

Property Rights in Urban Warfare

Revaz Tkemaladze¹, Saba Pipia²

¹Geneva Academy of International Humanitarian Law and Human Rights

²The Georgian American University

¹revaz.tkemaladze@graduateinstitute.ch

²saba.pipia@gau.edu.ge

Abstract

Urban wars are amongst the deadliest conflicts of our time.¹ People's homes, their doorsteps, their streets, their schools, and their hospitals are all part of the battlefield now.² There have been numerous attempts to discuss various aspects of urban warfare by renowned scholars of international law³ and indeed there are many military, legal, humanitarian, or ethical facets of urban warfare or other violence,⁴ which yet need to be explored more in-depth. The primary objective of this article is to analyze a specific dimension of urban warfare, which is the protection of property rights and in particular responsibility of parties to the conflict for damages or destruction of private property of civilians. The article focuses on the conduct of hostilities in urban settings, which inevitably affects private property in cities or other inhabited areas. The purpose of the article is to first identify what kind of urban violence qualifies as armed conflict and thus triggers the application of IHL norms and afterward to analyze how these norms apply to military operations, carried out by belligerents during an armed confrontation between them in cities.

Keywords: Urban Warfare; Property Rights; Armed Conflict

Introduction

Urban violence is not a new phenomenon; however, with rapid demographic and economic changes in recent decades, war inevitably affects more areas that are highly populated. While figures primarily tend to focus on human victims of the conflict, wars have devastating consequences on civilian objects and residential areas. Such damage in return has grave impact on the livelihood of the population. When residences are destroyed, many become displaced in the search for safe havens either domestically or across the frontiers.⁵

* This article was finalized before the outbreak of hostilities between Israel and armed groups in Gaza; therefore, the examples cited refer only to armed conflicts preceding the current war in Gaza. The authors extend their gratitude to the Journal's editors and the anonymous reviewer for their valuable feedback on earlier versions of this article. Standard disclaimers apply.

¹ *I Saw My City Die: Voices from the Front Lines of Urban Conflict in Iraq, Syria, and Yemen*. Geneva: International Committee of the Red Cross, 2017, introduction.

² Ibid.

³ Yoram Dinstein, "The Special Dimensions of Urban Warfare," *Israel Yearbook on Human Rights* vol. 50 (2020).

⁴ "Urban Warfare Project," *Modern War Institute*, last modified August 30, 2024, <https://mwi.westpoint.edu/urban-warfare-project/>.

⁵ *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts* (Geneva: International Committee of the Red Cross, 2019), 18: "In addition to the threat to civilian lives, and the disruption of essential urban services,

As the title suggests, the article is concerned with the conduct of warfare and not all types of urban violence. *Dinstein* has suggested the following definition of “urban warfare”, which can also apply to this paper: “intense and sustained fighting by ground troops for effective control of densely built-up (mostly residential) localities.”⁶ Different branches of international law apply to the destruction of property in such contexts. Under International Human Rights Law (IHRL), certain human rights treaties protect the right to property explicitly; International Humanitarian Law (IHL) protects civilian objects more broadly (residential places, educational institutions, hospitals, administrative buildings, etc.) without the need for individuals to show that the property is in some way connected to them and International Criminal Law (ICL), mirroring IHL, criminalizes certain destruction of property during armed conflicts as war crimes in international and non-international armed conflicts. Additionally, in extraterritorial situations for use of force to be lawful it must be in accordance with the Charter of the United Nations (UN). As a methodological point, the authors would like to underline that the scope of ‘private property’ referred to in this article extends only to immovable property, such as buildings and does not cover assets, copyrights or other modes of private ownership.

For urban violence to come within the scope of IHL, it will have to amount to either international (IAC) or non-international armed conflict (NIAC). There are many forms of urban violence with some of the prominent ones including gang violence, drug cartels, Mafia units, so-called “Bratvas” and other types of organized criminal groups.⁷ The majority of these forms of violence will necessitate a law enforcement response because the level of violence is not likely to meet the threshold of armed conflict or may not be sufficiently closely related to the ongoing hostilities.⁸ Under IHL, protection of property and persons may vary depending on whether individuals or objects are in the power of the belligerent using force. Urban warfare situations (based on the definition above) generally implies the lack of control. Accordingly, under IHL, the framework governing the use of force will generally be the conduct of hostilities paradigm.

IHL does not prohibit damage or destruction of private property if they are used by military groups and thus become military objectives or if such damage is an incidental result of a proportionate strike directed against a legitimate military target. This implies that destruction of some property as a result of unlawful use of force under the UN Charter, may not necessarily entail the classification of such conduct as war crimes and there will not be a parallel obligation to compensate the victims under IHL either. Concerning the obligations for belligerents under IHL treaties, the article explores when IHL applies and governs the use of force in urban warfare context, and to what extent buildings used by fighters or other military groups as command-and-control centers or for other military purposes are rendered military objectives.⁹ A related question of how the principle of proportionality under IHL is interpreted in urban warfare is also addressed. Finally, the article looks at the right of victims to receive reparations for the property that is destroyed under other branches of international law, specifically IHRL and *jus ad bellum*.

one of the key drivers of long-term displacement is the damage or destruction of civilian homes typically caused by the use of heavy explosive weapons”.

⁶ *Dinstein, The Special Dimensions of Urban Warfare*, para. 3.

⁷ Toni Pfanner, “Editorial: Urban Violence,” *International Review of the Red Cross* 92, no. 878 (2010): 310.

⁸ *Ibid.*, 311.

⁹ “Report of the Independent Commission of Inquiry on the 2014 Gaza Conflict - A/HRC/29/52,” *The United Nations Independent Commission of Inquiry*, accessed January 15, 2025, <https://www.ohchr.org/en/hrbodies/hrc/coigazaconflict/pages/reportcoigaza.aspx>.

A. How Does IHL Protect Property in Urban Warfare?

1. Qualification of Urban Warfare as Part of an Armed Conflict

1.1. Urban Warfare as Part of International Armed Conflicts

For urban warfare to qualify as an IAC what is determinative is that it effectively opposes two State parties to the conflict. There is no requirement of intensity or duration of such violence for it to amount to an IAC.¹⁰ For the conduct of hostilities rules in Additional Protocol I (API) to apply, complemented by customary IHL, the act of violence in question would have to amount to an attack within the meaning of IHL.¹¹ Instances of highly destructive means of warfare used in urban areas such as IEDs, booby traps, tanks, and other types of heavy artillery suggest that many of those instances of the use of force trigger IHL's conduct of hostilities norms, which have to be complied with in order to ensure a certain basic level of protection of civilians and civilian objects. IHL of IACs will govern the instances of urban warfare even if the acts of violence are directed at private property and not necessarily the property of the armed forces.

There are many examples where the use of explosives or other types of weapons have resulted in the large-scale destruction of homes and civilian infrastructure in international armed conflicts. Syria is perhaps the most prominent example of the devastating consequences war can have on cities. In 2018 Syrian Network for Human Rights estimated that the years of conflict had left 3 million homes destroyed and called it a "domicide".¹² The destruction appears to be due to deliberate bombing and destruction of residences and other vital facilities with artillery, tanks, helicopters, fixed-wing warplanes, scud missiles, thermobaric bombs, and cluster munitions among others. Reportedly, Syria has suffered 70,000 barrel bombs at least.¹³ While there are several parallel IACs in Syria, it is not excluded that some of these conduct could have the nexus to parallel NIACs ongoing in Syria.

Gaza has become another archetypal example of the damage caused to residential buildings. As is well-known, the population in Gaza is dispersed over a very little area, which inevitably exposes them to a lot of risks any time a military operation is carried out. Reportedly, 1,650 homes were wrecked during 11 days of hostilities in 2021.¹⁴ In 2014, multiple instances of destruction of multi-story buildings were documented in Operation Protective Edge, conducted by Israel.¹⁵ Allegedly, around 18,000 residential units were completely destroyed or damaged due to the different types of artillery and tank shells used in the conflict together with air bombings.¹⁶ Human Rights Council's (HRC) mission of inquiry in the conflict in Gaza found that Israel's four

¹⁰ International Committee of the Red Cross (ICRC), *Commentary on the Third Geneva Convention* (Geneva: ICRC, 2020), paras. 274–76.

¹¹ *Protocol Additional (AP I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts*, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978), art. 47.

¹² Middle East Monitor, "3m Homes Destroyed in Syria War," June 1, 2018, <https://www.middleeastmonitor.com/20180601-3m-homes-destroyed-in-syria-war/>.

¹³ *Ibid.*

¹⁴ Nidal Al-Mughrabi, "With Most Gaza Homes Wrecked by War Still in Ruins, Smiles for the Lucky Few," Reuters, January 13, 2022, <https://www.reuters.com/world/with-most-gaza-homes-wrecked-by-war-still-ruins-smiles-lucky-few-2022-01-13/>.

¹⁵ Amnesty International, "Israel's Destruction of Multistorey Buildings: Extensive, Wanton and Unjustified," December 9, 2014, <https://www.amnesty.org/en/latest/news/2014/12/israels-destruction-multistorey-buildings-extensive-wanton-and-unjustified/>.

¹⁶ The Israeli Information Center for Human Rights in the Occupied Territories, "4.5 Years after Israel Destroyed Thousands of Homes in Operation Protective Edge: 13,000 Gazans Still Homeless," March 3, 2019, https://www.btselem.org/gaza_strip/20190303_13000_gazans_homelless_since_2014_war.

operations in Shujaiya, Khuzaa, and Rafah resulted in the total destruction of 2,000 homes and the partial destruction of at least 2,000 homes.¹⁷ Some homes in Israel were also damaged by rockets launched by Hamas and by fellow militant groups. Despite the controversy surrounding the nature of the conflict between Israel and the Palestinian armed groups, some actors such as the International Committee of the Red Cross (ICRC), and the Prosecutor of the International Criminal Court (ICC), HRC's Mission of Inquiry still hold that Gaza is occupied.¹⁸ While it remains debatable whether Israel should have used force based on the conduct of hostilities or law enforcement paradigms as an Occupying Power, suffices to note here that the force appears to be used in the context of an IAC. The distinction between the treatment of objects in the power of a party and the conduct of hostilities will be explained below.

In the context of Russia's invasion of Ukraine, the mayor of Kharkiv has reported the destruction of 1,000 residential buildings in Kharkiv, the second-largest city in Ukraine.¹⁹ Iziurm in the Kharkiv district provides another example.²⁰ According to the mission of the Organization of Security and Cooperation in Europe (OSCE): "The Ukrainian Prosecutor General's Office informed the Mission that as of 30 March 2022, 1869 times civilian objects were attacked and consequently, 3881 civilian objects were destroyed or damaged as a result of attacks against civilian objects, figures which are in the Mission's view very conservative in light of the very widespread destructions reported by the media, in particular in towns like Mariupol, Kharkiv, Izum and Irpin".²¹ In Mariupol, up to 90% of the residential buildings have been wiped out as a result of Russian shelling.²² There have been reports of the extensive destruction of property in the war between Georgia and Russia, however, not all of these might be the consequence of the conduct of hostilities. For instance, in relation to the allegation of ethnic cleansing in the occupied territory after the ceasefire, which may constitute a violation of Geneva Convention IV,²³ however it will not fall in the scope of this paper because it falls outside the definition of urban warfare. Similarly, other practices of home demolitions, when the control is actually exercised over an urban area need not be explored here.

1.2. Urban Warfare as Part of Non-International Armed Conflicts

¹⁷ United Nations Human Rights Council, Report of the Detailed Findings of the Independent Commission of Inquiry on the 2014 Gaza Conflict, U.N. Doc. A/HRC/29/CRP.4 (24 June 2015), para. 250.

¹⁸ *Ibid.*, para. 30.

¹⁹ Andrew Carey and Yesa Kesaieva, "Nearly 1,000 Residential Buildings Have Been Destroyed in Kharkiv, Mayor Says," CNN, March 23, 2022, https://edition.cnn.com/europe/live-news/ukraine-russia-putin-news-03-23-22/h_89ea8adc6c5dda8282dda339d6d9e3ff.

²⁰ UN Office of the High Commissioner for Human Rights, "Update on the Human Rights Situation in Ukraine," reporting period: 24 February–26 March 2022 (28 March 2022), https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf.

²¹ Wolfgang Benedek, Veronika Bílková, and Marco Sassoli, "Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine Since 24 February 2022" (Organization for Security and Co-operation in Europe, 13 April 2022), 26.

²² "Official Says 80–90% of Mariupol Destroyed or Damaged by Russian Shelling, Airstrikes," *The Kyiv Independent*, March 17, 2022, <https://kyivindependent.com/uncategorized/official-says-80-90-of-mariupol-destroyed-or-damaged-by-russian-shelling-airstrikes/>.

²³ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949 (GC IV), art. 147.

Organized crime groups have been committing violence in cities such as Bidjan, Pristina, Kingston, Rio de Janeiro, Ciudad Juarez, and Benghazi.²⁴ However, not all such situations meet the NIAC threshold, which would render IHL applicable. This does not mean that such use of force would be completely unregulated under international law. The response to such acts of violence would still have to satisfy IHRL guarantees. For any given situation of violence to classify as a NIAC, it would have to satisfy two cumulative conditions, which have been gradually established since the adoption of Article 3 Common to Geneva Conventions and solidified in practice. There are additional conditions for the applicability of the Additional Protocol II (AP II). Nowadays the distinction between IACs and NIACs does not matter much in this context, given that the majority of the conduct of hostilities rules concerning the protection of civilian objects are equivalent in IACs and NIACs through customary IHL.²⁵

One criterion for the application of the law of NIACs would entail a non-State armed group (NSAG) that is sufficiently organized. Not all organized crime groups mentioned above fit into the description of a non-State armed group. Traditionally a NSAG can be perceived as an insurgent group fighting a state, but the *modus operandi* and goals of different NSAGs vary nowadays. It has been suggested that viewing criminal gangs under a conflict paradigm is inappropriate as it will rarely reach the required level.²⁶ The fact that the ideology of such organized armed groups is not necessarily to overthrow the governmental regime is normally not necessary for the determination of NIAC, and the objective factors will outweigh the subjective ones.²⁷ There is a certain degree of organizational structure for drug factions operating in Rio with the supreme responsible figure being the local drug baron.²⁸ However, the criterion which requires that such groups be able to design military plans, coordinate military tactics, and have a defined military strategy will normally distinguish such criminal groups from groups that are a party to a NIAC.

In order to determine whether the intensity threshold has been fulfilled, facts on the ground will have to be assessed separately. This evaluation can take into account the types of weapons used, types of forces engaged in fighting (armed forces or law enforcement personnel), number of victims, and extent of material destruction.²⁹ It has been suggested that responding to organized gang violence will rarely require a response by armed forces and in terms of its scale and duration such violence will more often not satisfy the armed conflict threshold.³⁰ Conversely, there are armed conflicts opposing State on one side and non-State armed groups on the other, which result in high-intensity confrontations, sometimes lasting years and resulting in grave consequences for civilian cities. Syrian example has been mentioned above. Another example is the Libyan civil war in the course of which Benghazi municipality reported around 6,600 properties partially or

²⁴ "Urban Violence: What Role for Traditional Humanitarianism?" Synthesis Report (Portcullis House, Westminster, 21 March 2013), <https://www.icrc.org/en/doc/assets/files/2013/urban-violence-summary-report.pdf>.

²⁵ Jean-Marie Henckaerts and Louise Doswald-Beck, eds., *Customary International Humanitarian Law, Volume 1: Rules* (Cambridge: Cambridge University Press, 2005), <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1>.

²⁶ Jennifer Hazen, "Understanding Gangs as Armed Groups," *International Review of the Red Cross* 92, no. 878 (2010): 386.

²⁷ Pierre Hauck and Sven Peterke, "Organized Crime and Gang Violence in National and International Law," *International Review of the Red Cross* 92, no. 878 (2010): 433.

²⁸ Luke Dowdney, *Children of the Drug Trade: A Case Study of Children in Organized Armed Violence in Rio de Janeiro* (Rio de Janeiro: 7 Letras, 2003), 47.

²⁹ International Criminal Tribunal for the Former Yugoslavia (ICTY), *Prosecutor v. Ramush Haradinaj et al.*, Judgement (Trial Chamber), Case No. IT-04-84, 3 April 2008, para. 49.

³⁰ Hauck and Peterke, "Organized Crime and Gang Violence," 430-431.

wholly damaged since Haftar's Operation Dignity began in 2014.³¹ In Yemen, 24,000 airstrikes have damaged 40 percent of all housing in cities during the conflict.³² The devastation of Grozny is another grim example. Russian indiscriminate bombardment resulted in the destruction of tens of thousands of Chechen homes. Human Rights Watch reported in 2001: "The city of Grozny and several villages were practically razed to the ground".³³ In Kandahar Province of Afghanistan, hundreds of homes were destroyed or damaged in the fighting between the Taliban and the pro-government forces in Afghanistan as a result of the alleged blanket bombing tactics in Operation Dragon Strike in 2010.³⁴ It is undisputed that these attacks took place in the context of NIACs.

2. Rules Protecting Civilian Objects in the Conduct of Hostilities Regime vs Objects in the Power of a Party

Various IHL instruments are relevant for the protection of property during armed conflicts. However, in order to determine whether IHL applies to property destruction in urban warfare, a crucial distinction needs first to be made on how IHL protects the civilian property in the midst of hostilities and how it protects property where a belligerent already exercises control over an area, where a particular object is located. Since urban warfare presupposes the absence of control over an area where fighting is taking place, the conduct of hostilities rules will apply in that situation. This distinction is important because the assessment of violations of norms belonging to the category of 'Geneva Law' and 'Hague Law' is conducted differently.³⁵

2.1. IHL Protections for Objects in the Power of a Party in IACs

Rules protecting property in occupied territories under GC IV do not apply to the situation of urban warfare. Article 53 of GC IV which prohibits the destruction of private or public property in occupied territory except when "absolutely necessary by military operations,"³⁶ was intended to strengthen the protection already provided under Articles 46 and 56 of the Hague Regulations.³⁷ The Commentary makes clear that the grave breach of unlawful destruction of property under GC IV does not apply to the destruction of property on enemy territory unless it is occupied. It suggests: "...if an air force bombs factories in an enemy country, such destruction is not covered either by Article 53 or by Article 147".³⁸ According to *Sassoli*, this rule prohibits the punitive

³¹ Abdulkader Assad, "War Has Damaged 6666 Properties in Benghazi," *The Libya Observer*, January 4, 2022, <https://www.libyaobserver.ly/news/municipality-war-has-damaged-6666-properties-benghazi>.

³² "Escalating Death, Destitution, and Destruction, as Yemeni Civilians Left to Bear Brunt of 7-Year War," *Oxfam*, March 24, 2022, <https://reliefweb.int/report/yemen/escalating-death-destitution-and-destruction-yemeni-civilians-left-bear-brunt-7-year>. While there is a foreign coalition intervening in Yemen, there intervention had the basis of Yemeni President Hadi and the involvement of the Saudi coalition in the conflict does not affect the classification of the conflict as a NIAC.

³³ Human Rights Watch, *Memorandum on Domestic Prosecutions for Violations of International Human Rights and Humanitarian Law in Chechnya*, February 9, 2001, https://www.hrw.org/sites/default/files/media_2021/07/200102eca_russia_chechnya.pdf.

³⁴ "Who Will Rebuild Destroyed Houses in Kandahar," *Afghanistan Rights Monitor*, November 5, 2010, <https://reliefweb.int/report/afghanistan/who-will-rebuild-destroyed-houses-kandahar>.

³⁵ Marco Sassoli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare* (Cheltenham: Edward Elgar, 2019), mn 3.28–3.33.

³⁶ GC IV, art. 53.

³⁷ Jean Pictet, ed., *Commentary on the Geneva Conventions of 12 August 1949*, vol. 3: *Geneva Convention Relative to the Treatment of Prisoners of War* (Geneva: ICRC, 1960), 301.

³⁸ *Ibid.*, p. 601.

destruction of homes.³⁹ Article 53 threshold can therefore apply when objects are actually in the power of a party to the conflict and this provision of GC IV will not apply to urban warfare.

It may well be, however, that in occupied territories hostilities break out. The conflict between Israel and Palestine is a prominent example. While the short duration of temporary resistance and hostilities may not end the situation of occupation of a particular area, what matters for the purposes of this analysis is that in the course of such hostilities, none of the parties potentially exercises sufficient control over an area to bring such objects into its immediate power. In such a case, depending on the geographical scope of the hostilities, it might be appropriate to assess the use of force based on the paradigm of hostilities in an area where hostilities take place and where, therefore, a party no longer exercises effective control over an area.

2.2. IHL Relevant to the Protection of Property in the Conduct of Hostilities in IACs

The instrument that predates the Geneva Conventions and its Additional Protocols and deals with the protection of property in the conduct of hostilities is the Hague Regulations. Article 23 of the Hague Regulations is placed in the section dealing with hostilities.⁴⁰ It uses a different wording as opposed to Article 53 and provides that the destruction will be unlawful unless “imperatively demanded by the necessities of war”. While the difference appears to be minimal, *Arai-Takahashi* suggests that this language difference was a deliberate choice by the drafters, and the “necessity of military operations” is a more restrictive term.⁴¹ However, the continuing relevance of this provision, at least in the part where it prohibits destruction, appears questionable, given that AP I since its adoption provides more vigorous guarantees of protection of civilian objects and sets a stricter threshold.

The definition of military objects as we see it in the AP I gradually developed. Hague Convention IX Concerning Bombardment by Naval Forces in Time of War provided more generally that the bombardment of some undefended locations including dwellings and buildings, where civilians would be affected, was unlawful. However, the prohibition excluded certain objects that could be used by the hostile army.⁴² The Commission of Jurists proposed a draft of Article 22 in 1922 for the definition of military objectives in which it acknowledged that it could be legitimate to bomb cities, towns, villages, habitations, and buildings provided that a high concentration of military would justify exposing civilians located in these areas to the dangers of war.⁴³ Throughout the years that followed, several wars were waged without parties having a unanimous definition of a military objective, each determining the targets at their own convenience depending on whether such objects were located in their own or enemy territory.⁴⁴ The current definition is quite close to the one proposed by the Institute of International Law in 1969 except that the earlier definition had left out the “location” from the definition in juxtaposition to nature, purpose, and use; and

³⁹ Sassoli, *International Humanitarian Law*, mn. 8.258.

⁴⁰ International Court of Justice (ICJ), *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136, para. 124.

⁴¹ Yutaka Arai-Takahashi, “Protection of Private Property,” in *The 1949 Geneva Conventions: A Commentary*, ed. Andrew Clapham, Paola Gaeta, and Marco Sassoli (Oxford: Oxford University Press, 2015), mn. 7.

⁴² Yves Sandoz, Christophe Swinarski, and Bruno Zimmermann, eds., *Commentary on the Additional Protocols* (Geneva: ICRC, 1987), para. 1995.

⁴³ *Ibid.*, para. 1997.

⁴⁴ *Ibid.*, para. 2000

instead of “definite military advantage” it provided that the advantage had to be “substantial, specific, and immediate”.⁴⁵

The current definition of civilian objects was drafted negatively because it is easier to exhaustively outline what constitutes a military object. Everything that is not a military object, will be a civilian object. Civilian objects are protected against “attacks”, and “attacks” have their autonomous meaning in IHL. Article 49 of the AP I provides that attack is an act of violence undertaken either in offense or defense and it does not make a difference whether attacks are directed at an enemy or own property or whether they are conducted in the enemy or own territory. With this, it is distinguishable from the rules protecting objects in the power of a party.

Despite the significant guarantees contained in API, in treaty IHL there appears to be an important omission when it comes to the protection of civilian objects. Article 85 of the AP I for instance only deems a violation of the principle of distinction as a grave breach if an attack is directed at the civilian population or individual civilians;⁴⁶ civilian objects feature in the grave breach of indiscriminate attacks however, when attacks are launched with the knowledge that they will cause disproportionate damage to civilians and civilian objects;⁴⁷ then sub-paragraph ‘d’ makes it a grave breach to attack non-defended localities and demilitarized zones.⁴⁸ The latter stems from the violations of Articles 59 and 60 of A PI. This omission is remedied by the Rome Statute of the ICC, which criminalizes “intentionally directing attacks against civilian objects, that is, objects which are not military objectives.”⁴⁹ Therefore, direct targeting of civilian objects in international armed conflicts undoubtedly entails both State responsibility under AP I or customary IHL and individual criminal responsibility under the Rome Statute.

2.3. Protection of Property in NIACs

There are notable differences in how property is protected in international and non-international armed conflicts. For example, treaty international law on the protection of objects in NIACs is virtually silent. Common Article 3 centers around the protection of persons taking no active part in hostilities as well as the wounded and sick and makes no mention of civilian objects. AP II provides the protection of objects indispensable to the survival of the civilian population,⁵⁰ works and installations containing dangerous forces,⁵¹ cultural objects and places of worship,⁵² and relief actions,⁵³ but no general protection of civilian objects is found. Likewise, the Rome Statute does not criminalize international direction of attacks against civilian objects in Article 8(2) subparagraph (e) in the section of “other serious violations of the laws and customs applicable to armed conflicts not of an international character” as opposed to IAC war crimes.

⁴⁵ *Ibid.*, para. 2003.

⁴⁶ Additional Protocol I (AP I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978), art. 85(3)(a).

⁴⁷ AP I, art. 85(3)(b).

⁴⁸ AP I, art. 85(3)(d).

⁴⁹ AP I, art. 8(2)(b)(ii).

⁵⁰ Additional Protocol II (AP II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609, 8 June 1977 (entered into force 7 December 1978), art. 14.

⁵¹ AP II, art. 15.

⁵² AP II, art. 16.

⁵³ AP II, art. 18.

According to customary IHL database Rule 7, the parties to the conflict must always distinguish between civilian objects and military objectives – a rule that applies both in IACs and NIACs. The ICRC commentary also points to the Amended Protocol II to the Convention on Certain Conventional weapons, which prohibits directing attacks at civilian objects. The destruction or seizure of the property of an adversary unless required by imperative military necessity is also a separate rule under Rule 50, which applies in both IACs and NIACs. Subsequent Rule 51 of the ICRC database provides that private property must be respected and may not be confiscated in occupied territory except where the destruction or seizure of such property is required by imperative military necessity. Because the reference is made to occupied territories, it is clear that the Commentary only addresses IACs and not NIACs. The legitimate conclusion can therefore be that Rule 7 will apply in the conduct of hostilities, whereas Rule 50 will apply to objects in the power of the party.

The ICC appears to have confused this crucial distinction. It dealt with the destruction of certain historic and cultural objects in the context of a NIAC in Mali under the war crime of art. 8(2)(e)(iv). The relevant acts appear to have taken place in the context of the “occupation” of Timbuktu after the Malian Armed Forces retreated from the area and the groups Ansar Dine and Al-Qaeda in the Islamic Maghreb (‘AQIM’) took control of it.⁵⁴ Notably, the Chamber considered: “the element of ‘direct[ing] an attack’ encompasses any acts of violence against protected objects and will not make a distinction as to whether it was carried out in the conduct of hostilities or after the object had fallen under the control of an armed group.”⁵⁵ However, such distinction would be called for given that under IHL it is not necessary to analyze whether a particular object is a military objective if a such object is in the power of an adverse party.⁵⁶

3. Application of the IHL Distinctions in International Criminal Law

The Rome Statute criminalizes in both IAC and NIACs “the destruction or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.”⁵⁷ The question arises whether this specific war crime applies in the conduct of hostilities or only with respects to objects in the power of a party to the conflict. The ICRC suggests in its Commentary to Rule 7 (dealing with the principle of distinction in the conduct of hostilities) that “an attack against a civilian object constitutes a war crime under the Statute inasmuch as such an attack is not imperatively demanded by the necessities of the conflict.”⁵⁸ Implicitly, the ICRC seems to view this as a ‘conduct of hostilities crime’. However, the conclusion that the war crime under Article 8(2)(e)(xii) of the Rome Statute applies in the conduct of hostilities does not appear to be warranted in light of the specific exclusion by the drafters of the Statute of attacks directed at civilian objects in the conduct of hostilities as a war crime in NIACs.

A similar problem arises with respect to IACs: why did the drafters of the Statute have to include a separate prohibition in 8(2)(b)(xiii), if there is already 8(2)(b)(ii) protecting civilian objects

⁵⁴ International Criminal Court (ICC), *Prosecutor v. Ahmad Al Faqi Al Mahdi*, ICC-01/12-01/15, Judgment and Sentence, 27 September 2016, paras. 31 and 39.

⁵⁵ *Ibid.* para. 15.

⁵⁶ Sassoli, *International Humanitarian Law*, mn. 3.33.

⁵⁷ The Statute of the International Criminal Court, 2187 UNTS 3, adopted 17 July 1997, entered into force 1 July 2002 (Rome Statute), Art. 8(2)(e)(xii), 8(2)(b)(xiii).

⁵⁸ ICRC Rules on Customary IHL, Commentary to Rule 7.

in the conduct of hostilities? The Commentary to the ICC statute to Article 8(2)(b)(xiii) provides that the destruction and seizure of enemy property may take place a) as a result of the combat activities; b) on the territory of a belligerent state; c) in occupied territories; and it legitimately asks: “Thus, the question arises, which of the three situations just outlined, article 8 para. 2(e)(xiii) of the Statute is it supposed to cover.”⁵⁹ The Commentary continues to note that while this provision originates from the Hague Regulations section dealing with hostilities if it was interpreted strictly to cover means and methods of warfare, it would become “largely redundant and superfluous”.⁶⁰ The Commentary further points out: “... allowing the military necessity exception ... to be invoked in the realm of the conduct of hostilities could undermine the principle of distinction in as much as it could potentially be used to extend the range of legitimate military targets beyond the confines of the accepted definition of military objectives as it is contained in article 52(2) of AP I and customary international law.”⁶¹ The commentators, therefore, conclude that notwithstanding its roots in the Hague Regulations, this provision does not regulate the means and methods of warfare. The state of the affairs is however complicated because, in the actual ICC practice, the ICC did apply 8(2)(b)(xiii) in the conduct of hostilities.⁶² However, in order to avoid the double standards and guarantee the coherence of identical war crimes, the commentary suggests that article 8 para 2(b)(xiii) and 8(2)(e)(xii) are not “conduct of hostilities crimes”.⁶³ Such an interpretation is confirmed by the drafting history as the original proposal by the United States had stated that the rule was intended to apply to the property over which custody and control are actually exercised.⁶⁴ This view of the commentators is shared by the authors.

B. Legality of Destruction of or Damage to the Civilian Property during Urban Warfare

After qualifying which situations of urban violence can amount to armed conflict and trigger the application of IHL, now we turn to analyze all possible scenarios, whereas the private property of civilians can be lawfully or unlawfully (under IHL) damaged or destroyed by belligerents in urban areas.

After its incorporation into international human rights instruments in the second part of the twentieth century, the property right has become a significant part of the freedom of the individual, their economic autonomy in modern societies, and an important element for the development of the individual’s personality.⁶⁵

Before property rights, or generally human rights, became part of international law, paradoxical though it may seem, it is in the context of armed hostilities that we first find the development of principles and rules concerning the protection of private property in international law.⁶⁶ By that time two main principle related to the treatment of private property in armed conflict

⁵⁹ Andreas Zimmermann and Robin Geis, “Article 8(2)(b)(xiii),” in *Commentary to the Rome Statute of the International Criminal Court*, ed. Otto Triffterer (Munich: C.H. Beck, 2016), mn. 488.

⁶⁰ *Ibid.*, mn. 489 and 490.

⁶¹ *Ibid.*, mn. 491.

⁶² ICC, *Prosecutor v. Katanga and Chui*, ICC-01/04-01/07, Decision on the Confirmation of Charges, 26 September 2008, para. 311.

⁶³ Zimmermann and Geis, “Article 8(2)(b)(xiii),” mn. 496.

⁶⁴ *Ibid.*, mn. 499.

⁶⁵ L.G. Loucaides, “The Protection of the Rights to Property in Occupied Territories,” *International and Comparative Law Quarterly* 53 (2004): 677.

⁶⁶ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907 (Hague Regulations), art. 46.

was already established: (1) that private property can't be deprived unlawfully and (2) deprivation of private property by belligerent should lead to adequate compensation to the owner.⁶⁷ This suggests that in some circumstances, exigencies of war may require lawful deprivation of property, such as requisition⁶⁸ or seizure⁶⁹ for example, and in all such situations party to the conflict shall make compensation to the owner.

However, the aforementioned principles are largely applicable during the occupation and would not be relevant in situations of the conduct of hostilities, as explained above.

Given the specific context of urban warfare, which mostly all the time involves damage or destruction of civilian properties in cities, it is crucial to examine types of military operations that destroy or damage private property buildings in urban settings and ascertain the legality of such assaults under the relevant IHL principles.

For this reason, three possible scenarios are discussed below: (i) when the private property that turns into a legitimate military objective is attacked; (ii) when private property is incidentally destroyed or damaged as a result of an attack against military objectives and (iii) when civilian property buildings are intentionally attacked as targets.

1. Damage to private property in urban warfare – lawful attacks under IHL

1.1. Private Property as a Military Objective

IHL explicitly provides protection for civilian objects by allowing attacks strictly to military objectives.⁷⁰ The latter is further defined as 'objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.'⁷¹

The definition of military objective comprises two elements: (a) the nature, location, purpose, or use which makes an effective contribution to military action; (b) the total or partial destruction, capture, or neutralization which in the circumstances ruling at the time offers a definite military advantage. Whenever these two elements are simultaneously present, there is a military objective.⁷² Some buildings can also be used by civilians and military alike. In this case, the object has a dual function and is of value for the civilian population, but also for the military.⁷³ In such situations the time and place of the attack should be taken into consideration, together with, on the one hand, the military advantage anticipated, and on the other hand, the loss of human life which must be expected among the civilian population and the damage which would be caused to civilian objects.⁷⁴ Perhaps the most recent example of such dual-use buildings in urban areas was the battle of Mariupol in Ukraine, where among other buildings, the Steel Factory was used to harbor peaceful civilians, but it was also used to store weapons and to house fighters of Azov battalion to combat Russian troops in the city.

⁶⁷ P. C. Jessup, "A Belligerent Occupant's Power over Property," *The American Journal of International Law* 38 (1944): 458.

⁶⁸ Hague Regulations, art. 53.

⁶⁹ *Ibid.*, art. 53(2).

⁷⁰ AP I, art. 52(1-2).

⁷¹ *Ibid.*, art. 52(2).

⁷² Commentaries to the AP I, art.52, para. 2018.

⁷³ *Ibid.*, para. 2023.

⁷⁴ *Ibid.*

Additionally, IHL also upholds the presumption of the civilian nature of the object if there is a doubt whether an object which is normally dedicated to civilian purposes, such as a [...] house or another dwelling [...], is being used to make an effective contribution to military action.⁷⁵ This provision does not apply to clear-cut situations where there is no possibility of doubt but rather refers to borderline cases where belligerents should make a judgment on how to treat the particular building.⁷⁶

The dual-function objects are highly relevant during urban warfare, where residential buildings, blocks, and houses are largely used for storing ammunition or conducting combat operations, thus making these buildings a legitimate target of attack. As *Dinstein* suggests, urban warfare postulates intense and sustained fighting in densely built-up localities, which is usually conducted on a street-by-street, block-by-block, house-to-house, and sometimes room-to-room basis.⁷⁷ These complex features of urban warfare create a fragile environment in cities and make combat operations the most challenging undertaking. Even if civilian lives are spared to a maximum extent by proper warnings and evacuations, their houses are less likely to remain unharmed throughout offensives in urban areas.

During hostilities in cities, residential localities may be placed from the control of one party to another one and back. Having said that, once a residential segment of a built-up area, which is intrinsically civilian by nature, is controlled by the enemy, it becomes a military objective by ‘use’ and automatically includes multiple military objectives by ‘nature’, such as weapons, vehicles, troops, etc.⁷⁸ Furthermore, when active hostilities are waged in urban settings, there is a high likelihood that a whole city block or section can be treated as a military objective if not by ‘use’, then by ‘location’ or ‘purpose’,⁷⁹ making it essentially difficult, if not impossible, to make a clear distinction which part of the building/block can be assaulted and which should be spared from attacks.

Therefore, urban warfare creates a military environment, in which some private property may qualify as a military objective and thus become a legitimate target of attack. However, in cases of partial use of civilian buildings for military purposes, the better view is to treat the remaining part of the building as civilian and factor it in the proportionality assessment.⁸⁰

1.2. Proportionality

One of the common features of urban warfare operations is that they often involve some damage or harm to objects or persons that are not necessarily lawful targets.⁸¹ They may very well result in incidental harm or damage, which cannot always be anticipated.⁸² Therefore, most of the cases of urban operations trigger the applicability of the proportionality rule, which is a well-established

⁷⁵ AP I, art. 52(3).

⁷⁶ Commentaries to the AP I, para. 2037.

⁷⁷ Dinstein, “The Special Dimensions of Urban Warfare.” 1-2.

⁷⁸ *Ibid.*, 5.

⁷⁹ *Ibid.*

⁸⁰ Michael Schmitt, “Targeting Dual Use Structures: An Alternative Interpretation,” *Articles of War*, June 28, 2021, <https://lieber.westpoint.edu/targeting-dual-use-structures-alternative/>.

⁸¹ Noam Neuman, “Challenges in the Interpretation and Application of the Principle of Distinction during Ground Operations in Urban Areas,” *Vanderbilt Journal of Transnational Law* 51 (2018): 810.

⁸² *Ibid.*, 819

principle of international humanitarian law.⁸³ The proportionality rule qualifies an attack unlawful, if incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, is clearly excessive in relation to the concrete and direct military advantage gained/anticipated through this attack.⁸⁴ In addition, a disproportionate attack on civilians, civilian objects, and/or natural environment, carried out during an international armed conflict, is recognized as a war crime.⁸⁵

Whereas urban warfare causes clearly excessive damage to civilian property and loss of civilian life, such operations qualify as unlawful and may lead to the international responsibility of a state, whose armed forces committed this violation and/or individuals, who were in charge of planning and carrying out this operation. Nevertheless, the very notion of the proportionality rule prescribes the possibility that some lawful attacks may still result in significant damage to civilian objects, but it would not violate IHL, because there is a balance between the damage to the civilian objects and the gained military advantage. This becomes specifically relevant during urban warfare when almost all battles cause incidental loss of civilian objects and damage or destruction of private property.

Under IHL, there is no obligation to provide reparation for damages inflicted through a lawfully launched attack. However, the civilian population who live in urban settings, where war is waging, suffer devastating consequences of military operations, which directly affect their private property. As long as urban warfare predominantly involves collateral damage to civilian objects, this phenomenon already becomes a pattern during wars in cities. Under applicable IHL, civilians who do not participate in hostilities, but merely find themselves in the heart of armed operations just because their homes and other properties appear to be a battlefield, have no right to ask for compensation in case of damage or destruction of their property, because attacks in question, most likely will be considered proportionate. This can happen because of the dual use of the building, which was targeted, or because of the strategical location of the building, or because of any other reasons, which gives a greater military advantage to the party to the conflict than the loss of someone's apartment for example, let alone other private property, such as vehicles.

2. Damage to private property in urban warfare – unlawful attacks

The third scenario of possible damage to or destruction of private property during urban warfare is the occasion when fighters deliberately attack private property with a knowledge of its civilian nature and thus violate the principle of distinction.⁸⁶ However, drawing a clear distinct line between civilian and military objects is particularly complicated during a military operation in cities. Sometimes, when ground forces move towards a certain point, they receive incoming fire and are under the threat of harm but are not able to locate the exact source of the fire; they will likely need to act in order to disrupt, suppress, or stop that fire so that they may complete their mission and preserve their forces.⁸⁷ The very nature of urban operations makes it difficult to identify a military

⁸³ Michael Newton and Larry May, *Proportionality in International Law* (Oxford: Oxford University Press, 2014).

⁸⁴ AP I, art. 51(5)(b).

⁸⁵ Rome Statute, art. 8.

⁸⁶ Fausto Pocar, Marco Pedrazzi, and Micaela Frulli, eds., *War Crimes and the Conduct of Hostilities: Challenges to Adjudication and Investigation* (Cheltenham: Edward Elgar, 2013), Part II.

⁸⁷ Nitsan Alon, "Operational Challenges in Ground Operations in Urban Areas: An IDF Perspective," *Vanderbilt Journal of Transnational Law* 51 (2018): 757.

target and not mistake it for a civilian object. Physical structures conceal the adversary's positions and assets, tunnels allow for executing fire and immediately moving in a concealed fashion to another position, and infrastructure interrupts the lines of sight required to identify far-off attacks.⁸⁸ For all these reasons, belligerents may act with knowledge and assumptions that during active hostility in the streets, anything could contain a threat and they might be attacked from anywhere around them. The Israeli Defence Forces, for example, assumes that 'during a ground operation in densely populated areas, a wine cellar may be a coordination point for different attacks; a passing truck may contain explosives; a young man looking through a window may be passing intelligence to an anti-tank squad behind him; even animals may be primed to explode; the command and control center could be the local school's computer room, the administration office of the local religious community center, or even a work-study in a house.'⁸⁹

As it is discussed, target identification is extremely difficult during urban warfare, largely because the adversary uses a hiding technique, which makes the other party vulnerable to harm or an adversary continuously changes locations (buildings, tunnels, other structures) in the city while firing at the enemy. In such scenarios, the belligerent party, which is under attack, most likely has the right to assault all possible objects, which according to the best of the commander's knowledge are used for launching an attack against them. The principle of military necessity allows commanders to neutralize threats against their units. Private property, which is damaged or destroyed as a consequence of such attacks will fall under a legitimate target of attack under the principle of distinction or an incidental loss under the principle of proportionality.

Despite the rather chaotic nature of urban hostilities, belligerents cannot escape their obligations under IHL even if it is hard to distinguish the civilian or military nature of the object and identify lawful targets. The fact, that source of fire is not recognizable, cannot shield fighters from the responsibility to take all precautions for sparing civilian casualties and damage to civilian infrastructure and private property. Article 58 of the AP I, obliges the parties to the conflict, to take necessary measures to protect the civilian population, individual civilians, and civilian objects under their control against the dangers resulting from military operations to the maximum extent feasible.⁹⁰ Some authors even suggest that this provision complements the general rule on precautionary measures in the context of urban warfare.⁹¹

IHL generally does not prohibit belligerents to conduct military operations in densely populated areas,⁹² but it nevertheless does not reduce obligations of the parties to distinguish civilian and military objects all the time and whereas clear distinction cannot be made, to take all feasible measures to spare civilian loss or damage to civilian objects and private property. Density in a specific terrain indeed makes the conduct of hostilities very challenging efforts for military commanders and fighters alike, but this challenge triggers even greater responsibility to fully comply with the rules and principles of IHL.

Belligerent is not prohibited to target private property during urban warfare if it meets the requirement of the military objective under applicable IHL and attacks against it are justified based

⁸⁸ Ibid.

⁸⁹ Ibid., 757-58.

⁹⁰ AP I, art. 58(c).

⁹¹ Aurrel Sari, "Urban Warfare: The Obligations of Defenders," *Lanfare* (blog), January 24, 2019, <https://www.lanfareblog.com/urban-warfare-obligations-defenders>.

⁹² Ibid.

on the principle of military necessity. In addition, belligerent may also target private property as a part of a proportionate attack against military objective, whereas damage to or destruction of this property is not clearly excessive in relation to the concrete and direct military advantage gained or anticipated as a consequence of this attack. These scenarios would make lawful the damage to private property owned by civilians, who do not take direct part in hostilities.

On the contrary, when there is no military necessity to destroy or damage private property or such destruction or damage would be disproportionate to the military gains, such attacks will be considered unlawful. Belligerents should always identify whether the property in question is civilian or military and should launch attacks strictly against military objects. However, in the event of an unidentifiable source of fire in cities, belligerents are allowed to target all possible objects, from which potential threat can be materialized, but they are permitted to do so only after all feasible measures are taken to spare civilian loss or damage to civilian objects.

Another example of willfully damaging private property in urban areas is launching attacks in non-defended towns, which are localities, that a party to the conflict unilaterally declares to be open for occupation and there is no military necessity to attack the place which is undefended.⁹³ AP I explicitly outlaws attacks, by any means whatsoever, on non-defended localities.⁹⁴ Even if a locality contains military objectives and hostile acts are perpetrated from such objectives, that does not in any way justify the total destruction of the buildings in that locality.⁹⁵ Simply, there is no need to damage or destroy civilian property in non-defended towns and any such action cannot be justified by reference to either principle of military necessity or proportionality. Attacks on private property located in the non-defended towns would be considered as deliberate destruction/damage of civilian objects and would qualify as unlawful. However, if a resistance gains strength in non-defended towns and if the combat is taking place within a city or a town, and there is fighting from house to house, it is clear that the situation becomes very different and that any building sheltering combatants becomes a military objective,⁹⁶ and the belligerent party is not prohibited under IHL to launch attacks even against a civilian property if this attack is in line with requirements of military necessity or proportionality.

C. Property Rights and Applicability of Human Rights Law during Urban Warfare

1. How does IHL regulate compensation for the violation of property rights?

Article 91 of the AP I sets out an obligation for any parties to the conflict to pay compensation if they violate the provisions of the GCs or AP I.⁹⁷ This rule originates from the Hague Convention⁹⁸ and also constitutes a principle of international law.⁹⁹ Responsibility for violation of IHL is recognized as part of customary law¹⁰⁰ – thus applicable to both IAC and NIAC. This obligation

⁹³ Jean-Marie Henckaerts, “Non-Defended Towns,” in *Max Planck Encyclopedia of Public International Law* [MPEPIL], 2015, 810.

⁹⁴ AP I, art. 59(1).

⁹⁵ Commentary to the AP I, para. 2264.

⁹⁶ *Ibid.*, para. 2265.

⁹⁷ AP I, art. 91.

⁹⁸ Hague Regulations, art. 3.

⁹⁹ Permanent Court of International Justice, *Chorzów Factory Case* (Germany v. Poland), Judgment of 13 September 1928, Series A, No. 17, 29: “It is a principle of international law and even a general conception of law, that any breach of an engagement involves an obligation to make reparation [...] Reparation is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself.”

¹⁰⁰ ICRC Rules on Customary IHL, rule 149.

applies equally to all parties to the conflict, whether winner or defeated because IHL prevents all parties from 'absolve itself or any other Party of any liability incurred by itself or by another Party in respect of breaches of IHL.'¹⁰¹

Article 91 obliges parties to the conflict to pay compensation only if the violations have been committed by acts, which are attributed to its armed forces.¹⁰² The scope of this provision is limited to violations of the Conventions and the Protocol, but it is without prejudice to questions that might arise with regard to compensation for damage inflicted when there has not been any violation in the strict sense of the word.¹⁰³

Mere violation of the IHL rules does not give rise to claims for compensation, as the *Commentaries* to the AP I suggest 'there must also be a loss or damage which in most cases will be of a material or personal nature and such compensation is usually expressed in the form of a sum of money which must correspond either to the value of the object for which restitution is not possible or to an indemnification which is proportional to the loss suffered.'¹⁰⁴

Therefore, for a person to claim compensation from a party to the conflict under Article 91, the following elements must be met cumulatively: (a) violation of the IHL rule must be committed; (b) violation must be committed by any parties to the conflict and thus be attributable to their armed forces and (c) violation must cause some loss or damage to the civilian population. Besides article 91, neither core IHL treaties, nor customary law provide other rules about compensating victims of violation, therefore this provision remains the only point of reference in IHL, which can be applied to vindicating claims of civilians, whose property got damaged or destroyed during urban warfare.

1.1. Compensation for unlawful targeting in urban warfare

Application of Article 91 to the violation of property rights in urban warfare suggests that owners of private property, which was either damaged or destroyed during military operations in cities, can rely on the right to compensation under IHL only if their property was unlawfully targeted, which amounted to the violation of the GCs or the AP I. However, as discussed above, urban warfare sometimes results in damaging entire civilian infrastructure (including private property), which can be justified either under the principle of distinction or proportionality. A distinction can be invoked as a ground of lawfulness in case the civilian building is used by combatants and proportionality precludes unlawfulness if a civilian property was damaged or destroyed as an accidental harm to the military advantage.

Therefore, the only scenario, when owners can claim compensation is the case, when an attacker clearly knew that a specific civilian building was neither a military objective nor in close proximity to a military objective, which would justify its destruction as proportionate collateral damage. In this situation, the attacker deliberately targeted a civilian object, which amounts to the violation of the principle of distinction and thus gives raise to the claims for compensation. However, to reiterate once again, the nature of urban warfare leaves very little chance for this scenario to be materialized.

¹⁰¹ GC I, art. 52; GC II, art. 52; GC III, art. 131; GC IV, art. 148.

¹⁰² AP I, art. 91.

¹⁰³ *Commentaries* to the AP I, art. 91, para. 3659.

¹⁰⁴ *Ibid.*, para. 3655.

1.2. Compensation for locating military objective in urban terrain

Another possibility to apply compensation rule under IHL is the situation, when a party to the conflict intentionally places military objectives in close proximity to the civilian infrastructure in cities. Article 58 of the AP I imposes an obligation to the parties to the conflict to the maximum extent feasible to avoid locating military objectives within or near densely populated areas.¹⁰⁵ This includes both, permanent and mobile objectives.¹⁰⁶ The purpose of this provision is to force governments to install or place military objectives as far from urban settings as possible, however for densely populated areas, this provision is very difficult to apply.¹⁰⁷ IHL does not indicate to the parties to the conflict where to place military objectives. This should be decided independently by military commanders of the parties. However, IHL requires them to take all feasible measures to avoid placing military objectives close to areas, which are heavily packed with civilians.

So, in order to find a violation of this provision, it is required to prove that party to the conflict intentionally located military objectives in urban areas and that feasible measures were available to avoid this. Such measures can include ensuring that the party to the conflict locates its forces away from populated areas or evacuates civilians from areas where the military is operating. Militaries should avoid using inherently civilian objects and the private property of civilians to engage in warfare and can do so only as a last resort when there are no practical choices.

If the violation is found, this must cause damage or loss of private property of civilians to give rise to claims for compensation. Mere installation of military objectives in the proximity of residential areas if other options were available, does not necessarily validate compensation claims, however, this poses a serious threat to civilians and their property and amounts to violation. Only if this threat has materialized and it caused loss or damage to civilian property, then the owners can argue that the party to the conflict is under an obligation to pay them compensation.

1.3. Compensation for an indiscriminate attack

Article 51 of the AP I prohibits indiscriminate attacks,¹⁰⁸ which includes attack, that ‘treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects.’¹⁰⁹ This type of attack sometimes is referred to as carpet bombing or saturation bombing ‘that destroys all life in a specific area and razes to the ground all buildings situated there.’¹¹⁰

As explained above,¹¹¹ the nature of urban combat operations practically precludes effective distinction of military targets and civilian objects, because of the proximity of such buildings to each other, or the dual use of civilian infrastructure. Therefore, launching an attack in urban areas in most cases would bear the features of indiscriminate attacks. However, the phrase ‘clearly separated and distinct’ is key in determining whether such an attack amounts to a violation or not. Interpretation of this phrase indeed leaves some degree of latitude to those mounting an

¹⁰⁵ AP I, art. 58(b).

¹⁰⁶ Ibid., Commentary, para. 2251.

¹⁰⁷ Ibid., paras. 2251, 2256.

¹⁰⁸ AP I, art. 51(4).

¹⁰⁹ Ibid., art. 51(5)(a).

¹¹⁰ Ibid., Commentaries, para. 1968.

¹¹¹ See, Chapter 2 of this article.

attack¹¹² and only launching such an attack will amount to a violation, which was targeted against civilian objects, that were clearly distinguishable from the nearby military objectives.

Indiscriminate attack of course brings loss or damage to private civilian property, but for the owners to claim compensation from the attacker, it is necessary to demonstrate that their property was evidently distinct from the adjacent military objectives. Otherwise, such an attack wouldn't amount to a violation of the AP I.

Given the special features of urban operations, the vast majority of property destructions during urban warfare would, most likely, qualify as lawful and would not amount to 'violations', which is an essential requirement under article 91 to claim compensation.

To conclude, IHL does not acknowledge the right to compensation for civilians, whose private property was damaged or destroyed as a result of a lawful attack under IHL, even if those civilians did not take a direct part in hostilities and are not otherwise linked to the hostilities.

2. Right to Property under the International Human Rights Law

The right to private property features in early human rights documents, such as, for example, the French Declaration of the Rights of Men and Citizens.¹¹³ It later was incorporated into the first universal human rights instrument – the Universal Declaration of Human Rights.¹¹⁴ Despite the absence of the right to private property in the international covenants,¹¹⁵ all regional human rights instruments recognize the inviolability of private property, as a fundamental human right.¹¹⁶ In some regional jurisdictions, peaceful enjoyment of the right to private property is considered even a peremptory norm of international law.¹¹⁷

The essential idea of the right to private property is that everyone is allowed to own, use and enjoy private property without interference from the State. However, in some instances, legitimate objectives, such as public interests, can allow the deprivation of property rights upon payment of adequate compensation to the owner.

International human rights law recognizes the obligation of a State to provide adequate compensation for the deprivation of possession or destruction of property for the public

¹¹² AP I, art.51(5)(a), Commentaries, para. 1972.

¹¹³ The Declaration of the Rights of Man and Citizen, 1789, art. 17.

¹¹⁴ Universal Declaration of Human Rights, 10 December 1948, UN GA res.217A, art. 17.

¹¹⁵ International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976); International Covenant on Economic, Social and Cultural Rights (ICESCR), 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

¹¹⁶ Convention on the Protection of Fundamental Human Rights and Freedoms (European Convention on Human Rights), 4 November 1950, ETS No. 5, Protocol No. 1, art. 1; Charter of Fundamental Rights of the European Union, 18 December 2000, OJ C 364/1, art. 17; American Convention on Human Rights, 22 November 1969, OAS Treaty Series No. 36, art. 21; African Charter on Human and Peoples' Rights, 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, art. 14.

¹¹⁷ In the case *Kadi v. Council and Commission*, the Court of First Instance held that respect for the right to property must be regarded as forming part of the mandatory rules of general international law. It further stated that only an arbitrary deprivation of that right might, in any case, be regarded as contrary to jus cogens. See: Judgment of the Court of First Instance (Second Chamber, Extended Composition), 21 September 2005, in Case T-315/01, *Yassin Abdullah Kadi v. Council of the European Union and Commission of the European Communities*, para. 242.

interest.¹¹⁸ Moreover, paying compensation for the lawful deprivation of private property constitutes a general principle of international law.¹¹⁹

Unlike IHL, which allows the destruction of property in certain conditions and requires parties to the conflict to compensate for damages only if a violation occurs, IHRL explicitly prohibits violation of the right to private property and only in exceptional circumstances allows lawful deprivation of property upon paying adequate compensation to the owner.

3. Applying human rights standards for compensation during urban warfare

Relations between the IHL and other branches of law are often characterized according to the principle *lex specialis derogate legi generali*, which implies that the specific rule applies with priority over a general rule.¹²⁰ Authors suggest that the *lex specialis* principle may be applicable between the IHL and the human rights law, the environmental law,¹²¹ or the law of the seas.¹²² However, it should be underscored that the *lex specialis* principle does not regulate the relation between two branches, but between two rules. Additionally, *lex specialis* is best understood as a principle of treaty interpretation and not of conflict resolution. Whether a particular human right can be interpreted in light of IHL will depend on how a specific treaty governs admissible limitations and derogations. That being said, there might be situations where IHL may indeed be taken into account when interpreting different rights through the concept of systemic integration. Where a particular treaty allows for that type of systemic integration, several factors must be weighed to determine whether IHL indeed contains a ‘special’ rule in relation to a certain problem.¹²³ Between two potentially applicable rules, the one that has the larger “common contact surface area” with the situation applies.¹²⁴ Some situations involving private property in armed conflict can be governed exclusively by the IHRL, while other situations are fully regulated by the IHL and some specific aspects of protection of private property can be regulated differently under both areas of law.

The right to compensation for harm to private property appears to be among the rules, which are differently regulated under the IHL and IHRL. While human rights law prohibits any kind of arbitrary deprivation of property and provides the right to compensation in case of lawful damage or destruction of private property, IHL only prescribes such possibility if the property was unlawfully destroyed. Unintentional destruction of homes in the vicinity of military objectives may be tolerated if the relevant IHL rules are complied with.¹²⁵

¹¹⁸ Christoph Grabenwarter, *European Convention on Human Rights – Commentary* (2014): 378–81; Thomas M. Antkowiak and Alejandra Gonza, *The American Convention on Human Rights: Essential Rights* (Oxford: Oxford University Press, 2017), 275–77; Rachel Murray, *The African Charter of Human and Peoples’ Rights: A Commentary* (Oxford: Oxford University Press, 2019), 374; Ludovic Hennebel and Helena Tigruojda, *The American Convention on Human Rights: A Commentary* (Oxford: Oxford University Press, 2022), 650–51.

¹¹⁹ William A. Schabas, *The European Convention on Human Rights: A Commentary* (Oxford: Oxford University Press, 2015), 977–78; D. J. Harris, Michael O’Boyle, et al., eds., *Law of the European Convention on Human Rights* (Oxford: Oxford University Press, 2018), 877–84.

¹²⁰ Yoram Dinstein, *Conduct of Hostilities under the Law of International Armed Conflict*, 3rd ed. (Cambridge: Cambridge University Press, 2016), 31–33.

¹²¹ Sassoli, *International Humanitarian Law*, p. 433, 572.

¹²² Ben Saul and Dapo Akande, eds., *The Oxford Guide to International Humanitarian Law* (Oxford: Oxford University Press, 2020), 232.

¹²³ Sassoli, *International Humanitarian Law*, p. 439.

¹²⁴ Ibid.

¹²⁵ Maheta Molongo, "Property Right during Armed Conflict: Application of Adopting Principles of International Humanitarian Law by the European Court of Human Rights," *ILSP Journal* (Washington College of Law), 76.

Under the *lex specialis* rule, the assumption might be that IHL rule on compensation takes precedence over the human rights standard on compensation, which suggests that during urban warfare only damages to private property inflicted through IHL violations can be compensated and the loss suffered by owners of property, which were destroyed as a consequence of the lawful attack, won't be paid off.

However, this interpretation would be unfair for the victims who lost their private property, as it would deprive them of the possibility of claiming compensation even if their homes were damaged as a result of lawful attacks under IHL. As explained earlier, property may be lawfully destroyed under IHL even in situations where a property owner has not committed any wrongful conduct.

Having said that, the human rights standard of paying compensation for lawful deprivation of property should complement IHL and be applied to the specific situations of urban warfare, whereas targeting and attacking private homes of peaceful civilians is practically unavoidable. In fact, as mentioned above, article 91 of the AP I is without prejudice to questions that might arise with regard to compensation for damage inflicted when there has not been any violation of IHL.¹²⁶ IHL indeed imposes an obligation on parties to the conflict to pay compensation for damages only if this damage occurred as a consequence of violations, but at the same time, it does not exclude the possibility of paying compensation for lawfully inflicting damages. Indeed, other branches of international law, notably IHRL, may even create an obligation to provide a compensation and remedy the harm.

In case of damage of property during urban warfare, regional and international human rights bodies provide avenues for claiming compensation. In these bodies, individuals themselves appear as subjects of the proceedings by lodging the applications. For example, in a high-profile *Akdivar case* brought before the European Court of Human Rights by a group of Kurdish villagers in 2002, the Turkish government was found guilty of violations of the right to private and family life and the right to peaceful enjoyment of possessions. The soldiers had entered the village Kelekçi after a PKK attack. They began firing heavy weapons from armoured cars at houses. The Court found violations and awarded the villagers pecuniary damages for destruction of the houses, livestock and crops, household property, loss of income, and cost of alternative accommodation, totalling £115,062.76. Each applicant also received £8,000 in non-pecuniary damages for the emotional trauma they experienced during the destruction of their houses.¹²⁷ There have been other similar cases.¹²⁸

Russia's invasion of Ukraine once again demonstrated the need to adopt this approach in compensating victims, who lost their homes. President Zelenskiy has proposed the creation of a mechanism based on a multilateral agreement that would award compensation to those that suffered as a result of the Russian invasion. The participating government would then use seized

¹²⁶ Commentaries to the AP I, art.91, para. 3659.

¹²⁷ Human Rights Watch, *Human Rights Watch Country Report on Turkey* (2002), <https://www.hrw.org/reports/2002/turkey/Turkey1002-12.htm>.

¹²⁸ *Menteş v. Turkey*, ECHR, Application No. 23186/94, Judgment, 28 November 1997; *Selçuk and Asker v. Turkey*, ECHR, Application No. 23184/94, Judgment, 24 April 1998; *Bilgin v. Turkey*, ECHR, Application No. 23819/94, Judgment, 16 November 2000; *Dulas v. Turkey*, ECHR, Application No. 14268/01, Judgment, 13 November 2003; *Orban v. Turkey*, ECHR, Application No. 25656/94, Judgment, 18 June 2002.

and sanctioned foreign assets to compensate the victims and rebuild the property.¹²⁹ The resolution adopted by the UN General Assembly calls upon making reparations for injuries and damages, which were caused by violations of IHL or IHRL.¹³⁰ Despite this, official calls from Kyiv,¹³¹ or the EU¹³² to freeze Russia-linked assets in order to pay reparations to the victims of aggression against Ukraine do not necessarily distinguish between damages which were inflicted through violations of the IHL rules and damages, which occurred as a result of attacks, which might qualify as lawful under IHL. Most of the civilian damages happened in Ukrainian cities during urban warfare and Ukraine plans to compensate everyone, who lost their homes regardless of the lawfulness of the attacks, which led to destruction or damage to the private property of owners.¹³³

4. Reparations for wartime destruction of property for violations of *jus ad bellum*

Another area of law that regulates the use of force and which is undoubtedly relevant in situations of urban warfare is the *jus ad bellum*. The right to reparations in cases of violations of *jus ad bellum* is quite significant, as it potentially covers all property destruction, which has a connection with the breach of the peremptory prohibition to use force irrespective of whether or not it at the same time amounts to a violation of IHL. By implication, an aggressor state will have to compensate a victim state for all property destruction, even if a such property in the sense of IHL might have constituted a legitimate military objective. This is also acknowledged in the Commentary to Additional Protocol I: “A State which resorts to war in violation of the principle of Article 2, paragraph 4, of the United Nations Charter may be held responsible for all damages caused by such a war, and not only for those resulting from unlawful acts committed in the sense of *jus in bello*”¹³⁴

UN Security Council (UNSC) in the post-Cold War period also proved to be instrumental in compensation claims related to wartime violations. For example, for Iraq-Kuwait War in 1990-91, the Council set up as a subsidiary organ of the United Nations Compensation Commission in 1991.¹³⁵ the Security Council considered that Iraq bore liability for any damage or injury to Government or nationals of other countries as a result of its invasion and occupation of Kuwait.¹³⁶ The mechanism was successful because it used sequestered oil revenues to pay the reparations.¹³⁷ It also relied on a more flexible test for ascertaining which losses were eligible for compensation:

¹²⁹ Reuters, “Ukraine’s Zelenskiy Proposes Formal Deal on Compensation from Russia,” May 20, 2022, <https://www.reuters.com/world/europe/ukraines-zelenskiy-proposes-formal-deal-compensation-russia-2022-05-20/>.

¹³⁰ United Nations General Assembly. Resolution A/RES/ES-11/5, *Furtherance of Remedy and Reparation for Aggression against Ukraine*, November 14, 2022, para. 2.

¹³¹ Minister of Justice of Ukraine. “We Want Compensation for All the Damage That Russia Caused in Ukraine through Its War of Aggression.” *Nau.ch*, <https://www.nau.ch/news/europa/ukraine-will-uber-300-milliarden-us-dollar-entschadigung-von-moskau-66271204>.

¹³² European Commission. *Ukraine: Commission Presents Options to Make Sure that Russia Pays for Its Crimes*, November 30, 2022.

¹³³ “*Compensation for Housing Destroyed Due to the War: How It Will Work in Ukraine*.” Visit Ukraine, accessed January 15, 2025, <https://visitukraine.today/blog/575/compensation-for-housing-destroyed-due-to-the-war-how-it-will-work-in-ukraine>.

¹³⁴ Commentary to AP I, para. 3650.

¹³⁵ United Nations Security Council, *Resolution 687*, April 28, 1991.

¹³⁶ United Nations Security Council, *Resolution 687* (1991), para. 16.

¹³⁷ Pietro Sullo and Julian Wyatt, “War Reparations,” in *Max Planck Encyclopaedia of Public International Law* (September 2015), mn. 32.

it had to establish a connection with Iraq's invasion and occupation of Kuwait and not the violations of *jus in bello*.¹³⁸ But it is very well possible, that at the same time, the destruction of the real property of the victims was actually a result of *jus in bello* violations.

The past practice of States has been to make the losing State pay all compensation, irrespective of whether the acts of war had been lawful or unlawful.¹³⁹ For example, the Treaty of Versailles provided in Article 232 that Germany was liable to cover damage to all property with the exception of military works.¹⁴⁰ The Reparation commission was tasked with determining the specific amount of the damage to be paid.¹⁴¹ In some cases, such treaties would take into account the economic conditions of the State liable to pay compensation, as was the case for Japan.¹⁴² For conflicts in the Cold War era, many states chose to renounce the claims for reparations in peace treaties.¹⁴³ In some other cases, it was politically not feasible to acknowledge the entitlement to reparations. For example, the US in the case of the Vietnam War preferred to provide aid and contribute to the reconstruction without formally accepting any responsibility and making no mention of the reparations.¹⁴⁴ A significant example of reparations for property destruction as a result of hostilities is a treaty between Croatia, Bosnia-Herzegovina, and FRY, which provided: "All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them the property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them."¹⁴⁵

Conclusion

As a result of the urbanization of armed conflicts, more and more civilian victims face homelessness and displacement from their residential areas. The use of explosive weapons in densely urban areas results in indiscriminate effects on civilians and civilian property and large-scale destruction. Such effects can only be limited if parties to the conflict take their IHL obligations seriously by targeting strictly military objectives, using more precise weapons, and taking all feasible precautions before carrying out each attack. Frequently, large-scale property destruction will result in violations of multiple norms of international law under parallel branches.

The commission of internationally wrongful acts undoubtedly triggers States' obligations to provide reparations for the harm suffered, but States appear to frequently bypass the available mechanisms of responsibility and opt rather for political solutions. The consideration of State practice so far indicates that while there have been some welcome developments in the field of international criminal law and international human rights law for individuals to claim and receive reparations, more sustained efforts to address wartime property destruction remain absent in many

¹³⁸ Emanuela-Chiara Gillard, "Reparation for Violations of International Humanitarian Law," *International Review of the Red Cross* 85, no. 851 (2003): 541.

¹³⁹ Commentary to AP I, para. 3647.

¹⁴⁰ *Treaty of Peace between the Allied and Associated Powers and Germany*, 112 BFSP 1, [1919] UKTS 4, Part VIII Reparation, Section I General Provisions, art. 232 (9).

¹⁴¹ Sullo and Wyatt, "War reparations," mn. 12.

¹⁴² *United States and Japan, Treaty of Peace with Japan*, September 8, 1951, 83 U.N.T.S. 497.

¹⁴³ Sullo and Wyatt, "War reparations," mn. 27.

¹⁴⁴ *Ibid.*, 28.

¹⁴⁵ The General Framework Agreement for Peace in Bosnia and Herzegovina, Dayton, initialled on 21 November 1995 and Paris, signed on 14 December 1995, Annex 7, Agreement on Refugees and Displaced Persons, art. 1.

countries that have felt the horrid effects of urbanized conflicts. Whether or not victims receive compensation in practice frequently depends on whether parties can reach a political agreement.

There is a possibility for increased judicial scrutiny over the actions of armed forces in domestic courts, but this requires a shift in the paradigm by national courts and acknowledgment that the current international law truly vests individuals with a right to claim reparations.

While the role of political agreements should not be excluded, such agreements do not dissolve the international responsibility of a State, which remains liable under international law for any property destruction resulting from internationally wrongful acts.

Bibliography

- Alon, Nitsan. "Operational Challenges in Ground Operations in Urban Areas: An IDF Perspective." *Vanderbilt Journal of Transnational Law* 51 (2018): 737-758.
- Al-Mughrabi, Nidal. "With Most Gaza Homes Wrecked by War Still in Ruins, Smiles for the Lucky Few." *Reuters*, January 13, 2022. <https://www.reuters.com/world/with-most-gaza-homes-wrecked-by-war-still-ruins-smiles-lucky-few-2022-01-13/>.
- Amnesty International. "Israel's Destruction of Multistory Buildings: Extensive, Wanton and Unjustified." December 9, 2014. <https://www.amnesty.org/en/latest/news/2014/12/israels-destruction-multistorey-buildings-extensive-wanton-and-unjustified/>.
- Antkowiak, Thomas M., and Alejandra Gonza. *The American Convention on Human Rights: Essential Rights*. Oxford: Oxford University Press, 2017.
- Arai-Takahashi, Yutaka. "Protection of Private Property." In *The 1949 Geneva Conventions: A Commentary*, edited by Andrew Clapham, Paola Gaeta, and Marco Sassoli. Oxford: Oxford University Press, 2015.
- Assad, Abdulkader. "War Has Damaged 6666 Properties in Benghazi." *The Libya Observer*, January 4, 2022. <https://www.libyaobserver.ly/news/municipality-war-has-damaged-6666-properties-benghazi>.
- B'Tselem. "4.5 Years after Israel Destroyed Thousands of Homes in Operation Protective Edge: 13,000 Gazans Still Homeless." March 3, 2019. https://www.btselem.org/gaza_strip/20190303_13000_gazans_homeless_since_2014_war.
- Benedek, Wolfgang, Veronika Bílková, and Marco Sassoli. "Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine Since 24 February 2022." *Organization for Security and Co-operation in Europe*, April 13, 2022.
- Carey, Andrew, and Yesa Kesaieva. "Nearly 1,000 Residential Buildings Have Been Destroyed in Kharkiv, Mayor Says." *CNN*, March 23, 2022. https://edition.cnn.com/europe/live-news/ukraine-russia-putin-news-03-23-22/h_89ea8adc6c5dda8282dda339d6d9e3ff.
- Dinstein, Yoram. *Conduct of Hostilities under the Law of International Armed Conflict*, 3rd ed. Cambridge: Cambridge University Press, 2016.
- Dinstein, Yoram. "The Special Dimensions of Urban Warfare." *Israel Yearbook on Human Rights* 50 (2020): 1-25.
- Dowdney, Luke. *Children of the Drug Trade: A Case Study of Children in Organized Armed Violence in Rio de Janeiro*. Rio de Janeiro: 7 Letras, 2003.
- European Commission. "Ukraine: Commission Presents Options to Make Sure that Russia Pays for its Crimes." November 30, 2022.
- Factory at Chorzów* (Germany v. Poland), Judgment, 1928 P.C.I.J. (ser. A) No. 17 (Sept. 13). *Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War*. 75 UNTS 287, adopted 12 August 1949, entered into force 21 October 1950.

- Gillard, Emanuela-Chiara. "Reparation for Violations of International Humanitarian Law." *International Review of the Red Cross* 85, no. 851 (2003): 529-553.
- Grabewarter, Christoph. *European Convention on Human Rights – Commentary*. Munich: C.H. Beck, 2014.
- Harris, D. J., Michael O'Boyle, et al. *Law of the European Convention on Human Rights*. Oxford: Oxford University Press, 2018.
- Hauck, Pierre, and Sven Peterke. "Organized Crime and Gang Violence in National and International Law." *International Review of the Red Cross* 92, no. 878 (2010): 407-436.
- Hazen, Jennifer. "Understanding Gangs as Armed Groups." *International Review of the Red Cross* 92, no. 878 (2010): 369-386.
- Henckaerts, Jean-Marie. "Non-Defended Towns." In *Max Planck Encyclopedia of Public International Law*. Oxford: Oxford University Press, 2015.
- Henckaerts, Jean-Marie, and Louise Doswald-Beck, eds. *Customary International Humanitarian Law, Volume 1: Rules*. Cambridge: Cambridge University Press, 2005.
- Hennebel, Ludovic, and Helena Tigrudjda. *The American Convention on Human Rights: A Commentary*. Oxford: Oxford University Press, 2022.
- Human Rights Watch. "Human Rights Watch Country Report on Turkey." 2002. <https://www.hrw.org/reports/2002/turkey/Turkey1002-12.htm>.
- Human Rights Watch. "Memorandum on Domestic Prosecutions for Violations of International Human Rights and Humanitarian Law in Chechnya." February 9, 2001. https://www.hrw.org/sites/default/files/media_2021/07/200102eca_russia_chechnya.pdf.
- International Committee of the Red Cross. *Commentary on the Third Geneva Convention*. Geneva: ICRC, 2020.
- International Committee of the Red Cross. *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*. Geneva: ICRC, 2019.
- International Committee of the Red Cross. *I Saw My City Die: Voices from the Front Lines of Urban Conflict in Iraq, Syria and Yemen*. Geneva: ICRC, 2017.
- Jessup, Philip C. "A Belligerent Occupant's Power over Property." *American Journal of International Law* 38, no. 3 (1944): 457-468.
- Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, 136.
- Loucaides, L. G. "The Protection of the Rights to Property in Occupied Territories." *International and Comparative Law Quarterly* 53, no. 3 (2004): 677-690.
- Modern War Institute. "Urban Warfare Project." Accessed August 30, 2024. <https://mwi.westpoint.edu/urban-warfare-project/>.
- Molango, Maheta. "Property Right during Armed Conflict: Application of Adopting Principles of International Humanitarian Law by the European Court of Human Rights." *ILSP Law Journal* (Washington College of Law): 76-98.
- Murray, Rachel. *The African Charter of Human and Peoples' Rights: A Commentary*. Oxford: Oxford University Press, 2019.
- Neuman, Noam. "Challenges in the Interpretation and Application of the Principle of Distinction during Ground Operations in Urban Areas." *Vanderbilt Journal of Transnational Law* 51 (2018): 807-825.
- Newton, Michael, and Larry May. *Proportionality in International Law*. Oxford: Oxford University Press, 2014.
- "Official Says 80-90% of Mariupol Destroyed or Damaged by Russian Shelling, Airstrikes." *The Kyiv Independent*, March 17, 2022. <https://kyivindependent.com/uncategorized/official-says-80-90-of-mariupol-destroyed-or-damaged-by-russian-shelling-airstrikes/>.

- Oxfam. “Escalating Death, Destitution, and Destruction, as Yemeni Civilians Left to Bear Brunt of 7-Year War.” March 24, 2022. <https://reliefweb.int/report/yemen/escalating-death-destitution-and-destruction-yemeni-civilians-left-bear-brunt-7-year>.
- Pfanner, Toni. “Editorial: Urban Violence.” *International Review of the Red Cross* 92, no. 878 (2010): 309-313.
- Pictet, Jean, ed. *Commentary on the Geneva Conventions of 12 August 1949*, vol. 3: *Geneva Convention Relative to the Treatment of Prisoners of War*. Geneva: ICRC, 1960.
- Pocar, Fausto, Marco Pedrazzi, and Micaela Frulli, eds. *War Crimes and the Conduct of Hostilities: Challenges to Adjudication and Investigation*. Cheltenham: Edward Elgar, 2013.
- Protocol Additional (I) to the Geneva Conventions of 12 August 1949*, and relating to the Protection of Victims of International Armed Conflicts. 1125 UNTS 3, adopted 8 June 1977, entered into force 7 December 1978.
- Prosecutor v. Ahmad Al Faqi Al Mahdi*, ICC-01/12-01/15, Judgment and Sentence (International Criminal Court, September 27, 2016).
- Prosecutor v. Katanga and Chui*, ICC-01/04-01/07, Decision on the Confirmation of Charges (International Criminal Court, September 26, 2008).
- Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84, Judgement (Trial Chamber), International Criminal Tribunal for Former Yugoslavia, April 3, 2008.
- Sandoz, Yves, Christophe Swinarski, and Bruno Zimmermann, eds. *Commentary on the Additional Protocols*. Geneva: ICRC, 1987.
- Sari, Aurrel. “Urban Warfare: The Obligations of Defenders.” *Lawfare* (blog), January 24, 2019. <https://www.lawfareblog.com/urban-warfare-obligations-defenders>.
- Sassoli, Marco. *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*. Cheltenham: Edward Elgar, 2019.
- Saul, Ben, and Dapo Akande, eds. *The Oxford Guide to International Humanitarian Law*. Oxford: Oxford University Press, 2020.
- Schabas, William A. *The European Convention on Human Rights: A Commentary*. Oxford: Oxford University Press, 2015.
- Schmitt, Michael N. “Targeting Dual Use Structures: An Alternative Interpretation.” *Articles of War* (blog), June 28, 2021. <https://lieber.westpoint.edu/targeting-dual-use-structures-alternative/>.
- Sullo, Pietro, and Julian Wyatt. “War Reparations.” In *Max Planck Encyclopedia of Public International Law*. Oxford: Oxford University Press, September 2015. *The General Framework Agreement for Peace in Bosnia and Herzegovina*, Annex 7: Agreement on Refugees and Displaced Persons, December 14, 1995.
- “3m Homes Destroyed in Syria War.” *Middle East Monitor*, June 1, 2018. <https://www.middleeastmonitor.com/20180601-3m-homes-destroyed-in-syria-war/>.
- Treaty of Peace between the Allied and Associated Powers and Germany*, 112 BFSP 1 (1919).
- Treaty of Peace with Japan*, United States-Japan, September 8, 1951, 83 U.N.T.S. 497.
- UN Office of the High Commissioner for Human Rights. “Update on the Human Rights Situation in Ukraine.” March 28, 2022. https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf.
- United Nations General Assembly Resolution ES-11/5*. “Furtherance of Remedy and Reparation for Aggression against Ukraine.” A/RES/ES-11/5 (November 14, 2022).
- United Nations Human Rights Council. *Report of the Detailed Findings of the Independent Commission of Inquiry on the 2014 Gaza Conflict*. U.N. Doc. A/HRC/29/CRP.4 (June 24, 2015).
- United Nations Independent Commission of Inquiry. “Report of the Independent Commission of Inquiry on the 2014 Gaza Conflict - A/HRC/29/52.” Accessed August 30, 2024. <https://www.ohchr.org/en/hrbodies/hrc/coigazaconflict/pages/reportcoigaza.aspx>.

- United Nations Security Council Resolution 687, S/RES/687 (April 28, 1991). “Urban Violence: What Role for Traditional Humanitarianism?” *Synthesis Report*, Portcullis House, Westminster, March 21, 2013. <https://www.icrc.org/en/doc/assets/files/2013/urban-violence-summary-report.pdf>.
- “Who Will Rebuild Destroyed Houses in Kandahar.” *Afghanistan Rights Monitor*, November 5, 2010. <https://reliefweb.int/report/afghanistan/who-will-rebuild-destroyed-houses-kandahar>.
- Zimmermann, Andreas, and Robin Geis. “Article 8(2)(b)(xiii).” In *Commentary to the Rome Statute of the International Criminal Court*, edited by Otto Triffterrer. Munich: C.H. Beck, 2016.