OF HUMANITARIAN AFFS., <https://www.unocha.org/humanitarian-access>.

“[c]hanging [environment] of [a]rmed [c]onflicts[.]”⁹³ The “spiral of violence” describes the “increase in the rate and development of violence . . . spiraling from one place to another.”⁹⁴ Civilians bear the consequences of this uptick in conflict, thus leading to a greater demand for aid.⁹⁵

In urban warfare, complications make it more difficult for humanitarian aid organizations to access civilians in need. Urban conflicts are more complex in that they often include many fragmented groups fighting each other. Moreover, additional crises, such as food insecurity, overlap with the armed conflict.⁹⁶ It can be difficult to locate those in need of assistance when civilians, and especially those internally displaced, are spread and hidden throughout “the mass of the city” under attack, though that is not always the case.⁹⁷ In a concentrated environment and with the number of humanitarian organizations increasing in the world, there also suddenly arises the need for coordination between enthusiastic helpers.⁹⁸

Lines in conflict have become far less distinct in modern times, including those separating military, political, and humanitarian operations. Humanitarian efforts can be mistaken for movements in a political agenda, putting the operation at risk and even resulting in opposing States blocking civilians’ access to their services.⁹⁹ Occupying forces want to maintain control over the area and population,¹⁰⁰ but military techniques such as blockades or sieges prevent provisions from reaching civilians unless an exemption for humanitarian items is established.¹⁰¹ Sometimes, this separation of civilians and supplies is intentional. In some previous conflicts, the controlling military has refused entrance of convoys

93. O.A. Olaseeni & Kayode Mimiko, *ICRC’s Responses to the Challenges of Humanitarian Assistance During Armed Conflicts*, 54 J.L. POL’Y & GLOBALIZATION 92, 96–98 (2016).

94. *Id.* at 96.

95. *Id.* at 97.

96. Schwendimann, *supra* note 78, at 994.

97. Dominique Loye, *Urban Warfare and the Humanitarian Concerns of the International Committee of the Red Cross*, 58 MIL. L. & L. WAR REV. 136, 138 (2020).

98. Schwendimann, *supra* note 78, at 994.

99. *Id.*

100. Loye, *supra* note 97, at 138.

101. Stoffels, *supra* note 77, at 523.

of food and medicine, such as occurred in Darayya, Syria.¹⁰² Hostilities against humanitarian workers specifically can escalate, as well. When considered a threat connected to some political agenda, humanitarian workers themselves can become “object[s] of attack[,]” and even if not directly targeted, the dangers inherent in urban warfare put humanitarian workers at serious risk of injury and death.¹⁰³

Urban warfare can provide some advantages to humanitarian aid. Though fragile, urban environments are flexible and adaptable,¹⁰⁴ in part because foundational infrastructure is already in place to provide shelter and serve as central aid distribution points and because the density of civilians is much higher in these areas. However, these potential logistical advantages do not accomplish enough to render urban destruction an unfortunate side effect of an overall good thing. As Peter Maurer, president of the International Committee of the Red Cross, said in the 2021 Moscow International Security Conference, “Whole systems and communities are weakened when fighting occurs in densely populated areas and suffer from the cumulative impacts of unrestricted warfare, violence, poverty, pandemics, sanctions and bad governance.”¹⁰⁵

III. IMPLICATIONS FOR UKRAINE

Despite worries that Russia’s forces would easily overtake Ukrainian defenses, the Russian invasion of Ukraine met fierce opposition and has now stretched into a second year of conflict. Though Ukraine has been celebrated, especially in the media, for its bravery and spirit in response to such odds, the damage to the country has been extreme.

The Russian Federation has inflicted large-scale and widespread destruction, including indiscriminate military strikes

102. Tom Gal, *Territorial Control by Armed Groups and the Regulation of Access to Humanitarian Assistance*, 50 *ISR. L. REV.* 25, 26 (2017).

103. Schwendimann, *supra* note 78, at 994.

104. *Tackling Humanitarian Crises in Cities: Intervention & Assistance*, HABITAT FOR HUMAN. GR. BRIT., <https://www.habitatforhumanity.org.uk/blog/2016/12/tackling-humanitarian-crisis-cities> (last visited Oct. 18, 2023).

105. Peter Maurer, *The Challenges for Humanitarian Action in Today’s Conflicts: The Perspective from the International Committee of the Red Cross*, *INT’L COMM. OF THE RED CROSS* (Jun. 23, 2021), <https://www.icrc.org/en/document/challenges-humanitarian-action-todays-conflicts-perspective-international-committee-red>.

with explosive weapons (even in locations far from the frontlines), attacks on cities, and attacks on civilians attempting to flee.¹⁰⁶ In northeastern Ukraine, the conflict centers on urban areas, including the cities of Kharkiv and Sumy, where civilians are bombarded by “heavy urban warfare.”¹⁰⁷ With the consequences of urban war, reports have also shed light, unsurprisingly, on humanitarian access issues, and additional obstacles to civilian aid are likely to continue to arise as the conflict stretches further.

A. The War in Ukraine

Following 5 trips to Ukraine, covering 27 locations and conducting 191 interviews, the Independent International Commission of Inquiry on Ukraine reported findings of human rights violations in Ukraine.¹⁰⁸ Many of the violations reported overlap with Russia’s choice to pursue urban warfare: namely, violations of large-scale and indiscriminate destruction using explosives in populated areas. As the Commission stated, “The destruction of infrastructure, which includes the destruction not only of physical objects, but also of what families have built or invested to ensure their comfort and safety in the future, has been immense.”¹⁰⁹ Many of these human rights violations have not been inflicted with the express purpose to prevent humanitarian aid access from reaching Ukrainian civilians, but they have nevertheless had unintended negative impacts on humanitarian aid access.

Urban attacks on Ukraine have been relentless, blocking humanitarian routes and wrecking infrastructure. The Commission reported “significant civilian casualties and large-scale destruction of residential buildings and critical infrastructure” across the country.¹¹⁰ For example, Russian troops, in their advance on the city of Kyiv, surrounded the city of Cherniv and “subjected the city to heavy airstrikes and artillery fire, which severed it from essential supply and evacuation routes.”¹¹¹ As Russian forces withdrew from

106. *Inquiry on Ukraine*, *supra* note 4, at 2.

107. *Id.* ¶ 29.

108. *Id.* ¶¶ 11–12.

109. *Id.* ¶ 110.

110. *Id.* ¶ 26.

111. *Id.* ¶ 27.

some areas, “dozens of dead people and large-scale destruction were uncovered[,]” news which prompted the General Assembly to call for Russia’s suspension from the Human Rights Council.¹¹² In the northeastern cities of Kharkiv and Sumy, “[s]helling pounded residential and other key buildings and led to large-scale destruction.”¹¹³ Even when Russian armed forces withdrew from that area, artillery strikes in the area continued.¹¹⁴ In southern Ukraine, the city of Mariupol “suffered from constant shelling, which led to large-scale destruction.”¹¹⁵

Thousands of civilians have been killed as a result of these urban attacks, in combination with indiscriminate and inhumane violence and torture against civilians. The Russian military has employed explosives, including cluster munitions and unguided bombs.¹¹⁶ Moreover, Russian troops “appear to have deliberately positioned their troops or equipment in residential areas or near civilians to reduce the likelihood of attacks.”¹¹⁷ Further, the Commission reported that “Russian armed forces also forced civilians to remain inside or in proximity of their positions, exposing them to significant risk.”¹¹⁸ In one case, “soldiers confined 365 civilians in the basement of a school, while they established their headquarters on the ground floor of the same building.”¹¹⁹

The Commission, in uncovering human rights violations and the consequences of the Russo-Ukrainian fighting in urban landscapes, has also pinpointed many current humanitarian access problems in Ukraine. Their report stated, “In most of the affected areas within Ukraine, essential supplies are lacking, and there are access challenges for humanitarian assistance.”¹²⁰ In Mariupol, “heavy fighting hampered repeated efforts to evacuate civilians and curtailed the access of inhabitants to basic necessities.”¹²¹ In

112. *Id.* ¶ 28.

113. *Id.* ¶ 29.

114. *Id.*

115. *Id.* ¶ 30.

116. *Growing Civilian Toll from Russian Cluster Munition Attacks*, HUM. RTS. WATCH (Aug. 25, 2022), <https://www.hrw.org/news/2022/08/25/growing-civilian-toll-russian-cluster-munition-attacks>.

117. *Inquiry on Ukraine*, *supra* note 4, ¶ 52.

118. *Id.*

119. *Id.* ¶ 54.

120. *Id.* ¶ 33.

121. *Id.* ¶ 30.

Chernihiv, "heavy airstrikes and artillery fire . . . [have] severed it from essential supply and evacuation routes."¹²² Classic, foreseeable consequences of urban warfare are reducing civilians' access to previously available necessities in their area while also inhibiting civilians' access to humanitarian assistance. However, in this case, access issues are not attributable solely to incidental effects of urban warfare, but also to intentional prevention by Russian forces.

Lack of safe, accessible locations to obtain essential resources is a humanitarian access problem. In Ukraine, civilians have been unintended victims of explosives while queuing for necessities such as bread and water.¹²³ One such example occurred as victims were queuing for water at a hospital in Chernihiv in March 2022. An attack that included cluster munitions killed and injured civilians, including children, when the munitions struck the hospital.¹²⁴ Another such instance also occurred in Chernihiv in March 2022 when munitions, including "unguided rockets," hit near a supermarket where "more than 200 civilians were queuing for bread." The munitions "killed at least 14 civilians and injured 26."¹²⁵

Ukrainian forces have also contributed to these grave problems by failing to distance themselves from civilian-populated areas. For example,

In the city of Chernihiv, residents stated that although schools 18 and 21 were used to distribute humanitarian aid to the civilian population and school staff had written 'children' on the walls of one of the school buildings, Territorial Defence [sic] Forces of the Ukrainian armed forces had set up headquarters in school 18 and their members were also present at school 21. Both military personnel and civilians were among those killed and injured when an airstrike hit both schools and nearby houses on 3 March 2022.¹²⁶

Humanitarian assistance organizations must be officially sanctioned, allowed access to civilians, and guaranteed safe

122. *Id.* ¶ 27.

123. *Id.* at 10, ¶¶ 48-49.

124. *Id.* ¶ 48.

125. *Id.* ¶ 49.

126. *Id.* at 11, ¶ 55.

locations for distribution of aid and shelter for civilians; otherwise, makeshift shelters such as the schools that were damaged in Chernihiv will continue to materialize and be disregarded and destroyed, at great risk to civilian populations.

The Commission also discovered numerous examples of Russian armed forces shooting at civilians who were attempting to flee to safety or obtain food or other essential resources.¹²⁷ In these cases, the victims were dressed as civilians, drove civilian vehicles, and were unarmed, and most cases occurred during daylight hours, meaning it was (or should have been) clear to the attackers that their targets were civilians.¹²⁸ According to the Commission's report, "[u]nder international humanitarian law, in case of doubt, a person shall be considered to be a civilian."¹²⁹ While intentionally targeting a civilian is a war crime,¹³⁰ intentionally attacking civilians who are evacuating or trying to access essential resources could be considered an act contrary to the State's duty to ensure humanitarian aid access.

At the beginning of the conflict, in February and March of 2022, Russian forces detained and confined great amounts of civilians, violating those individuals' rights, including volunteers assisting with evacuation of civilians.¹³¹ In many cases of torture or mistreatment, as well, evacuation volunteers were targeted.¹³² This show of power and attempt to remain in control of the population—and, in doing so, maintain control of the greater area—unlawfully interferes with the rights of humanitarian workers. Confinement also prevents injured civilians from receiving essential medical help for lack of ability to reach hospitals. Many civilians, especially the elderly, who remained in their homes rather than trying to evacuate, may not be individually confined by military personnel, but they too are trapped dangerously close to the frontlines without adequate access to food, water, heating, and physical and mental health resources.¹³³

127. *Id.* ¶ 56.

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.* ¶ 75.

132. *Id.* ¶ 81.

133. *Id.* ¶ 34.

A Kyiv-based journalist specializing in humanitarian issues reported that Red Cross volunteers in Ukraine have been specifically targeted by Russian forces.¹³⁴ In one case, following the withdrawal of Russian forces from the town of Bucha, a Ukrainian Red Cross volunteer helping with civilian evacuation from Russian-occupied areas was found dead in a mass grave with his hands tied.¹³⁵ “The body was identified by his Red Cross accreditation.”¹³⁶ Another Ukrainian Red Cross volunteer shared his experience being captured by Russian forces while trying to evacuate a group of civilians.¹³⁷ He attempted to convince the Russian forces to allow him past their checkpoint, but they detained him and forcibly deported him to Russia along with Ukrainian civilians.¹³⁸

It is important to note that the negative actions and impacts of Russian forces, and Ukrainian forces, are not a universal trend. Some interview subjects also attested to Russian servicemen helping civilians escape captivity, intervening in situations of sexual violence, and providing medical help to people injured in attacks.¹³⁹

B. State Obligations in Ukraine’s Humanitarian Situation

At the end of June 2022, the ICRC published a news release about the deteriorating humanitarian situation in Ukraine.¹⁴⁰ Because of the violence in densely populated areas, the humanitarian crisis was worsening; the report specifically mentioned medicine shortages, lack of access to lifesaving services, destruction of schools and hospitals, and damage to bridges and other essential infrastructure.¹⁴¹ Humanitarian access suffered in that, especially in and around Severodonetsk, intensity of the

134. Lily Hyde, *Evacuation Challenges and Bad Optics: Why Ukrainians Are Losing Faith in the ICRC*, THE NEW HUMANITARIAN (May 3, 2022), <https://www.thenewhumanitarian.org/news-feature/2022/05/03/the-icrc-and-the-pitfalls-of-neutrality-in-ukraine>.

135. *Id.*

136. *Id.*

137. Yogita Limaye, *War in Ukraine: Ukrainians Deported to Russia Beaten and Mistreated*, BBC (Apr. 28, 2022), <https://www.bbc.com/news/world-europe-61248436>.

138. *Id.*

139. *Inquiry on Ukraine*, *supra* note 4, ¶ 64.

140. *Ukraine: Humanitarian Situation Deteriorates as Major Cities Bear the Brunt of Heavy Fighting*, INT’L COMM. OF THE RED CROSS (June 22, 2022), <https://www.icrc.org/en/document/ukraine-humanitarian-situation-deteriorates-major-cities-bear-brunt-heavy-fighting?amp>.

141. *Id.*

fighting prevented (or otherwise made very difficult) “[d]eliveries of food, water, and medical supplies[,]” and, though “[e]vacuations of civilians were proposed[, they had not yet] tak[en] place due to an absence of agreement between the parties.”¹⁴²

In the news release, Pascal Hundt, the ICRC head of delegation in Ukraine, reminded the world of States’ responsibilities:

Parties to the armed conflict have the obligation to take all necessary precautions to spare civilians and essential infrastructure. They should also find agreements to ensure safe passage for civilians to move to safer locations of their choice and to facilitate the delivery of much needed impartial humanitarian aid. The ICRC stands ready as neutral intermediary [sic] to facilitate such agreements.¹⁴³

He urged actors to protect hospitals, schools, water, and electrical facilities, as “[a]ttacks on such facilities only lead to more human suffering.”¹⁴⁴

It is clear that Ukrainian civilians are suffering from impeded passage of humanitarian aid, directly in violation of the Fourth Geneva Convention,¹⁴⁵ along with a host of additional deterrents to humanitarian aid access caused incidentally by the urban warfare raging around them. Despite the lack of official government statements on the issue of State obligations concerning humanitarian aid,¹⁴⁶ the Geneva Conventions and Additional Protocols, as well as the Conventions on Human Rights, are legally binding instruments,¹⁴⁷ and States’ failures to observe their commitments found therein pose a serious threat to both human lives and the efficacy of international law. The Additional Protocol I requires States unable to provide aid themselves to allow third parties to do so; the warring parties must allow humanitarian aid organizations, which, like the ICRC, have offered their services and are doing their best to implement them in

142. *Id.*

143. *Id.*

144. *Id.*

145. Fourth Geneva Convention, *supra* note 47, art. 23.

146. Though many NGOs have made statements on this issue, as outlined in this paper, this author could find no official government statements directly discussing countries’ obligations concerning humanitarian aid access.

147. Dietrich Schindler, *The Right to Humanitarian Assistance: Right and/or Obligation?*, UNESCO DIGIT. LIBR. 1 (Jan. 13, 1995), <https://unesdoc.unesco.org/ark:/48223/ptf0000112480>.

conflict zones,¹⁴⁸ to access the population and accomplish their work.¹⁴⁹ This obligation has not been fully realized as of yet in Ukraine.¹⁵⁰ Civilian objects, too, are certainly not being protected as mandated, deepening the resource deficit.¹⁵¹ Additionally, attacks on humanitarian workers violate protections in the Additional Protocol I mandating respect and protection for humanitarian personnel.¹⁵² Many of these attacks and inhibitions faced by humanitarian workers may not be intentionally meant to foil the progress of relief efforts, but States cannot truly uphold their legal obligations to respect, protect, and facilitate humanitarian aid operations if they continue with actions that result in civilians' diminished ability to receive humanitarian aid.

On October 10, twenty-nine humanitarian aid agencies called for the upholding of international humanitarian and human rights law and the protection of civilians and civilian objects.¹⁵³ The statement included further information about challenges facing humanitarian aid agencies—specifically, that the “pattern of escalation across [Ukraine], [has] forced several aid agencies to suspend operations over safety concerns for their staff and populations in need of support, until it is safe to resume.”¹⁵⁴ As the conflict in Ukraine rages on, the humanitarian access situation is likely only to worsen, unless intentional steps are taken to lessen the destruction and encourage respect for civilians and their rights under international law.

III. SOLUTIONS

Feliz Schwendimann, former Diplomatic Officer in the Swiss Federal Department of Foreign Affairs Section for International Humanitarian Law, suggested the reason States block access to humanitarian aid is that they do not adequately understand the

148. Limaye, *supra* note 137.

149. Protocol I, *supra* note 54, at art. 70.

150. Limaye, *supra* note 137.

151. Protocol I, *supra* note 54, at art. 54.

152. *Id.* at art. 71.

153. *Aid Agencies Call for Upholding International Humanitarian Law, Protection of Civilians and Civilian Objects in Ukraine*, RELIEFWEB (Oct. 10, 2022), <https://reliefweb.int/report/ukraine/aid-agencies-call-upholding-international-humanitarian-law-protection-civilians-and-civilian-objects-ukraine-enuk>.

154. *Id.*

legal framework outlined to protect humanitarian assistance.¹⁵⁵ However, if “denial of humanitarian assistance . . . may . . . constitute the war crime of starvation” and may also be considered a crime against humanity, as he explains,¹⁵⁶ one could easily argue that States carry the responsibility to know the law and its limits. The ICRC has even argued that States have a treaty-based legal obligation to disseminate information about international humanitarian law among their armed forces and civilians.¹⁵⁷ It is vital that actors know and understand the relevant law, and in situations where parties act in ignorance of international law, their error is no excuse. In the United States criminal justice system, mistake of law is almost never a viable defense;¹⁵⁸ shouldn’t world powers be held to the same standard of competence?

Is the issue a lack of public awareness of the law, or a need for the law to be clarified and strengthened? How do we begin attempts to correct wrongs in war? Many are calling for criminal prosecution of Russian officials responsible for war crimes against Ukrainian civilians.¹⁵⁹ Would prosecution be a helpful method of repairing lack of access to humanitarian assistance in Ukraine and future urban warzones? The Fourth Geneva Convention and its Additional Protocol I contain so-called protections for civilians’ access to humanitarian assistance, yet what are the enforcement mechanisms to ensure that those protections work?

Potential solutions to improve the humanitarian access situation in present-day Ukraine and future urban conflict zones include (1) strengthening current international law which prohibits obstruction of humanitarian access; (2) attempting to induce countries to move away from conflict in civilian-populated areas; (3) supporting previously attempted alleviations, such as “safe zones” and humanitarian corridors; and (4) boosting the concrete legal status of NGOs’ and other organizations’ neutrality.

155. Schwendimann, *supra* note 78, at 1006–07.

156. *Id.* at 1005–06.

157. Advisory Serv. on Int’l Humanitarian L., *The Obligation to Disseminate International Humanitarian Law*, INT’L COMM. OF THE RED CROSS (Feb. 28, 2003), https://www.icrc.org/en/doc/assets/files/other/obligation_to_disseminate.pdf.

158. *Mistake of Law*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/mistake_of_law (last updated July 2023).

159. Mark Kersten, *Justice for War Crimes in Ukraine Must Not Be Delayed*, ALJAZEERA (Oct. 3, 2022), <https://www.aljazeera.com/opinions/2022/10/3/justice-for-war-crimes-in-ukraine-must-not-be-delayed>.

A. Existing Principles: How Do We Enforce?

Humanitarian agencies love to throw out the call to “strengthen international humanitarian law.” What does that mean? When international law is so tightly interwoven with diplomacy, treaties, and unwritten rules, improving the law is much more difficult than simply writing new laws, as is commonplace in a domestic setting. In considering provisions for humanitarian access, “[n]one of the conventional mechanisms provided for under the International Covenant on Civil and Political Rights or within the framework of the Council of Europe, for example, are capable of effectively enforcing the right to humanitarian assistance.”¹⁶⁰ How do we persuade countries to comply with custom that already exists and, in theory, is already “binding”?

What we need is greater respect for international law, and it is clear that the existence of law has not and will not stop those who wish to break it—especially those who do not hesitate to go so far as the flagrant commission of very serious war crimes. These States and non-State actors in question are unlikely to reconsider repetition of this position toward international law unless they face deterrent consequences. Is this the task of diplomats and politicians? Perhaps the best strategy is to continue imposing sanctions on Russia, prosecute their military commanders for the war crimes they have committed, and then, if eventually Russia ends on the losing side of a conflict, have the winner pressure Russia to accept additional treaties and parameters for future activity. We can look to many different areas of international law for clues as to a helpful avenue for resolution, and many signs point to diplomacy as the answer. Under human rights law, for example, information gathered through fact-finding mechanisms turns into public reports that can be used by the Commission on Human Rights and other international organizations to “pressure States into compliance with their obligations.”¹⁶¹ “[R]esolutions can be adopted at any time to induce the offending party to comply. [Diplomacy] is therefore perhaps the most effective type of human rights implementation mechanism that can be used to enforce the right of victims of armed conflict to humanitarian assistance.”¹⁶²

160. Stoffels, *supra* note 77, at 525.

161. *Id.* at 526.

162. *Id.*

Pressure on a State is even more effective, however, when coming from fellow States. We see from Russia's example that pressure from third-party and nongovernmental sources, including official pronouncements of war crimes and expulsion from the UN Human Rights Council,¹⁶³ has little effect on an offending State's actions—at least not immediately. States must intervene further to express their disapproval of Russia's disregard for international law about humanitarian access. Under international humanitarian law, it can be considered "unlawful for a State to maintain a passive attitude when it is in a position to take action, because the failure to respond allows the rights of victims protected under IHL to be abused."¹⁶⁴ International law professor and researcher Ruth Abril Stoffels wrote that, "[i]n view of the commitment of States to respect and ensure respect for IHL, it is, at best, inappropriate for them to focus on repressing or condemning violations of the right to humanitarian assistance in order to avoid greater involvement in the conflict."¹⁶⁵ Under international law, States should respond when humanitarian assistance violations occur, not only by condemning the acts but also by taking action to apply pressure on bad actors.

B. Urban Warfare

Is there a way to combat one exacerbator of inaccessibility to humanitarian assistance at its inception, beginning with the very existence of urban warfare? Although not a direct cause of humanitarian access issues, urban warfare multiplies obstacles to humanitarian aid, as discussed above. In a meeting of the U.N. Security Council, ICRC president Peter Maurer said of the crisis of urban warfare, "We must do more."¹⁶⁶ What more can be done, when many of those willing to engage in destructive armed conflict seem to observe few limits? How can we hold violators of international law accountable for the serious damage they willfully cause to cities and civilians? How do we create, as world human rights leaders ask, "real accountability" for urban war crimes?¹⁶⁷

163. *U.N. General Assembly Notes to Suspend Russia from the Human Rights Council*, UN NEWS (Apr. 7, 2022), <https://news.un.org/en/story/2022/04/1115782>.

164. Stoffels, *supra* note 77, at 529.

165. *Id.*

166. *Meetings Coverage of the S.C.*, *supra* note 79.

167. *Id.*

When resources allow war to be waged on any front, what regulates its destruction, particularly in urban areas? Have we looked so far beyond norms as to make prior boundaries meaningless? How can legal structure continue to guide and bind actors' moves when innovation is endless and impossibility restricts us less than ever before?

Again, to induce already-deviant States to comply with international law, the key likely lies in international relationships. For example, Peter Maurer suggested that States could restrict exports of explosive weapons (one popular accoutrement of urban warfare that creates further complications for humanitarian assistance needs and abilities) by adopting conditions to forbid their deployment in populated areas.¹⁶⁸ Leveraging trade interests is one fantastic way to induce States to comply with already-existing international law to prevent urban warfare, and pressuring States to join existing treaties is another. A convention against cluster munitions already exists,¹⁶⁹ but Russia is not a party to the treaty.¹⁷⁰ A State could leverage trade agreements or other financial assets on the condition that Russia sign on to that convention.

In October of 2019, representatives of 130 States gathered in Austria for the Vienna Conference on the Protection of Civilians in Urban Warfare.¹⁷¹ There, they began a political process aimed to address civilian harm inflicted by warfare in villages, towns, and cities. Following this meeting, Ireland instigated the development of a new "Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas," a shared understanding of the problem at hand and guidelines for policy and practice to respond to that issue.¹⁷² The declaration represents proximate collaboration between States, agencies of the United Nations, such as the UNOCHA, international organizations like the

168. *Id.*

169. *Convention on Cluster Munitions*, U.N. OFF. FOR DISARMAMENT AFFS., <https://www.un.org/disarmament/convention-on-cluster-munitions> (last visited Oct. 18, 2023).

170. *Convention on Cluster Munitions*, U.N. TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-6&chapter=26&clang=_en (last visited Oct. 16, 2023).

171. *Safeguarding Civilians*, HUM. RTS. WATCH (Oct. 26, 2022), <https://www.hrw.org/news/2022/10/26/safeguarding-civilians>.

172. *Id.*

ICRC, and civil society organizations.¹⁷³ Following three years of negotiations, countries convened in Dublin, Ireland, on November 18, 2022, to endorse the declaration.¹⁷⁴ The document reaffirms the damage caused to civilians and cities when explosive weapons are employed in urban areas, and it further condemns attacks on civilians.¹⁷⁵ Additionally, the declaration proposes renewed commitments to comply with existing international humanitarian law, improve national policy, and practice

“to enhance the protection of civilians, . . . [f]acilitate rapid, safe, and unhindered humanitarian access to those in need in situations of armed conflict in accordance with applicable international law, . . . [and] [m]eet on a regular basis to review in a collaborative spirit the implementation of this Declaration and identify any relevant additional measures that may need to be taken[.]”

among other actions to reduce instances of armed conflict-related urban destruction.¹⁷⁶ Over eighty countries, including the United States, endorsed the declaration at the meeting.¹⁷⁷ Hopefully, this declaration and additional similar conferences and agreements can contribute to international rejection of current habits involving urban warfare.

Greater accountability for violations, too, is necessary.¹⁷⁸ When States sign on to an agreement such as the Geneva Convention of 1949, and one of them breaks their agreement by failing to uphold its duty to protect civilians and humanitarian access, the other States party to that convention can band together to further pressure the violator. We see this happening to an extent with Russia and the many sanctions imposed upon the country by other nations, but this does not represent a consistent occurrence. States who believe in these fundamental conventions can all unite to oppose every violation, every time.

173. *Id.*

174. *Id.*

175. *Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas*, AN ROINN GNÓTHAÍ EACHTRACHA DEP'T OF FOREIGN AFFS. (June 17, 2022), <https://www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/EWIPA-Political-Declaration-Final-Rev-25052022.pdf>.

176. *Id.*

177. *Conference Adopts Declaration on Protecting Civilians from Explosive Weapons in Populated Areas*, RELIEFWEB (Nov. 18, 2022), <https://reliefweb.int/report/world/conference-adopts-declaration-protecting-civilians-explosive-weapons-populated-areas>.

178. *Meetings Coverage of the S.C.*, *supra* note 79.

In the UN Security Council meeting, Secretary-General of the United Nations António Guterres emphasized that United Nations Member States must “demonstrate the political will to investigate and prosecute alleged war crimes[,]” saying, “We owe that to the victims and their loved ones—and it is also crucial to serve as a powerful deterrent[.]”¹⁷⁹ Radhya al-Mutawakel, co-founder and Chairperson of the Mwatana Organization for Human Rights, said of urban attacks in Yemen, “It is not sufficient to name and shame the warring parties; [the UN Security Council] should at long last refer Yemen’s situation to the International Criminal Court.”¹⁸⁰ The ICC has opened an investigation into the crimes committed in Ukraine;¹⁸¹ hopefully, the result will fuel deterrence of future urban crimes. For this to be the case, however, States must also respect and respond in accordance with the verdict, again applying diplomatic pressure to ensure the outcome has weight.

C. “De-Escalation Zones” and Humanitarian Corridors

Civilians and humanitarian aid organizations alike need safe locations for distribution of essential resources, including humanitarian items like food or clothing and services such as medical aid. Evacuation operations, too, need dependable routes. In the early months of the 2022 conflict, civilians queuing for water at a children’s hospital and bread near a supermarket were hit with indiscriminate munitions. Many were killed or injured.¹⁸² Schools used for aid distribution and for sheltering children have been destroyed in airstrikes.¹⁸³ Obstacles to civilians’ receipt of humanitarian assistance occur, whether purposefully or incidentally, when war is brought into a civilian-occupied zone, and especially when cluster munitions and unguided rockets are employed as part of that warfare, as Russia did in the recorded instances when civilians in line for essential food and water were attacked.

In considering events such as these, where release of weaponry is done with seeming absence of regard for civilian life, it is hard to imagine any reason for such destructive tactics, but they have

179. *Id.*

180. *Id.*

181. *Ukraine*, INT’L CRIM. CT., <https://www.icc-cpi.int/ukraine> (last visited Oct. 18, 2023).

182. *Inquiry on Ukraine*, *supra* note 4, ¶ 48–49.

183. *Id.* ¶ 50.

become the new norm of armed conflict. “De-escalation” or “safe” zones, humanitarian corridors with many designs implemented to foster safe spaces for civilians to receive humanitarian assistance without threat of danger from warring parties. Most have proven relatively successful, though not perfect, and not always functional as long-term solutions. In a discussion with the UN Security Council about ways to combat urban warfare, Mahamudu Bawumia, Vice-President of Ghana, called for efforts to improve the resiliency of urban infrastructure, especially concerning shelter zones and evacuation efforts.¹⁸⁴ If observed and respected by the warring groups, safe areas can make a huge difference in mitigating war’s harm to civilians in populated areas.

In 2017, by agreement between Russia, Turkey, and Iran, “de-escalation zones” were implemented in conflict-torn Syria.¹⁸⁵ The plans required the cessation of hostilities within the boundaries of these set-aside zones in “mainly opposition-held areas[,]” the boundaries of which were determined by delegations from the three countries.¹⁸⁶ The result was decreased fighting in these areas, positively affecting more than 2.5 million people.¹⁸⁷ The question of who would continue to monitor the program’s implementation was an issue, but the experiment of these zones provided space for the entrance of “‘unhindered’ humanitarian aid” as warring parties refrained from conducting air raids and other dangerous activities.¹⁸⁸ Humanitarian needs would not disappear, but with cooperation between States and humanitarian organizations, “de-escalation” or “safe” ceasefire zones can improve the humanitarian situation in many ways.¹⁸⁹

Humanitarian corridors, also called humanitarian safe passages, are another helpful tool for improved humanitarian

184. *Meetings Coverage of the S.C.*, *supra* note 79.

185. *Final De-escalation Zones Agreed on in Astana*, ALJAZEERA (Sept. 15, 2017), <https://www.aljazeera.com/news/2017/9/15/final-de-escalation-zones-agreed-on-in-astana>.

186. *Id.*

187. *Id.*

188. *Id.*

189. *Moscow Humanitarian: In Dialogue with Russian Officials and Experts on De-escalation Zones in Syria*, INT’L COMM. OF THE RED CROSS (Nov. 29, 2017), <https://www.icrc.org/en/document/moscow-humanitarian-dialogue-russian-officials-and-experts-de-escalation-zones-syria>.

access.¹⁹⁰ These corridors are a limited-time tool providing safe passage for civilians in a specific geographic area, negotiated by parties to the armed conflict.¹⁹¹ They are similar to de-escalation zones in that corridors, too, facilitate humanitarian access by the (in this case, temporary) suspension of hostilities, but, in contrast, they focus primarily on humanitarian movement.¹⁹² Humanitarian corridors provide an avenue by which humanitarian assistance can enter the conflict zone; they also allow civilians to evacuate the dangerous area.¹⁹³ Thousands of civilians from Ukraine have been evacuated via humanitarian corridors.¹⁹⁴ The ICRC concedes that corridors are not an ideal nor even preferred solution, but are more of a temporary aid in dire situations. Ideally, under international humanitarian law, humanitarian aid should be allowed to move freely into necessary areas, and civilians should be allowed to evacuate freely.¹⁹⁵ Humanitarian corridors are hazardous operations, despite the parties' agreement, and pose risks to civilians, humanitarian personnel, and fighters.¹⁹⁶

None of these temporary solutions are possible, however, without negotiation between humanitarian organizations and the parties involved in the conflict.

D. Legal Neutrality of NGOs

The ICRC has isolated a few necessities that make its success possible, including "the trust and consent of the States concerned, the support from the parties to the armed conflicts or other situations of emergency and cooperation with other organisations [sic], such as National Societies, the International Federation, the UN, the NGOs and the military and private sectors."¹⁹⁷ Support from actors on both sides of a conflict cannot be present without an aid agency's strictly observed neutrality:

190. *How Humanitarian Corridors Work to Help People in Conflict Zones*, INT'L COMM. OF THE RED CROSS (June 3, 2022), <https://www.icrc.org/en/document/how-humanitarian-corridors-work>.

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.*

197. Olaseeni & Mimiko, *supra* note 93, at 96.

Even though the ICRC carries out humanitarian activities with other organisations [sic], its activities are guided by its own right of initiative (or action) and by the Fundamental Principles it shares with the other components of the Movement, the States parties to the Geneva Conventions themselves having recognised [sic] and agreed to respect them.¹⁹⁸

As stated in the Additional Protocol I, humanitarian assistants are to be “respected and protected.”¹⁹⁹ Aid organizations act as mediators between warring parties to negotiate and facilitate safe parameters for humanitarian assistance. However, States have not always observed this permission.²⁰⁰ The issue here lies not primarily in adding law to make NGOs and aid agencies neutral, but in better incentivizing States to obey that custom. When the efficacy and capability of humanitarian assistance organizations rely on their observed neutrality, how can we better convince States and civilians to respect and understand that neutrality?

A current issue in humanitarian assistance is “the threat of neutral, impartial and independent humanitarian action.”²⁰¹ Aid organizations, in adopting neutrality, have a duty to refrain from taking sides or acting in any way that would benefit one side over the other; the idea is that impartiality and independence give all people an equal opportunity to have their needs assessed and addressed as victims of war, regardless of origin, race, politics, religion, or gender.²⁰² For this aim to be realized, humanitarian workers must truly make no distinction between civilians in need – whether they differ politically, religiously, or ethnically – in distributing aid according to the population’s needs.²⁰³

That said, can neutral, impartial, independent humanitarianism be maintained? Neutrality, as professors of law O. A. Olaseeni and Kayode Mimiko wrote, has been “the price to be paid by the ICRC aid workers so as to be acceptable on the battlefield by the soldiers from both sides and to enjoy protection and immunity from

198. *Id.*

199. Protocol I, *supra* note 54, at art. 71.

200. *The ICRC Engagement with Armed Groups: A Humanitarian Necessity*, INT’L COMM. OF THE RED CROSS (June 31, 2021), <https://www.icrc.org/en/document/icrc-engagement-armed-groups-humanitarian-necessity>.

201. Olaseeni & Mimiko, *supra* note 93, at 97.

202. *Id.*

203. *Id.*

hostilities.”²⁰⁴ Often, the ICRC and its workers are accused of partiality and bias in their distribution of aid materials and services during their relief operations. Moreover, combatants attempt to mingle with civilians in order to benefit from provided aid.²⁰⁵ Failure to remain impartial and in line with international law is “a threat to the ICRC’s humanitarian aid or assistance in recent times.”²⁰⁶

Strict observance of neutrality on the part of the organizations themselves, however, can also backfire. In a May 2022 article, a Kyiv-based journalist explained that the ICRC’s engagement with Russian leadership has led to disappointment, anger, and feelings of betrayal on the part of Ukrainian civilians.²⁰⁷ “Many Ukrainians called on those wanting to support humanitarian efforts in Ukraine not to donate to the ICRC and the Ukrainian Red Cross, claiming the aid was not reaching beneficiaries. A Ukrainian MP called for the ICRC to leave the country.”²⁰⁸ Reported consequences included Ukrainians “threatening volunteers and preventing them from carrying out aid activities,”²⁰⁹ contributing to the level of humanitarian inaccessibility. The ICRC, Ukrainian Red Cross, and other humanitarian actors have suffered this backlash.²¹⁰

Tetiana Hoyenko, director of the Ukrainian Red Cross in Kyiv, said, “People were so stressed and didn’t have time to analyse [sic] or properly grasp the situation They just heard the words Red Cross and that was it – we were all traitors and our volunteers were getting guns pointed at them.”²¹¹ This animosity only contributed to the dangers humanitarian workers face, and some aid workers in Ukraine are reportedly beginning to question the idea of neutrality.²¹² It is hard to stay away from bias after witnessing the destruction inflicted by one side of a conflict, and it is hard to believe that neutrality remains an honorable standard when efforts

204. *Id.*

205. *Id.*

206. *Id.*

207. Hyde, *supra* note 134.

208. *Id.*

209. *Id.*

210. *Id.*

211. *Id.*

212. *Id.*

of neutrality haven't seemed to make a positive difference.²¹³ Hoyerko said, "We really doubt our own mission now because the principles [of International Humanitarian Law] are not being fulfilled at all, as far as we can see. We see that these principles don't work."²¹⁴

Greater education around the parameters and goals of humanitarian assistance – and greater communication – is needed. Greater dialogue and greater cooperation among all involved will go hand in hand. If populations in need are to accept the neutrality of humanitarian organizations, they must understand neutrality's purpose and requirement under the law. Many civilians – as well as countries, it seems – misunderstand the concept of neutrality and its place in international humanitarian law; the anger victims feel comes oftentimes from not understanding that neutrality is necessary because it "demands that humanitarian actors engage with all sides in a conflict to have a better chance of gaining access to people in need of assistance."²¹⁵

Humanitarian neutrality in Ukraine, including collaboration with both the Russian and Ukrainian sides, has yielded some positive results – though these triumphs may seem few, small, and of low visibility compared to the continuing and overshadowing onslaught of war crimes. Following ICRC meetings with Russian and Ukrainian authorities, both countries established a National Information Bureau to gather and share information about prisoners of war, civilian internees, and missing and wounded people. Both countries agreed to share the information with the ICRC in Geneva, who would then inform relatives about their loved ones.²¹⁶ After weeks of attempts, the ICRC and the UN were able to coordinate with both countries to organize a humanitarian corridor for the evacuation of about a hundred civilians from the steel plant in Mariupol.²¹⁷ Without neutrality, aid organizations are crippled in their attempts to organize humanitarian corridors, de-escalation zones, and other potential solutions that have been mentioned above. All solutions must interweave to accomplish the

213. *Id.*

214. *Id.* (alteration in original).

215. *Id.*

216. *Id.*

217. *Ukraine: U.N.-Red Cross Operation Underway to Evacuate Civilians from Stricken Mariupol Plant*, U.N. NEWS (May 1, 2022), <https://news.un.org/en/story/2022/05/1117342>.

changes needed to facilitate the necessary and legally intended access to humanitarian assistance.

CONCLUSION

Despite the number of actors who do not keep the rules, consideration for those most affected by urban armed conflict—civilians—should be optimistically prioritized in the further evolution and promotion of international law. Through strengthening current international law meant to protect humanitarian assistance and ensure access, working to persuade countries to abstain from conflict in civilian-populated areas, supporting “safe zones” and humanitarian corridors, and improving the concrete legal status of NGOs’ and other organizations’ neutrality, we can build a unified system in which humanitarian access rights are protected and ensured.

Armed conflict is a chaotic and unwieldy beast whose overlapping aggressions produce unintended consequences. An involved party need not particularly target humanitarian access for the effect of urban warfare to encroach upon civilians’ rights to aid. If we as an international community hope to ensure access to essential resources, we must focus on mitigating a wide variety of related issues, including the practice of urban warfare and its hand-in-hand law of war violations. Even as much of the Ukrainian populace continues to struggle beneath burdens of need and inability to reach the aid they require, perhaps it is not too late to improve both the current situation overseas and protect future inhabitants of war-torn areas, in hopes they need not face the same terrible situation.

Is it possible to prioritize humanity in this intricate game of international strategy? “I can see the great cities of this country will be rebuilt, and out of the ashes of total destruction, unprecedented beauty will surely bloom[,]” Ballif wrote in his newsletter.²¹⁸ “I worry, however, about the moral corruption of any developed country that fails to do all it can to stand against this great evil. I pray that you and I and our nations will have the courage to stand for something much more precious than the chessboard of geopolitics.”²¹⁹

218. Ballif, *supra* note 1.

219. *Id.*