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PROTECTED OBJECTS AND PROPERTY IN IHL- Diksha Pardhan¹

INTRODUCTION TO REQUIREMENT OF PROTECTION: THE ‘WHAT, WHY, AND HOW?’

“Wanton killing of innocent civilians is terrorism, not a war against terrorism.”

Noam Chomsky, a renowned American linguist and political activist, put forth his views on state terrorism in the aforementioned terms. While the context may not be precisely akin to the discussion that this research project intends to undertake, these words can arguably be employed to describe the gospel of the principles of international humanitarian law [“IHL”] i.e., protection of civilian lives and objects from unprecedented damage and injury.

1. WHAT ARE CIVILIAN OBJECTS UNDER IHL?

“The Customary Rules of IHL” is a list of 161 rules of customary international humanitarian law which have been identified by the ICRC in its study on customary IHL and have been published in Volume I by the Cambridge University Press in 2005.² Rule 9 of the aforementioned rules expounds upon civilian objects. Article 52(2) of the Additional Protocol I³ identifies “civilian objects” as “all objects that are not military objectives”. Notably, no reservations have been made to this article till date.

2. WHY DO CIVILIAN OBJECTS AND PROPERTY WARRANT PROTECTION?

IHL, being ‘jus in bello’ or the law that governs the way in which warfare is conducted, imposes a responsibility upon the parties to abide by the customs and approved methods of war. Among these customs, a special status has been attributed to civilian objects, in furtherance of the intention to protect civilian lives from disproportionate adversities of war.

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² ICRC, ‘Customary Rules of International Humanitarian Law’, <https://casebook.icrc.org/case-study/icrc-customary-international-humanitarian-law> accessed on 3 November 2021.

³ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (entered into force on 7 December 1978) [“Additional Protocol I”].

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Among other reasons, the rationale behind protection of civilian objects and property in wartime is that it is illegal to launch an attack the primary purpose of which is to spread terror among the civilian population. The relevance of this rule is described by Yoram Dinstein as follows: *“The prohibition is applicable even if the attacker has every reason to believe that such a terror campaign will shatter the morale of the civilian population-so that the enemy's determination to pursue the armed conflict will be eroded-and the war will be brought to a rapid conclusion (saving, as a result, countless lives on both sides). Therefore, IHL establishes a specific protection for civilian objects and property and forbids attacks, reprisals, or other acts of violence against such objects, in both internal and international conflicts.”*⁴

Yet, Dinstein takes note of an important rider in this regard. He writes: *“What counts here is not the actual effect of the attack but its purpose or intent: an attack is not forbidden unless terrorizing civilians is its primary aim. Nothing precludes mounting an otherwise lawful attack against combatants and military objectives, even if the net outcome (due to resonating "shock, and awe") is the collapse of civilian morale and the laying down of arms by the enemy.”*

It is pertinent to note that in the view of some academicians, certain objects and property of civilians may not necessarily be accorded blanket protection under IHL, especially in cases of military necessity while balancing the same with principle of proportionality. In other words, the protection is accompanied by a caveat in certain circumstances where the intent of the attack may not be to create terror or particularly harm civilian objects and property but is a backed military strategy which may be inevitable and may also be justified.

3. HOW IS THE PROTECTION ACCORDED UNDER THE APPLICABLE RULES OF IHL?

International Humanitarian Law (IHL) establishes specific standards to ensure the protection of civilian objects and property during times of armed conflict. These standards are based on fundamental rules and customary practices. The presence of a distinguishing emblem, which is safeguarded by humanitarian law, often plays a crucial role in affording special protection to these objects and property. This protection is granted by humanitarian law treaties that are applicable to both international and non-international armed conflicts. Notably, the International Committee of the Red Cross (ICRC) conducted a study in 2005, known as customary IHL research, which determined that these rules are equally valid in both international and non-international armed conflicts, with very limited exceptions. Consequently, these

⁴ Yoram Dinstein, titled 'Distinction and Erosion of Civilian Protections in International Armed Conflicts,' which was published in 2008 within the 84th edition of International Law Studies under the theme of International Law and Military Operations.

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principles are binding on all parties involved in the conflict, even those who have not ratified or cannot ratify the conventions, including non-state armed organizations. Some of the entities accorded this special protection, which shall be discussed in detail in this research project, are covered under the following conventions⁵:

- **“Medical units, vehicles, and other transport** (API Arts. 12, 21; APII Art. 11; Rules 28 and 29 of the customary IHL study) [*Refer to Chapter II*];
- **Cultural objects and places of worship** (API Art. 53, APII Art. 16, and Rules 38–41) [*Refer to Chapter III*];
- Protection of **objects indispensable to the survival of the civilian population** (API Art. 54, APII Art. 14, Rule 54) [*Refer to Chapter IV*];

For the purposes of this project, the Researcher shall be focussing only on the first three of the aforementioned civilian objects and properties accorded protection under IHL. By means of this research project, the researcher aims to delve into the different objects and property accorded protection under IHL in wartime, both from the perspective of applicable rules as well as practical situations.

PROTECTION FOR MEDICAL UNITS AND TRANSPORTS

1. IMPORTANT DEFINITIONS

In terms of Articles 56 and 57 of the Geneva Convention IV, Articles 8-31 of the Additional Protocol I, and Articles 7-12 of the Additional Protocol II,⁶ the terms medical services covers “medical personnel, medical units, and medical transportation. It is a crucial element in bringing relief to the populations concerned. In situations of conflict, humanitarian law grants a special status and specific protection to medical services”.⁷

In particular the term “**MEDICAL UNITS**” may be defined as “establishments and other units – military or civilian, fixed or mobile, permanent or temporary – organized for medical purposes. The term includes,

⁵ ‘The Practical Guide to Humanitarian Law’, <https://guide-humanitarian-law.org/content/article/3/protected-objects-and-property/> accessed on 3 November 2021.

⁶ “International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts* (entered into force on 7 December 1978) [“Additional Protocol II”].”

⁷ “ICRC, ‘Objects Specially Protected in IHL’, <https://blogs.icrc.org/ilot/2017/08/14/objects-specially-protected-ihl/> accessed 4 November 2021.”

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for example, hospitals and other similar units, blood transfusion centres, preventive medicine centres and institutes, medical depots and the medical and pharmaceutical stores of such units.”⁸

The term “MEDICAL TRANSPORTS” may be defined as “any means of transportation – military or civilian, permanent or temporary – assigned exclusively to medical transportation under the control of a competent authority of a party to the conflict. This includes means of transportation by land, water or air, such as ambulances, hospital ships and medical aircraft.”⁹

Accordingly, medical units may be either fixed or mobile, permanent or temporary, and have been accorded protection under IHL from destruction, attacks, and requisitions.¹⁰ Apart from this, they are further entitled to protection that is bestowed and is available through the use of the distinctive symbol of the Red Cross.¹¹

2. OBLIGATION TO PROTECT AND RESPECT

Article 19 of the Geneva Convention (I) for the Relief of the Wounded and Sick in Armed Forces in the Field, established on 12 August 1949, addresses the "Safeguarding of Medical Units and Facilities" and states the following:

“(1) Fixed establishments and mobile medical units of the Medical Service may in no circumstances be attacked, but shall at all times be respected and protected by the Parties to the conflict. Should they fall into the hands of the adverse Party, their personnel shall be free to pursue their duties, as long as the capturing Power has not itself ensured the necessary care of the wounded and sick found in such establishments and units.

(2) The responsible authorities shall ensure that the said medical establishments and units are, as far as possible, situated in such a manner that attacks against military objectives cannot imperil their safety.”

It is pertinent to note that while “fixed establishments” and “mobile medical units” are accorded the same protection in terms of Article 19, their distinction becomes relevant when the same falls within the enemies’ hands, by virtue of Chapter V, Articles 33 and 34, of the First Convention. Interestingly, Article 19 remains silent on the medical purposes that are required to be specifically fulfilled by the

⁸ “Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Art. 8.”

⁹ “Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Art. 8.”

¹⁰ “Geneva Convention I of 1949, Arts. 19–23, 33–35; Geneva Convention IV of 1949, Art. 18; Additional Protocol I, Arts. 8, 12–14; Additional Protocol II, Art. 11.”

¹¹ “Geneva Convention I of 1949, Art. 38, 42; Geneva Convention IV of 1949, Art. 18; Additional Protocol I, Art. 18; Additional Protocol II, Art. 12”

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aforementioned fixed establishments and mobile medical units. Nevertheless, the context of activities outlined in relation to military medical personnel in terms of Article 24 of the First Convention may be borrowed to interpret Article 19, i.e., “the search for, or the collection, transport or treatment of the wounded or sick, or the prevention of disease”. The significance of Article 24's medical aims has also been reaffirmed by their later inclusion in Additional Protocol I's definition of ‘medical units,’ which includes military medical institutions and units covered by this article.¹²

The obligation to protect and respect medical units, both mobile and fixed, emanates from the 1864 Geneva Convention, wherein the protection was first enshrined only in respect of military hospitals. Notably, this commitment is also spelled out in the regulations pertaining to the injured and sick, as well as medical professionals and transportation. In this context, it is pertinent to note that 'to respect' implies negative responsibilities, such as refraining from specific action, but 'to protect' indicates positive obligations, such as taking certain proactive precautions. Accordingly, the researcher shall analyse the aforementioned negative and positive obligations of the parties in the following segments.

2.1.Prohibition on attack

The obligation regarding prohibition on attack precedes the obligation to respect and protect in terms of article 19, via the phrase “may in no circumstances be attacked”. This wording was made a part of the Article in 1947 at the Conference of Government Experts, at a time when aerial bombing was at rise and was only a recent development internationally, as opposed to the common occurrence it has proved to be in the present times.¹³

The ban on assaulting military medical installations and units first and foremost means that no assaults must be directed at them. Furthermore, indiscriminate assaults against such institutions and units, as well as strikes that are likely to cause significant incidental damage to them in comparison to the tangible and direct military benefit predicted, may be considered prohibited under law.¹⁴

In addition to this, the strict nature of the duty to respect and protect, which constitute the immediate context in which the prohibition on attacking military medical installations and units is entrenched, lends credence to this viewpoint. In any case, as will be evident from the discussion that follows, these enterprises and units are, in theory, civilian objects.¹⁵ In fact, several States, as well as a number of

¹²Additional Protocol I, Art. 8(e); Henckaerts/Doswald-Beck (eds.), *Commentary on Rule 28*, (ICRC 2005) 95.

¹³ “Military Legal Resources, ‘Report of the Conference of Government Experts of 1947’ https://www.loc.gov/rr/frd/Military_Law/RC_Report-conference-gov-experts.html accessed on 6 November 2021.”

¹⁴Additional Protocol I, Arts. 12(4), 48–58.

¹⁵ “Australia: *Manual of the Law of Armed Conflict* (2006), 5.9; Canada: *LOAC Manual* (2001), 204.5; Hungary: *Military Manual* (1992) 45; United Kingdom: *Manual of the Law of Armed Conflict* (2004) 5.32.5.”

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notable commentators for IHL, believe that certain installations or units are shielded against strikes that may be predicted to cause disproportionate and incidental damage in comparison to the tangible, direct military advantage anticipated.¹⁶ On the other hand, other perspectives hold that the expected incidental harm to these establishments or units should not be considered relevant harm for the purposes of conducting hostilities, because medical units stationed near military objectives may be considered to have accorded a deemed-acceptance to the risk of death or injury as a result of their proximity to military operations.¹⁷

Notably, the inclusion of the prohibition to attack as a portion of codified law in Additional Protocol I is important in making apparent the distinction between civilian and military objectives in the conduct of hostilities.

In terms of Article 52(2) of the Additional Protocol I, and its equivalent in customary law, enshrined that for an object to qualify as a “military objective”, it must not only belong to or be employed by the armed forces but also must make an “‘effective contribution to military action’ and that its ‘total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage’.” Since medical units used even by the armed forces do not fulfil any of the latter outlined criteria, military medical object shall be treated as civilian objects in the conduct of hostilities. In other words, the fact that the medical units of the military medical services, both fixed and mobile, are prohibited from being attacked upon confirms their status as civilian objects.¹⁸

In fact, military medical services not qualifying as military objectives but being treated as civilian objects in the conduct of hostilities is a notion that derives reason in the Additional Protocol I as well, wherein the attackers are required to take “all feasible precautions to verify, *inter alia*, that objectives to be attacked are not subject to special protection but are military objectives.”¹⁹ In this regard, it may be safely concluded that military medical establishments and units also qualify as objects entitled to protection from attacks since they qualify for special protection, as discussed above.²⁰

2.2.Obligation to Respect and Protect

¹⁶ “Michael Bothe, Karl Josef Partsch, and Waldemar A. Solf, *New Rules for Victims of Armed Conflicts: Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949* (Martinus Nijhoff Publishers, The Hague, 1982) 118–119.”

¹⁷ ICRC, ‘Commentary on the Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949’ <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BBF9A4E655C90872C1257F7A0054937B#30> accessed on 9 November 2021.

¹⁸ Additional Protocol I, Art. 49.

¹⁹, Additional Protocol I, Art. 57(2)(a)(i).

²⁰ ICRC, ‘Commentary on Article 21’, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=4825657B0C7E6BF0C12563CD002D6B0B> accessed 5 November 2021.

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In the obligation to respect and protect medical units and transports exclusively assigned to medical purposes in all circumstances:

- “RESPECT means, in particular, that medical units and transports shall not be attacked and that their functioning should not be unduly impeded;
- PROTECT means that medical units and transports must be actively assisted in their functioning, as well as protected from attacks or undue interference by third parties. In particular, medical units must, as far as possible, not be situated in the vicinity of military objectives. Moreover, medical units and transports may under no circumstances be used to shield military objectives from attack.”²¹

The explicit inclusion of the prohibition of attack before the need to respect is established suggests that it covers broader duties than simply refraining from assault in the conduct of hostilities. Respecting medical units also entails avoiding interfering with their job so that they can continue to care for the injured and sick in their care.

This rules out the possibility of deliberate destruction of medical facilities and units, as well as acts like pillaging their medical equipment.

Moreover, using such establishments or units for military purposes is subject to “stringent restrictions, in particular the principle – in line with the requirement to ensure continued medical care for the wounded and sick found therein”, as is proclaimed by the First Convention in its Article 33(2).²² In this vein, the seizure of an entire medical facility by an opposing Party with the intention of using it for military purposes, such as the storage of weapons, the establishment of a military command and control centre, or the launch of military operations, or for interrogations or detention,²³ raises issues under the obligation to respect. This is due to the fact that a seizure might disrupt the facility's operations and the provision of medical care to the injured and sick. In addition to this, it will inevitably also result in the loss of the specific protection accorded to such facility. The reason behind the same is that once it fulfils the relevant criteria under IHL, it shall be treated as a military objective as opposed to civilian object and will put the lives of the residing sick and wounded people, or those that may be injured subsequently and require medical help, at a complete risk.

²¹Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (Cambridge University Press 2010) 172.

²² ICRC, ‘Commentary on Article 33, section B.2’, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=4825657B0C7E6BF0C12563CD002D6B0B> accessed 5 November 2021.

²³ Ibid.

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Regarding the nature of the duty to ensure protection, fulfilling the obligation involves proactively aiding the operation of medical facilities and units. This includes actively providing support for the delivery of medical supplies and equipment, as well as ensuring that medical units have continuous access to critical resources like electricity and water.²⁴

To guarantee that medical institutions and units are not harmed, all reasonable efforts must be taken to ensure that such establishments and units are respected. As a result, preventative steps may be required to guarantee that their goal is not threatened by other parties, such as looters or rioters who are not affiliated with a conflicting party. Furthermore, if the operation of a medical establishment or unit is already being hampered by looters or rioters, fulfilling this commitment may necessitate assisting the afflicted facility.

If medical units and transports are employed to commit acts harmful to the enemy outside of their humanitarian duty, they will lose their protection and may be attacked. However, before assaulting them, a warning must be delivered, with a fair time limit specified whenever possible; the attack may be approved only if the warning has gone unheeded. Use of medical units to conceal able-bodied combatants, store weaponry or ammunitions, or to use these as military observation posts or shields are all examples of activities injurious to the adversary. Even so, as with all attacks on a military target, the laws of proportionality and precautions must be followed for the welfare of the injured and sick, as well as medical professionals who may be present inside a medical unit or transport from which acts injurious to the enemy are being perpetrated.²⁵

Finally, the distinguishing symbols may be displayed by approved medical units. Medical units and transports must be respected and safeguarded regardless of whether they show the distinguishing insignia; nonetheless, displaying the emblem aids identification.

PROTECTION OF CULTURAL OBJECTS AND PLACES OF WORSHIP

1. REFERENCE TO INTERNATIONAL CONVENTIONS

The legal basis for providing special protection for cultural property is found in the 1907 Hague Regulations, the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict and its Protocols,²⁶ and in the Additional Protocols of 1977. The obligation to respect and protect

²⁴Sandoz/Swinarski/Zimmermann (eds), *Commentary on the Additional Protocols* (ICRC 1987), 518.

²⁵Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (Cambridge University Press 2010) 172.

²⁶UN Educational, Scientific and Cultural Organisation (UNESCO), *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, 14 May 1954 (entered into force on 7 August 1956) ["Hague Convention, 1954"]

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cultural property also exists in customary law governing both international and non-international armed conflict.

1.1.The Hague Convention, 1954

The Hague Convention discusses cultural property as those that may be either movable or immovable and have been accorded great importance by the people due to the cultural heritage that the property may possess. The complete definition has been provided in Article 1 of the Convention, which reads as follows:²⁷

“Definition of cultural property

'For the purposes of the present Convention, the term "cultural property" shall cover, irrespective of origin or ownership:

(a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular, archeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;

(b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositaries of archives, and refuges intended to shelter, in the event of an armed conflict, the movable cultural property defined in sub-paragraph (a);

(c) centres containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as "centres containing monuments".”

All things that come under the definition are immediately given protection. It has two components: protection and respect for such property. In times of peace, the Convention does not specify the form that such "safeguarding" should take; it only requires the Contracting Parties to adopt "such measures as they think suitable" (Article 3).

Article 4 of the Convention discusses the concept of “respect”, which is provided below:²⁸

“Respect for cultural property ’

²⁷ Hague Convention, 1954, Art. 1.

²⁸ Hague Convention, 1954, Art. 3.

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- “1. The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility directed against such property.*
- 2. The obligations mentioned in paragraph 1 of the present Article may be waived only in cases where the military necessity imperatively requires such a waiver.*
- 3. The High Contracting Parties further undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property. They shall refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party.*
- 4. They shall refrain from any act directed by way of reprisals against cultural property.*
- 5. No High Contracting Party may evade the obligations incumbent upon it under the present Article, in respect of another High Contracting Party, by reason of the fact that the latter has not applied the measures of safeguard referred to in Article 3.”*

1.2. Additional Protocols I and II

It is notable that the draft articles of the ICRC failed to provide for a rule that related to the protection of cultural objects; the reason being that there already was an international instrument in place that served to protect these objects in particular i.e. the Hague Convention.

The Diplomatic Conference, on the other hand, believed that such a provision should be included in the Protocol, demonstrating its care for humanity's cultural legacy. The fact that the 1954 Convention had not yet come into force internationally was taken into account in this regard. In any event, the item is brief and to the point, banning the transformation of cultural objects into military targets as well as their destruction. As a result, during the second session, a proposal was made to Committee III as an amendment.²⁹ This article was built around it.

The protection of historic sites and works of art was immediately agreed upon by all delegates, but the issue of houses of worship sparked protracted debate. Some individuals believe that all houses of worship should be safeguarded, while others believe that this should only apply to a few significant sites of

²⁹ Jean-Marie Henckaerts, ‘Study on Customary International Humanitarian Law, Proceedings of the Annual Meeting’ (1996) 99 American Society of International Law.

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worship that are part of the "legacy of peoples." Committee III approved an initial draught that chose the second option, i.e., covering just a few significant houses of worship.

Accordingly, in light of this discussion, when Article 16 of Protocol II (i.e. "Protection of cultural objects and of places of worship") was examined, the Committee III reverted to the said matter and ultimately adopted another version of the article wherein no reference to places of worship was made in the article.³⁰ "In fact places of worship had been mentioned without restriction in Article 52' (General protection of civilian objects), ' paragraph 3, as one of several examples of objects normally used for civilian purposes - - and they must therefore be presumed to have a civilian character and enjoy the general protection to which such objects are entitled. In addition, places of worship which fall under historic monuments or works of art covered by Article 53 would benefit from the protection accorded under this article. In the plenary meetings the Conference considered that it was useful to reintroduce the reference to places of worship, specifying that the provision only applies to those places which constitute the 'spiritual heritage of peoples'".³¹ Finally, the item was unanimously approved. The article's opening few sentences make it clear that it is not intended to replace current international mechanisms. The second section establishes three restrictions that provide further protection for the protected things.

2. OBLIGATION TO RESPECT AND PROTECT

In the obligation to respect and protect cultural property:

- **"RESPECT** means that special care must be taken in military operations to avoid damage to cultural property, unless they are turned into military objectives;
- **PROTECT** means that all seizure of or destruction or wilful damage done to cultural property is prohibited. The occupying power must also prevent the illicit export of cultural property from occupied territory and must return illicitly exported property to the competent authorities of the occupied territory."

The Hague Convention for the Protection of Cultural Property, 1954 served to not only reinforce but also strengthen the protection that has been accorded to property which has been considered as being of great importance to the cultural and traditional values of the people and serves as part of the people's heritage. This was done systematically and through the introduction of several methods that would enable the

³⁰O.R. III, p. 213, CDDH/III/17

³¹O.R. XV, p. 307, CDDH/215/Rev.1, Annex

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distinction of such objects clearly in the zones of hostility, such as by encouraging people to mark their heritage place with “a blue-and-white shield.”³²

A property marked as so must not be involved in hostilities through directed attacks and may fall under an exception in cases of military necessity. The Second Protocol to the 1954 Hague Convention clarifies that “the waiver of imperative military necessity may be invoked only when and for as long as: (1) the cultural property in question has, by its function, been made into a military objective; and (2) there is no feasible alternative for obtaining a military advantage similar to that offered by attacking that objective. The Second Protocol further requires that the existence of such necessity be established at a certain level of command and that in case of an attack, effective advance warning be given whenever circumstances permit.”³³

Notably, Article 53 (1) of Additional Protocol I and Article 16 of Additional Protocol II take a step further in bestowing such protection to the properties. This is evident by the fact that the Additional Protocols do not provide for an exception in cases of attacks to such properties i.e. military necessity does not serve as a waiver in this obligation. These articles cover only a limited amount of very important cultural property, namely “that which forms part of the cultural or spiritual heritage of ‘peoples’ (i.e. mankind). The property covered by the Additional Protocols has to be of such importance that it is sure to be recognized by everyone and may not even have to be marked.”

PROTECTION OF OBJECTS INDISPENSABLE TO THE SURVIVAL OF THE CIVILIAN POPULATION

1. INTRODUCTION TO ARTICLE 54 OF ADDITIONAL PROTOCOL I

Although the comprehensive protection of civilian objects and the explicit prohibition of the starvation of civilians are new features in codified Humanitarian Law, it should be noted that the Diplomatic Conference of 1949 had taken the first step in this direction with the adoption of Article 23 of the Fourth Convention. This provided for “aid in favour of the most vulnerable categories of the population, and Article 53, which safeguards necessities of life of civilians in occupied territory.”

Article 54 of the Additional Protocol I reads as follows:³⁴

“Protection of objects indispensable to the survival of the civilian population

³² Jean-Marie Henckaerts, ‘Study on Customary International Humanitarian Law, Proceedings of the Annual Meeting’ (1996) 99 American Society of International Law.

³³ Hague Convention, 1954, Second Protocol.

³⁴ Additional Protocol I, Art. 54.

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1. *Starvation of civilians as a method of warfare is prohibited.*
2. *It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.*
3. *The prohibitions in paragraph 2 shall not apply to such of the objects covered by it as are used by an adverse Party:*
 - (a) *as sustenance solely for the members of its armed forces; or*
 - (b) *if not as sustenance, then in direct support of military action, provided, however, that in no event shall actions against these objects be taken which may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement.*
4. *These objects shall not be made the object of reprisals.*
5. *In recognition of the vital requirements of any Party to the conflict in the defence of its national territory against invasion, derogation from the prohibitions contained in paragraph 2 may be made by a Party to the conflict within such territory under its own control where required by imperative military necessity.”*

For the purposes of this section, the Researcher shall specifically focus only on the prohibition on “starvation” as a method of warfare (under paragraph 1), and the prohibition on “attack, destroy, remove or render useless objects indispensable to the survival of the civilian population” (under paragraph 2).

2. PROHIBITION ON STARVATION OF CIVILIANS AS A METHOD OF WARFARE

The term "starvation" is generally understood by everyone. However, provoking mass hunger deliberately as means of warfare in times of hostility, so as to drive the people to suffering from hunger and malnourishment in the face of shortage or lack of food through depriving them of food supplies via directed attacks, continues to be one of the most inhumane methods of warfare. “It is clear that activities conducted for this purpose would be incompatible with the general principle of protecting the population, which the Diplomatic Conference was concerned to confirm and reinforce.

Starvation is referred to here as a method of warfare, i.e., a weapon to annihilate or weaken the population. The statement of this general principle is innovative, and a significant progress of the law.³⁵ It arose from an amendment. However, a general principle only of course becomes fully operative when it is accompanied by rules of application: the remainder of the article is concerned with such application, as are several other articles in the Protocol, particularly those relating to relief actions.” It is pertinent to note here that this rule was not placed in Part III, Section I, “Methods and means of warfare”, since it speaks in particular of such attacks on the civilian population. Notably, this principle in IHL applies in terms of both occupied territories and unoccupied territories.

In this regard, the following was stated by the *Rapporteur* of Committee III: “*The fact that the paragraph does not change the law of naval blockade is made clear by Article 44, (5) paragraph 1.*” While it appears to be correct *prima facie*, the uncertainties regarding the present state of customary laws concerning blockades must be noted nevertheless. In truth, although being codified in the London Declaration of 24 February 1909, this instrument was never approved. Furthermore, during the Second World War, the laws were not always followed. Thus, it is hoped that the rules governing blockades will be clarified as part of a future review of some areas of the laws of war at sea, which is desperately needed. Such a re-examination should allow for the proper consideration of the Protocol's principles, which ban hunger as a weapon of warfare.³⁶

Nonetheless, the truth remains that a blockage is a possibility if certain criteria are met. Thus, it must be preceded by a statement specifying the duration and scope of the blockade; it must be effective and administered impartially to ships from all nations; and neutral states must be informed about blockades imposed on a party to the conflict.

It should be emphasized that the object of a blockade is to deprive the adversary of supplies needed to conduct hostilities, and not to starve civilians. “Unfortunately, it is a well-known fact that all too often civilians, and above all children, suffer most as a result. If the effects of the blockade lead to such results, reference should be made to Article 70 of the Protocol, which deals with Relief Actions. This provides that relief actions should be undertaken when the civilian population is not adequately provided with food and medical supplies, clothing, bedding, means of shelter and other supplies essential to its survival. Such actions may be very extensive.

³⁵ Zeray Yihdego, ‘Darfur and Humanitarian Law: The Protection of Civilians and Civilian Objects’ (2009) 14(1) *Journal of Conflict & Security Law*.

³⁶ Jelena Pejic, ‘Right to Food in Situations of Armed Conflict: The Legal Framework’ (2001) 83 *ICRC*.

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Moreover, if it turned out to be impossible to send sufficient aid for that part of the population of a besieged or encircled area that is particularly weak, the principle of the prohibition of starvation should henceforth dictate the evacuation of such persons; this was already made possible, though not prescribed, by Article 17 of the Fourth Convention. Finally, it should be mentioned that an action aimed at causing starvation would constitute a violation of this Protocol, but it could also be a crime of genocide if it were undertaken with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, according to the terms of the Genocide Convention.”

3. PROHIBITION ON “ATTACK, DESTROY, REMOVE OR RENDER USELESS OBJECTS INDISPENSABLE TO THE SURVIVAL OF THE CIVILIAN POPULATION

This provision develops the principle formulated in paragraph 1 “of prohibiting starvation of the civilian population; it describes the most usual ways in which this may be applied. (10) The adopted text is very similar to the ICRC draft, although some important details were incorporated which led to lengthy discussion. The Conference added removal and rendering useless of objects indispensable to the survival of the civilian population to the prohibition on their attack or destruction. With It should be noted that the verbs "attack," "destroy," "remove," and "render useless" are used to cover all possibilities, including pollution of water reservoirs by chemical or other agents,³⁷ or destruction of crops by defoliants, and also because the verb "attack" refers to acts of violence against the adversary, whether in offence or defence, according to Article 49' (Definition of attacks and scope of application),' paragraph 1.³⁸

The words "such as" also indicate that the list of protected objects is just indicative. A comprehensive list could have resulted in omissions or a haphazard selection.³⁹ The objects in question are essentially subsistence objects, as the text discloses. Article 52, that deals with “General protection of civilian objects” provides for the general protection of civilian objects. However, it is not impossible that, due to climate or other factors, goods such as shelter or clothing will be considered essential for survival.

³⁷ Jean-Marie Henckaerts, ‘Study on Customary International Humanitarian Law, Proceedings of the Annual Meeting’ (1996) 99 American Society of International Law.

³⁸ CDDH/407/Rev.1, Annex.

³⁹ Jelena Pejic, ‘Right to Food in Situations of Armed Conflict: The Legal Framework’ (2001) 83 ICRC.

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