

International Humanitarian Law and Human Rights Law Relevant to Siege Warfare

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Convoy delivering aid to Daraya, June 2016 (WHO)



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This note seeks to provide humanitarian workers in Syria and other relevant actors with an overview of some of the key international humanitarian law (IHL) and international human rights law (IHRL) rules relevant to the use of siege warfare.

Overview

IHL does not define the term “siege”, and explicit references to sieges in IHL treaties are limited. That said, in its broadest terms a siege can be understood as the military encirclement of an area with the imposition of restrictions on the entry and exit of essential goods with the aim of forcing its surrender. The use of sieges as a tactic of war is not prohibited under IHL if directed solely at a military objective and is in conformity with all relevant IHL rules. The capture of an enemy-controlled area is a legitimate military aim and military commanders often view laying siege to a town as less costly than fighting street-to-street. However, the effects of the siege must distinguish between fighters and civilians. Therefore any tactic which restricts civilians’ access to essential items necessary for their well-being such as water, food, and medicine is prohibited.

One set of relevant IHL rules relates to how parties to the conflict may direct their attacks (including the key principles of distinction, proportionality, and precaution in attack), and protects civilians who are not directly participating in the hostilities from the effects of the hostilities. These rules are not considered in this note, for purposes of brevity.¹ A second set of rules, which is the focus of this note, relates directly to the treatment of civilians themselves - requirements surrounding the collection and caring for the sick and wounded, including the delivery of humanitarian assistance to civilians; and the prohibition on the use of starvation of the civilian population as a tactic of war.

Humanitarian access

Under international humanitarian law, Common Article 3 of the Geneva Conventions requires that the wounded and sick be collected and cared for. It prohibits any ‘adverse distinction’ in the treatment among the wounded and sick. The ICRC has further stated that a responsibility of the parties to the conflict to meet the needs of the population under their control can be inferred from the object and purposes of IHL.² In terms of sieges, parties to the conflict have the primary responsibility to meet the needs of the population, be it the party in actual control of the territory (to the extent feasible given the shortages caused by being under siege), and the group imposing the siege by controlling all access points.

As the 2016 ICRC Commentary on Common Article 3 states, the activities of impartial humanitarian bodies should only complement, where necessary, the efforts of the parties.³ Humanitarian organisations themselves are under no legal obligation to offer their services.⁴ Common Article 3 provides that an impartial humanitarian body *may* offer its services to the parties to the conflict. This provision provides the legal basis for humanitarian organisations to

¹ For more information on the application of targeting laws in this context, see the paper “Indiscriminate Attacks and Indiscriminate Weapons in International Humanitarian Law”, produced by OHCHR Syria Team in March 2016.

² <https://www.icrc.org/eng/resources/documents/article/other/humanitarian-access-icrc-q-and-a-lexicon.htm>, p. 7.

³ <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=59F6CDFA490736C1C1257F7D004BA0EC>, para. 782.

⁴ *Ibid.*

offer their services without that offer being construed as an unfriendly act.

Under customary international humanitarian law, if the parties to the conflict are failing in their obligation to meet the needs of the population under their control, they must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their “right of control”.⁵

Parties to the conflict should neither arbitrarily withhold consent nor impede the provision of humanitarian assistance.⁶ Parties to the conflict may not withhold consent when the community of concern lacks supplies essential to its survival.⁷ Additionally, should a party to the conflict intentionally frustrate the delivery of humanitarian access (especially medical supplies) to the civilian population this may be a violation of its obligation to collect and care for the sick and wounded.

Any opposing armed actors present inside a besieged area are also under the obligation to collect and care for the sick and wounded. Any attempts to divert or frustrate such aid delivery to civilians by armed actors inside/controlling besieged areas would also be a violation of international humanitarian law.

Humane treatment and prohibition of starvation of civilians

Common Article 3 requires the humane treatment of all persons taking no active part in the hostilities - this includes persons who have laid down their arms, or are *hors de combat* (i.e. no longer involved in the hostilities, including because they are injured or detained). It also forbids the infliction of cruel treatment. The denial or restriction of food, medical and other basic supplies to persons taking no active part in the hostilities by parties to the conflict, runs contrary to these provisions.

Similarly, the starvation of civilians is prohibited under customary international law in international and non-international armed conflicts.⁸ This prohibition has a direct impact on how parties to the conflict in Syria may impose sieges and requires that they permit the access of humanitarian aid to prevent starvation.⁹

“Starvation” is not explicitly defined in IHL. However ICRC Commentaries define starvation not only as death caused by deprivation of food, but more generally as causing the population to “suffer hunger”, particularly by depriving it of its sources of food or of supplies,¹⁰ or as the action of “subjecting people to famine, i.e., extreme and general scarcity of food”.¹¹ Likewise, “starvation” can be understood as meaning not just the deprivation of food and water to cause the suffering of hunger or famine, but to also include the deprivation of other items necessary for survival, such as medical items.¹²

⁵ See ICRC, Customary International Humanitarian Law: Volume 1: Rules, rule 55.

⁶ ICRC, Customary International Humanitarian Law: Volume 1: Rules, rule 55; Jelena Pejic, The Right to Food in Situations of Armed Conflict: The Legal Framework, International Review of the Red Cross, December 2001, Vol. 83, No. 844, p. 1106 and 1108.

⁷ *Ibid*; See also ICRC Commentary of 1987 to Article 18 of AP II, para 4885.

⁸ See ICRC, Customary International Humanitarian Law: Volume 1: Rules, rule 53.

⁹ *Ibid*

¹⁰ 1987 ICRC commentary to Article 54 of API, para. 2089. (AP I applies in international armed conflicts.)

¹¹ 1987 ICRC commentary to Article 14 of APII, para. 4671. (AP II applies to non-international armed conflicts but has not been ratified by Syria.)

¹² During the negotiation of the Elements of Crimes for the International Criminal Court, it was recognised that the

The prohibition on the starvation of civilians also prohibits attacking, destroying, removing or rendering useless object indispensable to the survival of the civilian population.¹³

Collective punishment

The use of sieges as a form of punishment of civilians for actions taken by other members of their community such as the perceived or actual provision of support to the enemy is a violation of the prohibition of collective punishment under customary international humanitarian law in both international and non-international armed conflicts.¹⁴ Collective penalties and likewise all measures of intimidation or of terrorism are prohibited, as is pillage, and reprisals against protected persons and their property.

Applicable international human rights law

In addition to international humanitarian law, the imposition of sieges will also likely affect international human rights law including but not limited to the right to life;¹⁵ and the prohibition on the infliction of cruel, inhuman and degrading treatment;¹⁶ right to freedom of movement,¹⁷ right to adequate standard of living including adequate food, clothing and housing,¹⁸ and to essential primary health care, including essential medicine.¹⁹

States are obliged to respect, protect and fulfil human rights to all individuals within their jurisdiction. The nature of a state's human rights obligations may be more complicated in territory where it has lost control to an armed opposition group. However, at a minimum a state is prohibited from taking any action that would undermine or frustrate the enjoyment of rights of the affected population.²⁰

Applicable international criminal law

While it presently has no jurisdiction over most of the parties to the conflict in Syria, the Rome Statute of the International Criminal Court indicates what states believe to be customary international criminal law. The Rome Statute lists the intentional starvation of civilians as a method of warfare as a war crime in international armed conflicts, but remains silent on this issue in non-international armed conflicts.²¹ That notwithstanding, many legal scholars as well as the ICRC take the position that the intentional starvation of the civilian population is also a crime

ordinary meaning of the word “starvation” covered not only deprivation of water and food, but also the more general meaning of deprivation or insufficient supply of something necessary to survival. Other examples mentioned during those negotiations included indispensable non-food items such as medicines. See Knut Dörmann, “Preparatory Commission for the International Criminal Court: The Elements of War Crimes – Part II: Other Serious Violations of the Laws and Customs Applicable in International and Non-International Armed Conflicts”, *International Review of the Red Cross*, Vol. 83, 2001, pp. 475–476, and see ICRC, *Customary International Humanitarian Law: Volume 1: Rules*, rule 54. See also the “Commentary on the Law of the International Criminal Court” description of “Starvation” as a war crime in international armed conflict. <https://www.casematrixnetwork.org/case-m/klamberg-commentary/rome-statute/>, footnote 113.

¹³ See ICRC, *Customary International Humanitarian Law: Volume 1: Rules*, rule 58.

¹⁴ See ICRC, *Customary International Humanitarian Law: Volume 1: Rules*, rule 103.

¹⁵ International Covenant on Civil and Political Rights, article 6.

¹⁶ *Ibid*, article 7.

¹⁷ *Ibid*, article 12.

¹⁸ International Covenant on Economic Social and Cultural Rights (ICESCR), article 11.

¹⁹ *Ibid*, article 12.

²⁰ See European Court of Human Rights, *Ilascu and others v Moldova and Russia* judgment, 8 July 2004, para. 333.

²¹ Rome Statute of the International Criminal Court, article 8(b)(xxv).

in a non-international armed conflicts, though a clear statement by a majority of states or an eventual decision by an international tribunal is needed for a definitive answer. In addition, many of the consequences of intentional starvation of civilians such as killing, cruel and inhuman treatment, and causing great suffering are war crimes in non-international armed conflicts. The intentional starvation of civilians in a non-international armed conflict should therefore be prosecuted as a war crime.

If committed as part of a widespread or systematic attack against the civilian population, the denial of food or other basic good such as medicine may also constitute one or more crimes against humanity. It can be argued, for example, that such actions constitute inhuman acts that inflict great suffering, or serious injury to body or to mental or physical health, which is the crime against humanity of “other inhuman acts”.²² In certain instances, and if they cause death, such acts may constitute the crime against humanity of murder.

²² Listed as a crime against humanity in the statutes of various international tribunals, including the Rome Statute of the International Criminal Court, article 7(1)(k); Statute of the International Criminal Tribunal for the Former Yugoslavia, article 5(i); Statute of the International Criminal Tribunal for Rwanda, article 3(i); and the Statute of the Special Court for Sierra Leone, article 2(i).