

Original Study

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A legal review of sieges in modern war

DOI 10.2478/jms-2022-0002

Received: August 28, 2021; Accepted: April 13, 2022

Abstract: This paper examines the relationship between Western military doctrine, international law, and the impact of sieges in war. This paper examines three case studies – the battles of Mosul (2016-2017), the Second Battle of Donetsk Airport (2014-2015), and Ghouta – to analyze the effect of international law on the conduct of sieges and how that impacts the attacker, the besieged, and the innocent bystanders. In the end, we find that Western military doctrine is inadequate to address siege situations, which in turn can result in mishandling siege situations from an international law standpoint. Additionally, we find that international law, as well as applied law, provides the actors therein sufficient leeway to create the conditions for the siege to continue to be used well into the future.

Keywords: siege, modern war, Syria, Donbas, Russia

The relationship between war and sieges is nearly as old as war itself. To be sure, the battle of Megiddo, fought between the Egyptian Empire and the Canaanites (on territory that forms part of modern-day Israel), is one of the first examples that history provides of sieges playing a significant role in the conduct of war.¹ The Egyptians made quick work of the Canaanites, who subsequently fled to Megiddo.² The Egyptians, intent on bringing the Canaanites to heel, surrounded the city and laid siege for 7 months.³ The siege broke the Canaanites' will and capability to resist, resulting in their subsequent acquiescence.⁴ The Egyptians spared Megiddo and its holdouts

from the sword, but the siege's cumulative effect on the city, the civilian populace, the military, but Egyptian dominance prevailed.⁵

Since the fifteenth century B.C., sieges remain a constant in the application of war. Like at Megiddo, sieges are historically the result of an aggressor defeating another actor in open battle, to then see the defeated actor seek refuge in a neighbouring city. The aggressor subsequently encircles that city, and all those therein, and subjects it to regular bombardment and deprivation of essential services, food and water, until the besieged actor is either unable or unwilling to continue resisting.⁶ Recent scholarship on the subject of sieges emphasises that deprivation and starvation are defining characteristics of sieges and equally impact combatants and non-combatants alike.⁷ The besieger seeks to capture the area through starvation, or attrition, while the besieged holds out for relief, reinforcements, breakout or the aggressor to sue for peace.

The advent of aircraft, mechanised warfare, precision guided munitions and armed drones has done little to erode the prominent place that sieges occupy in modern war. Sieges are of particular importance in Non-International Armed Conflicts (NIACs), which Kathleen Lawand, former head of the International Committee of the Red Cross, defines as, 'A situation of violence involving protracted armed confrontations between government forces and one or more organised armed groups, or between such groups themselves, arising on the territory of a state.'⁸ Nevertheless, since the end of World War II (WWII), the international legal community has attempted to limit sieges, in particular the suffering of civilians and

1 Lello, G. (1978). Thutmose III's first lunar date. *Journal of Near Eastern Studies*, 37(4), p. 327.

2 Faulkner, R. O. (1942). The battle of megiddo. *Journal of Egyptian Archeology*, 28, pp. 14-15.

3 Faulkner. The battle of megiddo. p. 14.

4 Faulkner. The battle of megiddo. pp. 14-15.

5 Faulkner. The battle of megiddo. p. 15.

6 Bernard, V. (2015). Tactics, techniques, tragedies: A humanitarian perspective on the changing face of war. *International Review of the Red Cross*, 97(900), p. 960, Available at <https://shop.icrc.org/the-evolution-of-warfare-vol-97-no-900-pdf-en>.

7 Hägerdal, N. (2020). Starvation as siege tactics: Urban warfare in syria. *Studies in Conflict and Terrorism*, doi: 10.1080/1057610X.2020.1816682.

8 Lawand, K. (2012). Internal conflicts or other situations of violence – what is the difference for victims. interview by ICRC, Available at <https://www.icrc.org/en/doc/resources/documents/interview/2012/12-10-niac-non-international-armed-conflict.htm>.

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the destruction of civilian infrastructure. The international community has done this through the development and implementation of international law.⁹ Nevertheless, the increasing urbanisation of warfare puts civilians and civilian infrastructure squarely anchored in the middle of modern warfare.¹⁰ This is playing out in real-time as Russia's February 2022 invasion of Ukraine illustrates. Cities such as Kharkiv and Mariupol are subject to sieges on par with the Second Chechen War's razing of Grozny (1999–2000).

The primary focus of this article is the examination of modern sieges within the context of the NIAC and International Armed Conflicts (IAC), with special attention given to sieges in NIAC because they are predominant today.¹¹ Along the way, this article provides a brief description of sieges in modern war and highlights how Western militaries lack an appreciation of sieges in their respective doctrines.

The criteria chosen for the sieges analysed in this article were based on several factors: the length (over 30 days), scale (over 5,000 combatants) and documentation/reporting. For example, while the ISIS siege of Deir ez-Zor military air base (approximately 3 years) is a rare case of a non-state actor besieging government forces, reliable information regarding this siege was difficult to obtain.¹² As a result, based on the above criteria, the authors selected the Siege of Eastern Ghouta, the battle of Mosul and the siege of Donetsk Airport for case studies. The siege of Eastern Ghouta is particularly illustrative due to the length of the siege and the large number of affected civilians. The battle of Mosul, which was effectively a siege, demonstrates how far a well-supported non-state actor can push a state actor and its coalition of state actors in urban warfare. The on-going war between Ukraine and Russia, predominately fought through Russian proxy forces and those of Kyiv, has yielded several sieges too. The siege of Donetsk Airport was long and hard-fought and focused on a military force caught within infrastructure located just outside a city.

9 Palmieri, D. (2015). How warfare has evolved – a humanitarian organization's perception: The case of the ICRC, 1863–1960. *International Review of the Red Cross*, 97(900), pp. 995-997, Available at <https://shop.icrc.org/the-evolution-of-warfare-vol-97-no-900-pdf-en>.

10 Bell, A. (2020). Civilians, urban warfare, and US doctrine. *Parameters*, 50(4), pp. 33-34.

11 Roser, M. (2016). War and peace. *Our World in Data*. Available at <https://ourworldindata.org/war-and-peace>.

12 BBC News. (2017). Syria war: Army breaks IS siege of Deir Al-Zour. September 5, 2017, sec. Middle East. Available at <https://www.bbc.com/news/world-middle-east-41162683>.

1 Western military doctrine

From a military doctrinal standpoint, Western militaries all but ignore sieges in their warfighting doctrine, as well as the impact of urban warfare on civilian populations.¹³ The US Army, for example, only mentions sieges in four editions of its capstone operations manuals from 1929 to today.¹⁴ When a siege is mentioned, it is done in passing and in relation to the reduction of fortified areas.¹⁵ Today's operations manuals, Field Manual (FM) 3-0 and Army Doctrine Publication 3-0, fail to provide a broad framework or tactical doctrine for siege operations.¹⁶

FM 3-90-1 *Offense and Defense* does not discuss sieges but does allude to siege-like operations using encirclement operations. *Offense and Defense* defines encirclement operations as those in which 'one force loses its freedom of maneuver because an opposing force is able to isolate it by controlling all ground lines of communication and reinforcement.'¹⁷ While this definition is neither perfect nor describes a facsimile of a siege, it is certainly close enough to carry forward in the examination of U.S. Army doctrine as it relates to siege operations.

FM 3-90-2 *Reconnaissance, Security, and Tactical Enabling Tasks*, a relatively obscure US Army doctrine publication, does not mention sieges. The manual dedicates an entire chapter to encirclement operations; however, it is the last chapter of the publication. Therefore, an assumption can be made that if the reader is not actively looking for information about encirclements, it is not likely that they would stumble across the information. Nevertheless, FM 3-90-2 provides a generally useful taxonomy for encirclements. The manual provides offensive and defensive considerations, planning and execution

13 Bell, A. (2020). Civilians, urban warfare, and US doctrine. *Parameters*, 50(4), p. 40.

14 The authors reviewed each of the Army's Operations manuals, Field Manual 100-5, from 1923 to today. The obsolete manuals are located at the Ike Skelton Combined Arms Research Library's digital library. Available at <https://cgsc.contentdm.oclc.org/digital/collection/p4013coll9>.

15 Manual, F. (1944). 100-5, *Operations*. Government Printing Office, Washington, DC. p. 215; Manual, F. (1954). 100-5, *Operations*. Government Printing Office, Washington, DC, p. 150; Manual, F. (1962). 100-5, *Operations*. Government Printing Office, Washington, DC. p. 89; Manual, F. (1968). 100-5, *Operations*. Government Printing Office, Washington, DC. pp. 6-24.

16 FM 3-0, *Operations*; ADP 3-0, *Operations*.

17 Manual, F. (2013). 3-90-1, *Offense and Defense*. Government Printing Office, Washington, DC.

considerations, and the relationship between encirclements and breakouts.¹⁸

Given the scope, scale and requirements in terms of forces and resources, doctrine at the division level and higher should discuss encirclements and sieges. In spite of this assumption, the US Army's headquarters manuals are also derelict regarding sieges. Neither ATP 3-9 *Theater Army Operations* nor ATP 3-92 *Corps Operations* makes any mention of sieges or encirclements. FM 3-94 *Theater Armies, Corps, and Division Operations* also fails to mention the siege at all and only discusses encirclements as they relate to pursuits and exploitation.¹⁹ ATP 3-91 *Division Operations*, on the other hand, does not mention sieges and only offers a scant passing mention of encirclements.²⁰

Moving below the division level, FM 3-96 *Brigade Combat Team* does not discuss sieges (though it does mention the battles of Sadr City and Grozny²¹), but the manual does dedicate a decent amount of space highlighting encirclements. In fact, *Brigade Combat Team's* discussion of encirclements is arguably the most complete articulation of the concept in Army doctrine. Moving beyond just providing a definition of encirclement operations, *Brigade Combat Team* stresses that '[e]ncirclements are not a separate form of offensive operations but an extension of an ongoing operation' and that they 'usually result from the linkup of two encircling arms conducting a double envelopment.'²² Further, and most importantly, *Brigade Combat Teams* contends, 'Although a commander may designate terrain objectives in an encirclement, isolating and defeating enemy forces are the primary goals. Ideally, an encirclement results in the surrender of the encircled force.'²³

From a broad, conceptual standpoint, the closest the Army comes to discussing siege operations is a few passages located within Army Tactics, Techniques, and Procedures (ATTP) 3-06.11, *Combined Operations in Urban Terrain*. However, it does so by arguing for the application of the fundamentals of urban operations in conjunction with priorities of work, the elements of operational art, the operations process, sustainment characteristics, running estimates, a commander's critical information

requirements, and a commander's experience.²⁴ In essence, ATTP 3-06.11's guidance is little different from how Army forces are expected to operate in any environment. ATP 3-06, *Urban Operations* provides a description that is the closest the US Army doctrine comes to discussing the general and inner workings of a siege. While the manual does make two fleeting mentions of a siege between its hard covers, the US Army uses the relationship between an urban defence and isolation by an attacking force to allude to siege-type activities in *Urban Operations*.

ATP 3-21.20, *Infantry Battalion* does not openly discuss siege operations, but does discuss encirclements. Yet, it does so from the perspective of an encircled infantry battalion.²⁵ *Infantry Battalion's* basic proposition is defining an encirclement as one of four subcomponents of an envelopment, and the encircled battalion must establish an area defence and then prepare for and execute a breakout.²⁶ The manual does not extend the discussion beyond the battalion level, nor does it discuss the seemingly reciprocal relationship between an urban defence and a siege, which is the next logical step following an encirclement.

The British Army, on the other hand, makes no mention of sieges in the current edition of its land operations doctrine.²⁷ Furthermore, France's land operations and general tactics doctrine fails to address sieges beyond a cursory mention.²⁸ NATO land operations doctrine is classified

¹⁸ Manual, F. (2013). 3-90-2, *Reconnaissance, Security, and Tactical Enabling Tasks*. Government Printing Office, Washington, DC. pp. 6-1–6-13.

¹⁹ Manual, F. (2021). 3-94, *Theater Army, Corps, and Division Operations*. Government Printing Office, Washington, DC. pp. 7-13–7-14.

²⁰ Army Techniques Publication. (2014). 3-91, *Division Operations*. Government Printing Office, Washington, DC.

²¹ Manual, F. (2021). 3-96, *Brigade Combat Team*. Government Printing Office, Washington, DC.

²² FM 3-96, 6-96.

²³ FM 3-96, 6-99.

²⁴ Army Tactics Techniques and Procedures. (2012). 3-06.11, *Combined Arms Operations in Urban Terrain*. Government Printing Office, Washington, DC, p. xix. Fundamentals of Urban Operations include: (a) maintain a close combat capability, (b) avoid the attrition approach, (c) control the essential, (d) minimize collateral damage, (e) separate noncombatants from combatants, (f) preserve critical infrastructure, (g) restore essential services, (h) understand the human dimension, (i) create a collaborative information environment, and (j) transition.

²⁵ Army Techniques Publication. (2017). 3-21.20, *Infantry Battalion*. Government Printing Office, Washington, DC. pp. 3-14–3-16.

²⁶ ATP 3-21.20, 3-15–3-26.

²⁷ Army Doctrine Publication. (2017). AC 71940, *Land Operations*. Headquarters Field Army, Land Warfare Development Center, Westminster, pp. 1-1-10-10, Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/605298/Army_Field_Manual__AFM__A5_Master_AD_P_Interactive_Gov_Web.pdf.

²⁸ DFT. (2013). 3.2 Tome 1, *Employment of Land Forces in Joint Operations*. Centre de Doctrine d'Emploi des Forces, Paris, France, pp. 2-74, Available at <https://www.c-dec.terre.defense.gouv.fr/index.php/fr/content-english/our-publications/74-content-in-english/our-publications/the-french-land-forces-doctrine/228-dft-3-2-tome-2-ft-02-eng-general-tactics>; DFT. (2010). 3.2 Tome 2, *General Tactics*. Centre de Doctrine d'Emploi des Forces, Paris, France, Available at https://www.c-dec.terre.defense.gouv.fr/images/documents/us-publications/doctrine-FT/200807_NP_CDEF_DFT-3-2_T2_FT_2_eng.pdf.

and contained behind a digital firewall, and it is thus not possible to pinpoint whether it discusses sieges.²⁹ Nevertheless, given that NATO doctrine is generally based on US joint and Army doctrine, it is fair to assume that sieges are not discussed with any degree of specificity therein.

As a result of insufficient doctrine, Western militaries do not have measures in place to understand or account for sieges. Despite the attempt to sidestep the siege problem, in language and practice, Western militaries have not been able to do so on the modern battlefield because sieges continue to generate success in the post-Cold War era's wars. Given the increasing urbanisation of war, which is a trend likely to carry forward well into the future, sieges are also likely to factor heavily into future armed conflict.³⁰

Considering these shortcomings, Western militaries must develop siege-compatible doctrine informed by international law to better prepare themselves for the rigors of war in a siege scenario. Further, the development process must include experienced legal advisors who can help the concept and doctrine developers to navigate the tricky waters of international law. Moreover, Western militaries must develop a set of realistic assumptions on which to base this doctrine, to guide its practice in siege-shaded wars. The purpose of the assumptions and accompanying doctrine must be two-fold: to guide tactical and operational action on either end of a siege (i.e., purveyor or besieged actor); and to provide a legal framework in which to conduct tactical and operational action in accordance with international law during siege activities.

2 Legal framework for the siege

The legal framework for sieges is complex and vague, highlighting the friction between the efforts to ameliorate civilian suffering and the desire of combatants to 'win the fight'. To better appreciate this friction, it is necessary to first understand the fundamental principles of international humanitarian law, and then to analyse the text of the law and associated cases.

²⁹ See *NATO Handbook of Land Operations Terminology*, Available at <https://nso.nato.int/nso/nsdd/main/list-promulg>.

³⁰ Nedal, D., Stewart, M. & Weintraub, M. (2020). Urban concentration and civil war. *Journal of Conflict Resolution*, 64(6), p. 1146. doi: 10.1177/2F0022002719892054; United Nations Department of Economic and Social Affairs, Population Division, *The World's Cities in 2018—Data Booklet* (2018).

3 Fundamental principles

The general principles of international humanitarian law that are most relevant to sieges are military necessity, proportionality and distinction.

3.1 Military necessity

The principle of military necessity justifies the acts and conduct in war that are indispensable for securing the complete submission of the enemy as quickly as possible, while not violating international law.³¹ Article 23(g) of the Hague Regulation of 1899/1907 provides the basis for military necessity, stating an actor is prohibited 'to destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.'³² However, this principle must be applied along with the other principles and must be weighed in connection with other elements of international law.

It is important to note that military necessity does not act as a defence for prohibited acts. The Law of Armed Conflict's (LOAC) *Rendulic Rule*, which states that civilian objects may become military objectives, also supports the veracity of military necessity.³³ Under this rule, civilian objects may lose their protected status if there is a military necessity for their destruction or seizure. Further, the *Rendulic Rule* also asserts that military commanders are judged based on knowledge reasonably available to them at the time.³⁴

3.2 Proportionality

The principle of proportionality states the anticipated loss of life and damage to property incidental to attacks must not be *excessive* in relation to the concrete and direct military advantage expected to be gained.³⁵ For example, the atomic bombings of Nagasaki and Hiroshima could

³¹ Manual, F. (2019). 6-27 *The Commander's Handbook on the Law of Land Warfare*. Government Printing Officer, Washington, DC.: pp. 1-7.

³² Hague Convention Respecting the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land art. (1907). 23, Oct. 18, 1907, U.S.T.S. 539, 2 AJIL, Supp. 90, Available at <https://ihl-databases.icrc.org/ihl/INTRO/195>.

³³ Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. (1949). 147, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287; *United States v. Wilhelm List et al.* (1947); Germany. 1949. Trials of War Criminals before the Nuernberg Military Tribunals under Control Council Law No. 10, Nuernberg, October 1946-April, 1949: 1296. U.S. G.P.O, Washington, D.C.

³⁴ Smith. *Operational Law Handbook*. p. 58.

³⁵ Smith. *Operational Law Handbook*. p. 60.

arguably be categorised as disproportionate attack(s).³⁶ But a lopsided casualty figure or large loss of civilians alone does not necessarily mean the attacks were disproportionate.³⁷

3.3 Distinction

This principle of distinction requires belligerents to distinguish combatants from civilians and military objectives from civilian objects.³⁸ Additional Protocol I (AP1), discussed in depth below, prohibits indiscriminate attacks. Article 51, paragraph 4 defines indiscriminate attacks as those that (1) are not directed against a specific military objective, (2) employ a method or means of combat the effect of which cannot be directed at a specific military objective, and/or (3) employ a method or means of combat, the effects of which cannot be limited as required and consequently, in each case, are of a nature to strike military objectives and civilians or civilian objects without distinction.³⁹

Additional Protocol II (AP2), Article 14 prohibits starvation of civilians as a method of combat.⁴⁰ Carpet bombing is often cited as an example of an indiscriminate attack, and the Syrian Arab Army's use of barrel bombs has been cited as an example for the use of a weapon that violates the principle of distinction.⁴¹ Additionally,

³⁶ *Ryuichi Shimoda et al. v. The State* [Tokyo Dist. Ct.] Dec. 7, 1963, 355 Hanrei Jihō [Hanji] 17 (Japan) (finding the US bombings of the Nagasaki and Hiroshima was illegal since the bombs, while even if targeted at military objectives only, resulted in damage comparable to that caused by indiscriminate bombardment).

³⁷ Pavlischek, K. (2020). *Proportionality in warfare*. The New Atlantis 27 (Spring 2020), pp. 21–34, Available at <https://www.thenewatlantis.com/publications/proportionality-in-warfare>.

³⁸ United Nations Office of the High Commissioner on Human Rights. (2017). *International Humanitarian Law and Human Rights Law Relevant to Siege Warfare*, January 2017, Available at chrome-extension:https://efaidnbmnnnibpcajpcglclefindmkaj/viewer.html?pdfurl=https%3A%2F%2Freliefweb.int%2Fsites%2Freliefweb.int%2Ffiles%2Fresources%2Fsieges_legal_note_-_final_-_en_1.pdf&clen=475162&chunk=true.

³⁹ “Treaties, States Parties, and Commentaries - Additional Protocol (I) to the Geneva Conventions, 1977 - 51 - Protection of the Civilian Population.” n.d. Ihl-Databases.icrc.org. Available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=4BEBD9920AE0AEAE12563CD0051DC9E>.

⁴⁰ “Treaties, States Parties, and Commentaries - Additional Protocol (II) to the Geneva Conventions, 1977 - 14 - Protection of Objects Indispensable to the Survival of the Civilian Population.” n.d. Ihl-Databases.icrc.org. Available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=ACF5220D-585326BCC12563CD0051E8B6>. [accessed 21 February, 2022].

⁴¹ U.N. SCOR, 69th Sess., 7116 mtg. at 3, U.N. Doc. S/RES/2139) (Feb.

Russia's shelling of civilian infrastructure throughout February and March 2022 is another instance of the principle of distinction being disavowed, resulting in many nations, including the US, classifying these actions as war crimes.⁴² The principle of distinction applies to both attackers and defenders,⁴³ especially when it comes to information operations that may incentivise deliberate intermingling with civilians.⁴⁴

Nevertheless, the death of civilians during combat operations does not *ipso facto* result in a war crime. For instance, Louis Moreno-Ocampo, Chief Prosecutor at the International Court, investigated war crime allegations against the United States following the 2003 invasion of Iraq.⁴⁵ Moreno-Ocampo stated that the death of civilians during any armed conflict does not itself constitute a war crime so long as there is no intentional attack directed against civilians, or that an attack is launched on a military objective in the knowledge that the incidental civilian injuries would be clearly excessive to the anticipated military advantage.⁴⁶

4 International law and sieges in war

4.1 Geneva Conventions (GC) I–IV

CG IV, Article 17 obliquely addresses sieges. Article 17 states that when sieges transpire, starvation and deprivation are almost always assured, whether the besieged are civilians or military personnel.⁴⁷ Specifically, the commentary states, ‘besieged or encircled areas mean not only an open piece of country...but also a town or fortress offering

22, 2014).

⁴² Press Statement. (2022). *War Crimes by Russia's Forces in Ukraine*. Antony Blinken, US Secretary of State, US Department of State, March 23, 2022, Available at <https://www.state.gov/war-crimes-by-russias-forces-in-ukraine/>. [accessed 26 March, 2022].

⁴³ Smith. *Operational Law Handbook*. p. 59.

⁴⁴ Geoffrey, C. (2020). Beyond human shielding: Civilian risk exploitation and indirect civilian targeting. *International Law Studies*, 96(118), p. 125.

⁴⁵ Le Bureau, Du Procureur. (2006). *The office of the prosecutor*. Available at https://www.icc-cpi.int/NR/rdonlyres/04D143C8-19FB-466C-AB77-4CDB2FDEBEF7/143682/OTP_letter_to_senders_re_Iraq_9_February_2006.pdf.

⁴⁶ *Id.*

⁴⁷ “Treaties, States Parties, and Commentaries - Geneva Convention (IV) on Civilians, 1949 - 17 - Wounded and Sick II. Evacuation.” n.d. Ihl-Databases.icrc.org. Available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=B41303A76EA5BC95C12563CD0051BAF1>. [accessed 21 February, 2022].

resistance...The definition can even be extended to cover vast territories.⁴⁸ Even more interesting, the article states, ‘The Parties to the conflict shall *endeavor* to conclude local agreements for the removal from besieged or encircled areas, of wounded, sick, infirm, and aged persons, children and maternity cases, and for the passage of ministers of all religions, medical personnel and medical equipment on their way to such areas.’⁴⁹ The use of the word ‘endeavour’ indicates that the evacuation of the protected classes mentioned is not compulsory.⁵⁰ The commentary states it is only a very strong recommendation whenever it is in the interests of the civilian population and the military situation makes it possible.

Concerning civilians, the rule states that they can never be the object of *deliberate* attack, absent an exception.⁵¹ If a civilian takes a direct part in hostilities, such as firing a rifle, they will lose immunity.⁵²

4.2 Additional Protocol 1 and 2 and Rome Statute

The Additional Protocols I and II (AP1 and AP2, respectively) to the GCs add restrictions on combatants. AP1, which relates to IAC, places severe restrictions on an attacking force and indicates that a siege of a fortified place is now, from a practical standpoint, impossible. Article 54 of AP1 severely restricts an attacking force. Article 54 of AP 1, Part 2 states:

It is prohibited to attack, destroy, remove or render useless, objects indispensable to the survival of the civilian population... for the specific purpose of denying...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.⁵³

⁴⁸ “Treaties, States Parties, and Commentaries - Geneva Convention (IV) on Civilians, 1949 - 17 - - Commentary of 1958.” n.d. Ihl-Databases.icrc.org. Available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/1a13044f3bb5b8ec12563fb0066f226/a5e7b4b6b7fae82bc-12563cd0042b13d>. [accessed 21 February, 2022].

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Additional Protocol (I) to the Geneva Conventions, 51, *supra* note 41.

⁵² *Id.*

⁵³ “Treaties, States Parties, and Commentaries - Additional Protocol (I) to the Geneva Conventions, 1977 - 54 - Protection of Objects Indispensable to the Survival of the Civilian Population.” n.d. Ihl-Databases.icrc.org. Available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=C5F28CAC-C22458EAC12563CD0051DD00>.

In commentary section 2106, it states the Adverse Party should, when using force, ensure that the population is not reduced to starvation or compelled to move.⁵⁴ Section 2112 (2) of the commentary states, ‘When objects are used for a purpose other than the subsistence of members of the armed forces and such use is in direct support of military action, attacks...are legitimate [targets] unless they are bound to have serious effects on supplies for the civilian population and the latter would thereby be reduced to starvation or forced to move away.’⁵⁵ This language essentially compels a besieging force to take a besieged area by *coup de main* in order to avoid taking actions which could have ‘serious effects’ on civilians.

AP2, which applies to all armed conflicts to which AP1 is not applicable, places the same restrictions on belligerents in the context of a NIAC.⁵⁶ In particular, Articles 14 and 17 provide substantial protections to the civilian population and conversely restricts the belligerents. Article 14 states, ‘The starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove, or render useless for that purpose, objects indispensable to the survival of the civilian population such as food stuffs, crops, livestock, drinking water installations and supplies and irrigation works.’⁵⁷ Article 17 of AP2 states, ‘The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand,’ and ‘Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.’⁵⁸

As a result, under international law, if a belligerent force is besieged or encircled in an area populated with civilians, the besieging force is prohibited from taking action that would force the civilians to leave the area, such as cutting off water supplies. Furthermore, the besieging force should attempt to establish humanitarian corridors

⁵⁴ “Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) Adopted on 8 June 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts.” n.d. Available at <https://www.ohchr.org/Documents/ProfessionalInterest/protocol2.pdf>.

⁵⁵ *Id.*

⁵⁶ “Treaties, States Parties, and Commentaries - Additional Protocol (II) to the Geneva Conventions, 1977 - 1 - Material Field of Application.” n.d. Ihl-Databases.icrc.org. Available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=93F022B3010AA404C12563CD0051E738>.

⁵⁷ *Id.* at Article 14.

⁵⁸ *Id.* at Article 17.

to evacuate civilians from the siege; however, the civilians cannot be forced to leave.⁵⁹

The Rome Statute provides that ‘intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions constitutes a war crime in IAC.’⁶⁰

The United Nations published a pamphlet regarding law applicable to sieges and reaches the conclusion that ‘the effects of a siege must distinguish between fighters and civilians.’ It goes on to add that ‘[t]herefore, any tactic which restricts civilians’ access to essential items necessary for their well-being such as water, food and medicine is prohibited.’⁶¹

5 Case law and sieges in modern war

Case law on sieges is sparse. The trial of German Generalfeldmarschall Wilhelm von Leeb is the first such case. The siege of Leningrad (today’s Saint Petersburg) lasted from 8 September 1941 until 27 January 1944. In terms of hardship, terror and civilian suffering, there are few better examples.⁶² In 1942, for instance, over 650,000 citizens died during the siege.⁶³ As the siege progressed and food supplies ran low, von Leeb issued orders to the German artillery to fire on any civilians attempting to leave the city so that the German infantry would be spared from shooting civilians.⁶⁴ After the war, von Leeb and other German generals were tried in the *High Command Case*. In its 1948 judgement, the Tribunal held that von Leeb’s order to

his artillery to fire on fleeing civilians was lawful.⁶⁵ The judges stated:

A belligerent commander may lawfully lay siege to a place controlled by the enemy and endeavor by a process of isolation to cause its surrender. The propriety of attempts to reduce it by starvation is not questioned...It is said that if the commander of a besieged place expels the non-combatants, in order to lessen the number of those who consume his stock of provisions, it is lawful, though an extreme measure, to drive them back, so as to hasten its surrender.⁶⁶

This holding however has been modified in the following decades, particularly in the context of the disintegration of Yugoslavia and the subsequent conflicts.

The wars that accompanied Yugoslavia’s dissolution were incredibly brutal and are epitomised during the siege of Sarajevo, which was addressed in *Prosecutor v. Dragomir Milosevic*. This siege involved a variety of participants, but principally units of the Army of the Republika Srpska (VRS) and the Armed Forces of the Republic of Bosnia and Herzegovina (ABiH).⁶⁷ In Sarajevo, the VRS were the besiegers and the ABiH was the besieged.⁶⁸ The Court never addressed whether the siege itself was lawful, but instead focused on specific acts committed during the siege.

The ruling in *Milosevic* indicates that while conducting a siege, a besieging force must allow the evacuation of civilians, but deprivation may be permissible.⁶⁹ In *Milosevic*, the Court did not directly state that the siege of Sarajevo was unlawful and instead focused on specific attacks. Throughout the Court’s analysis, it does however mention that the civilians were trapped, and ‘unable to remove themselves from danger.’⁷⁰ Nevertheless, the Court did not find Milosevic guilty of using starvation as a weapon, nor guilty of compelling the civilian population to move.⁷¹ To the contrary, it found that it was the *besieged combatants* who diverted the food away from the intended recipients, the civilian population.⁷²

⁵⁹ Geneva Convention (IV), article 17, *supra* note 48.

⁶⁰ “Treaties, States Parties, and Commentaries - Statute of the International Criminal Court, 1998 - 8 - War Crimes.” n.d. Ihl-Databases. icrc.org. Available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=E4C44E2F1347B-99D412566900046EACB>. [Accessed 21 February, 2022].

⁶¹ United Nations Office of the High Commissioner on Human Rights, *International Humanitarian Law and Human Rights Law Relevant to Siege Warfare*, January 2017, Available at chrome-extension:https://efaidnbmnmbpcajpcglclefindmkaj/viewer.html?pdfurl=https%3A%2F%2Freliefweb.int%2Ffiles%2Fresources%2Fsieges_legal_note_-_final_-_en_1.pdf&clen=475162&chunk=true.

⁶² Krypton, C. (1954). The Siege of Leningrad. *Russian Review*, 13(4), pp. 262-264.

⁶³ J.F.C. (1957). Fuller, *A Military History of the Western World, Volume III: From the American Civil War to the End of World War II*. De Capo Press, New York, p. 446.

⁶⁴ *The German High Command Trial*, in 12 Law Reports of Trials of War Criminals, at 59 (1949).

⁶⁵ German High Command Trial. p. 84.

⁶⁶ German High Command Trial. (citing Charles C. Hyde, 3 International Law, Chiefly as Interpreted and Applied by the United States 1802–03 (2d ed. 1945)). In fact, *J.A.G.S. Text No. 7*, in Law of Land Warfare (Sept. 1, 1943, reissued July 1, 1945), used this very language.

⁶⁷ *Prosecutor v. Dragomir Milosevic*, Case No. IT-98-29/1-T, Judgement, paras. 1, 29 (Int’l Crim. Trib. for the Former Yugoslavia Dec. 12, 2007) [hereinafter *Milosevic*].

⁶⁸ *Prosecutor v. Dragomir Milosevic*. pp. 111–36.

⁶⁹ *Prosecutor v. Dragomir Milosevic*. p. 910.

⁷⁰ *Prosecutor v. Dragomir Milosevic*. p. 249, 307, 321, 417, 747–59, 991, and 1340.

⁷¹ *Prosecutor v. Dragomir Milosevic*. p. 985.

⁷² *Prosecutor v. Dragomir Milosevic*. p. 167.

In the context of an armed conflict—involving either IAC or NIAC—it is permissible for an aggressor to besiege an enemy force in a city. Using the *Milosevic* court case and its findings, a besieging force could also go so far as to destroy food and water supplies during a siege, so long as the besieger allows the civilian populace to evacuate. The Court, in its emphatic statements regarding the civilian entrapment, indicated that the besieger cannot force civilians to remain in the besieged place, but *deprivation* may be permissible so long as the non-combatants can leave the besieged location. However, the siege of Sarajevo also highlights the quandary a besieger is in. If they (the besieger) allow food supplies to enter the entrapped region so as to meet the needs of the civilian population, the risk that the besieged combatants will misappropriate the supplies for themselves, and thus become equipped to continue the fight, is incredibly high.

Additional Protocol 2, Article 14 prohibits the starvation of civilians as a method of combat.⁷³ Furthermore, commentary section 4796 states, ‘The use of blockade and siege as a method of warfare remains legitimate, provided they are directed *exclusively* against combatants.’⁷⁴ The commentary also states, ‘Except for the case where supplies are specifically intended as provisions for combatants, it is prohibited to destroy or attack objects...even if the adversary may benefit from them.’⁷⁵ However, Article 17 allows for the movement of civilians for ‘...the security of the civilians involved or imperative military reasons...’⁷⁶ As it stands today, the law of sieges, much like Western military doctrine, leaves much to be desired. As the following case studies highlight, a siege almost invariably results in civilians being trapped in the besieged area.

6 Case studies of sieges

A review of post-Sarajevo sieges illuminates a common set of factors. First, sieges predominate in NIACs – such as the Syrian Civil War and the war against ISIS, and

including the campaigns in Iraq, Syria and the Philippines. Second, there are usually a wide variety of belligerents, ranging from government forces, anti-government forces, foreign militaries and non-state actors, to terrorists. Third, anti-government, or non-state, forces typically seek refuge in urban areas, primarily to avoid the firepower and other advantages that a state actor brings to bear. Fourth, sieges entail basing. Basing is required for the actor conducting the siege, as well as the actors enduring the siege or assisting the besieged. In either case, basing locations quickly turn into additional targets. Typically, these basing locations, such as Pisky during the battle for Donetsk Airport, suffer devastation because of their involvement in the conflict.⁷⁷ Fifth, sieges are battles or operations of encirclement and position. As such, they can be either porous or impermeable, depending on the aggressor’s resource capability and political and military aims. Additionally, encirclement does not necessarily mean the tight constriction of a land force around its objective, but rather, sieges can be levied from distant means of encirclement that still allow for applied pressure at multiple points.⁷⁸ Sixth, the damage to civilian infrastructure and civilian deaths during these sieges can be extreme. Finally, the law of armed conflict and its role in sieges can have an impact on the course and conduct of the siege.

6.1 The siege of Eastern Ghouta (5 years, ~10,000–20,000 combatants⁷⁹)

According to the *Independent International Commission of Inquiry On the Syrian Arab Republic*, sieges throughout Syria are the primary method of warfare employed in the conflict.⁸⁰ One of the most prominent, and longest lasting, sieges was that of Eastern Ghouta.⁸¹

⁷³ “Treaties, States Parties, and Commentaries - Additional Protocol (II) to the Geneva Conventions, 1977 - 14 - Protection of Objects Indispensable to the Survival of the Civilian Population - Commentary of 1987.” n.d. Ihl-Databases.icrc.org. Available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=22A3363FA0482A57C12563CD0043AB5D>. [accessed 21 February, 2022]

⁷⁴ “Treaties, States Parties, and Commentaries,” Geneva Convention.

⁷⁵ “Treaties, States Parties, and Commentaries,” Geneva Convention.

⁷⁶ “Treaties, States Parties, and Commentaries,” Geneva Convention.

⁷⁷ “The Last Holdouts in a Ukrainian Ghost Town.” n.d. Www.rferl.org. Available at <https://www.rferl.org/a/ukraine-pisky-war/27347314.html>. [accessed 21 February, 2022].

⁷⁸ Black, J. (2021). *A Short History of War*. Yale University Press, New Haven, CT, p. 116.

⁷⁹ Tom, R. (2022). n.d. *The Unravelling of Syria’s Eastern Ghouta*. Www.aljazeera.com. Available at <https://www.aljazeera.com/news/2016/12/18/the-unravelling-of-syrias-eastern-ghouta/>. [accessed 21 February, 2022].

⁸⁰ Independent International Commission of Inquiry On The Syrian Arab Republic, *Sieges As A Weapon of War: Encircle, Starve, Surrender, Evacuate*, (May 29, 2018).

⁸¹ U.N. Human Rights Council, 38th Sess., *The Siege and Recapture of Eastern Ghouta*, U.N. Doc. A/HRC/38/CRP.3 (June 20, 2018) [hereinafter *The Siege and Recapture of Eastern Ghouta*].

The siege of Eastern Ghouta lasted approximately 5 years and an estimated 265,000 individuals subsisted in the enclave during the reporting period.⁸² Rebel factions entrenched themselves in urban terrain and government forces attempted to use massive firepower to overcome them.⁸³

Early in the siege, the Syrian government cut access to water and electricity.⁸⁴ This act was a direct violation of AP2, Article 14 ('It is therefore prohibited to attack, destroy, remove or render useless...objects indispensable to the survival of the civilian population').⁸⁵ Soon thereafter, Assad regime forces closed the Wafidin crossing point – a major supply route – to both the besieged force and the civilians trapped alongside them.⁸⁶ Severing the crossing point was intentional and meant to disrupt food flow to the civilians. Doubling down on using food as a weapon, the Syrian government regularly thwarted non-government organisations (NGOs) and other aid organisations in their attempts to supply the civilian population.⁸⁷ The prevalence of the Syrian regime's use of starvation as a tactic and form of collective punishment is strictly prohibited under international law.⁸⁸ Unfortunately, this was not a one-time event, but as analyst Nils Hägerdal highlights, starvation was a major factor, not only in Eastern Ghouta, but in all the Syrian war's sieges.⁸⁹ The denial of access to food, water and electricity caused many civilian deaths, in addition to fuelling the departure of many civilians from Ghouta or their surrendering to Assad regime forces.⁹⁰ Further, the siege was extremely porous, with proliferate smuggling of a variety of goods, allowing another angle for food's weaponisation.⁹¹

As the UN Commission of Inquiry on Syria noted in Resolution 2401, starvation of civilians as a method of combat is prohibited by international

humanitarian law.⁹² However, the Syrian government argued that civilians were not the *deliberate* object of attack, and that they were attacking terrorists within the besieged area, who themselves were committing violations of the laws of war. These violations included the indiscriminate revenge killings against civilians in Damascus.⁹³

In November 2017, the Syrian Army began sustained operations to retake Eastern Ghouta.⁹⁴ On 23 January 2018, the Russian Federation, a staunch ally of the Assad regime, announced its intent to establish nine humanitarian corridors out of Eastern Ghouta.⁹⁵ The corridors were open only to the evacuation of the sick and injured civilians.⁹⁶ This indicates that neither Russia nor the Syrian government felt bound by any need to comply with AP2; however, they have considered CG IV, Article 17 to be applicable. Between February and April 2018, approximately 95,000 individuals fled the area through these humanitarian corridors.⁹⁷ None of the civilians the Commission spoke to alleged members of armed groups interfered with their ability to flee, though some members warned civilians that they would be arrested by pro-government forces if they left.⁹⁸ However, owing to widespread distrust of the Syrian government, many civilians willingly stayed in the besieged area.⁹⁹

Ultimately, Bashar Al-Assad's forces were able to recapture Eastern Ghouta. Rather than storming the city, the Syrian government established a variety of local agreements allowing rebel forces to relocate to other rebel-held areas.¹⁰⁰ The cost to the civilian population and infrastructure, however, was incredibly high. From March 2011 to 24 February 2018, the Syrian Network for Human Rights alleges that approximately 12,763 civilians died in the siege of Eastern Ghouta, including 1,463 children.¹⁰¹

82 The Siege and Recapture of Eastern Ghouta. pp. 6 and 19.

83 The Siege and Recapture of Eastern Ghouta. p. 6.

84 The Siege and Recapture of Eastern Ghouta. pp. 7–8.

85 Additional Protocol (II), *supra* note 75.

86 The Siege and Recapture of Eastern Ghouta. note 88, at para. 8.

87 The Siege and Recapture of Eastern Ghouta. p. 24.

88 "Treaties, States Parties, and Commentaries - Geneva Convention (IV) on Civilians, 1949 - 33 - - Commentary of 1958." n.d. Ihl-Databases.icrc.org. Available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/1a13044f3bbb5b8ec12563fb0066f226/36bd41f14e2b3809c-12563cd0042bca9>. [accessed 21 February, 2022].

89 Hägerdal, N. (2020). Starvation as siege tactics: Urban warfare in syria. *Studies in Conflict and Terrorism*, (Sept. 4, 2020), at 9–16, doi: 10.1080/1057610X.2020.1816682.

90 "Siege of Syria's Eastern Ghouta 'Barbaric and Medieval', Says UN Commission of Inquiry." 2018. UN News. June 20, 2018. Available at <https://news.un.org/en/story/2018/06/1012632>.

91 The Siege and Recapture of Eastern Ghouta. p. 22.

92 U.N. SCOR, 72d Sess., 8188th mtg., U.N. DOC. S/RES/2401 (Feb. 24, 2018).

93 "Both Sides Committed War Crimes during Eastern Ghouta Siege: UN." n.d. Middle East Eye. Available at <https://www.middleeasteye.net/news/both-sides-committed-war-crimes-during-eastern-ghouta-siege-un>. [Accessed 21 February, 2022].

94 *The Siege and Recapture of Eastern Ghouta*, *supra* note 88, at para. 59.

95 *Id.*

96 *Id.*

97 *Id.*

98 *Id.*

99 *Id.*

100 *The Siege and Recapture of Eastern Ghouta*, *supra* note 88, at paras. 68–69.

101 "Approximately 13,000 Civilians Killed at the Hands of Syrian Regime Forces in Eastern Ghouta, Including 1,463 Children the Ongoing Massacre Statement." 2018. Available at https://sn4hr.org/wp-content/pdf/english/The_ongoing_massacre_en.pdf.

These deaths were largely attributed to Bashar Al-Assad's forces' indiscriminate shelling of the city.¹⁰² There was also significant infrastructure damage to Eastern Ghouta.¹⁰³ In terms of strategy, however, Bashar Al-Assad forces' siege tactics and relocation of enemy combatants to other opposition-held areas was a success.

First, it allowed the government to take the rebellious area, which was dangerously close to its capital, without suffering significant casualties among its armed forces. Throughout the war, the Syrian government faced the constraint of major manpower shortage, and victory without the loss of trained troops was important.¹⁰⁴ Furthermore, the transfer of opposition forces and their families to opposition-held areas has exacerbated the supply difficulties in these areas.¹⁰⁵

From a legal standpoint, the siege of Eastern Ghouta presents some interesting theories. First, the Syrian government would likely argue that civilians were never the deliberate object of attack, that while they are signatories to AP1 (IAC), they were not signatories to AP2 (NIAC), and that, as a result, the AP2 restrictions are not binding, but GC IV is binding. As evidence of this they would likely point to their use of humanitarian corridors to allow the evacuation of the wounded and sick. The Syrian government could further argue that, even if AP2 was binding, the tactics used were meant to facilitate the movement of civilians from the area (which would be an applicable requirement according to AP2, Article 17), as the opposition forces were targeting civilians in Eastern Ghouta.¹⁰⁶ No matter what the argument, however, the Syrian regime received widespread international condemnation for its conduct during the siege, and never presented a clear legal argument for its actions.

¹⁰² *Id.*

¹⁰³ BBC News. (2018). "Eastern Ghouta Syria: The Neighbourhoods below the Bombs," March 29, 2018, sec. Middle East. Available at <https://www.bbc.com/news/world-middle-east-43154146>.

¹⁰⁴ "Syria's Assad Admits His Army Suffering from Manpower Shortages." n.d. Middle East Eye Édition Française. Available at <https://www.middleeasteye.net/fr/news/syrias-assad-admits-his-army-suffering-manpower-shortages-2129166308>. [accessed 21 February, 2022].

¹⁰⁵ "Syria War: After a Decade of Bloodshed, Revolutionary Dreams Live On." n.d. Middle East Eye. Available at <https://www.middleeasteye.net/opinion/syria-war-after-decade-bloodshed-revolutionary-dreams-live>. [accessed 21 February, 2022].

¹⁰⁶ The Siege and Recapture of Eastern Ghouta, *supra* note 88, para. 53-58.

6.2 Battle of Mosul (~9 months, ~90,000)¹⁰⁷

From the perspective of efforts to reduce civilian casualties, the battle of Mosul is a good contrast to the siege of Eastern Ghouta, though it was still deadly and destructive. It was also one of the defining moments of the fight against ISIS. It is also illustrative of how difficult a siege of a large urban area can be in both the tactical and legal aspects.

The battle officially began on 16 October 2016 and victory was not declared until 10 July 2017.¹⁰⁸ Reports on civilian deaths vary drastically, depending on the source. Coalition Joint Task Force-Operation Inherent Resolve (CJTF-OIR), the US-led force working through the Iraqi Security Forces (ISF) to defeat ISIS, acknowledges only 326 civilian deaths.¹⁰⁹ The *Associated Press* states that the number of civilian casualties ranges from 9,000 to 11,000 dead, including at least 3,200 civilian deaths attributable to Iraqi or coalition forces.¹¹⁰ The *Associated Press'* estimates tend to reflect the findings of other NGOs. Additionally, the bill to repair Mosul following the battle was upwards of \$2 billion dollars.¹¹¹ The battle was no less deadly for the combatants, since ISIS is estimated to have lost over 3,000 fighters, whereas Iraqi forces, for their part, lost an estimated 1,200 combatants, with 6,000 wounded.¹¹²

¹⁰⁷ Walsh, N. P., Blau, M., Grinberg, E. & Hume, T. (2016). *Battle for Mosul Begins With Gunfire and Carbombs*, October 17, 2016, Available at <https://www.cnn.com/2016/10/17/middleeast/mosul-isis-operation-begins-iraq/index.html>.

¹⁰⁸ Coles, I. & Kalin, S. (2017). *Iraqi PM Declares Victory over Islamic State in Mosul*, Reuters, July 10, 2017, Available at <https://www.reuters.com/article/us-mideast-crisis-iraq-mosul/iraqi-pm-declares-victory-over-islamic-state-in-mosul-idUSKBN19V105>.

¹⁰⁹ *Id.*

¹¹⁰ "Mosul Is a Graveyard: Final IS Battle Kills 9,000 Civilians." 2021. AP NEWS. August 21, 2021. Available at <https://apnews.com/article/iraq-islamic-state-group-archive-only-on-ap-bbea7094fb954838a2fdc11278d65460>.

¹¹¹ "This Man Is Trying to Rebuild Mosul. He Needs Help - Lots of It." n.d. Reuters. Available at <https://www.reuters.com/investigates/special-report/iraq-mosul-official/>.

¹¹² Helene, C. (2017). "Revived after Mosul, Iraqi Forces Prepare to Battle ISIS in Tal Afar." *The New York Times*, August 18, 2017, sec. World. Available at <https://www.nytimes.com/2017/08/18/world/middleeast/iraq-tal-afar-isis-battle.html>; Chris Woods, A. of. n.d. "More Civilians than ISIS Fighters Are Believed Killed in Mosul Battle." NPR.org. Available at <https://www.npr.org/sections/parallels/2017/12/19/570483824/more-civilians-than-isis-fighters-are-believed-killed-in-mosul-battle>; "2 American Soldiers Killed in Iraq, U.S. Military Says. (2022)." n.d. NBC News. Available at <https://www.nbcnews.com/news/world/2-american-soldiers-killed-iraq-u-s-military-says-n792256>. [accessed 21 February, 2022]

The campaign to recapture Mosul and eliminate ISIS began on the city's eastern side.¹¹³ East Mosul was isolated from the city's western half, and, after bitter fighting, it was recaptured on 24 January 2017.¹¹⁴ The assault to recapture Mosul's western half began on 19 February and continued until 10 July 2017.¹¹⁵ During this period approximately 900,000 civilians fled the city.¹¹⁶ The fighting for western Mosul was more barbaric than that for eastern Mosul, as ISIS fighters hunkered down and waged an exhausting battle of attrition. During the siege, the ISF encircled eastern Mosul and methodically cleared the city block by block. Coalition forces, for their part, provided targeting-strike capabilities, as well as combat and headquarter advice, to the ISF throughout the battle. Despite there being no intention to pulverise the city, the combined ISF-Coalition encirclement and clearance of western and eastern Mosul, coupled with ISIS's destructive actions, resulted in a city reduced to rubble.

Legally, the Coalition operated within strict compliance with international humanitarian law. This included the use of leaflets to warn civilians to stay in place during the attempt to distinguish between non-combatants and ISIS fighters, who the Coalition presumed would be moving around the city to combat them.¹¹⁷ This is a clear example of applying the principle of distinction (AP1, Article 51(5)(a)). The use of precision munitions is also an example of applying the principle of distinction, at least in practice, despite precision munitions sometimes causing harm to civilians.¹¹⁸ Additionally, the ISF and the Coalition made use of safe corridors to evacuate non-combatants, complying with GC IV (Protection of Civilians in a Time of War), Article 17.¹¹⁹

¹¹³ Asymmetric Warfare Group et al., Mosul Study Group: What the Battle for Mosul Teaches the Force 6 (Sept. 2017), Available at <https://www.armyupress.army.mil/Portals/7/Primer-on-Urban-Operation/Documents/Mosul-Public-Release1.pdf>.

¹¹⁴ *Id.* at 7.

¹¹⁵ *Id.* at 8.

¹¹⁶ "Protection of Civilians in Mosul: Identifying Lessons for Contingency Planning a Center for Civilians in Conflict (CIVIC) and InterAction Roundtable." 2017. Available at https://civiliansinconflict.org/wp-content/uploads/2017/10/civic-interaction-protection-of-civilians-in-mosul-october-2017_final.pdf.

¹¹⁷ *Reuters*. (2016). "Iraqi Army Drops Leaflets over Mosul in Preparation for Offensive," October 16, 2016, sec. Media and Telecoms. Available at <https://www.reuters.com/article/us-mideast-crisis-iraq-mosul/iraqi-army-drops-leaflets-over-mosul-in-preparation-for-offensive-idUSKBN12G0GN>.

¹¹⁸ Center for Civilians in Conflict, *supra* note 131, at 3.

¹¹⁹ "Iraqi Forces Say IS Defences, Civilians Hamper Mosul Advance." 2016. ABC News. November 6, 2016. Available at <https://www.abc.net.au/news/2016-11-06/mosul-iraqi-forces-say-is-defences-and-civilians-hamper-advance/7999152?nw=0>.

However, the siege also emphasises how unscrupulous actors will attempt to use an adversary's adherence to international law to achieve tactical gain. For example, on many occasions, ISIS deliberately put civilians between it and advancing ISF-Coalition forces in the attempt to slow the coming attack, and additionally used civilian casualties for strategic information purposes.¹²⁰ The ISF-Coalition subsequently changed its message from 'stay in place' to 'flee when safe', as they became aware of the ruse being played by ISIS.¹²¹ At the same time, many NGOs expressed concern that they were not allowed to communicate appropriately with the Coalition to help address the situations involving non-combatants.¹²²

However, the question that remains is this: Could the Coalition have achieved the same high standards of adherence to the law if they did not have such an overwhelming force? During the battle, the ISF-Coalition to ISIS fighter ratio was almost 30:1, including air superiority; yet, defeating ISIS still required 9 months, the devastation of a city, thousands of civilian casualties and the dislocation of hundreds of thousands of non-combatants. As it is, this question will remain a discussion for counterfactual history.

6.3 The Second Battle of Donetsk Airport (3 months, ~2,000–3,000)

The on-going Russo-Ukrainian war's 2014–2015 Donbas Campaign is equal parts IAC and NIAC. The campaign is generally viewed as an IAC between Russia and the Ukrainian government, and a NIAC between the Ukrainian government and Donetsk People's Army (DPA) and Luhansk People's Army (LPA).¹²³ Viewed through the lens of IAC, the campaign presents a unique scenario because IACs are rare in modern conflicts. The Second Battle of Donetsk Airport is but the third of four significant sieges that have so far taken place as part of the Donbas Campaign, and it illustrates several themes found in modern sieges.

Despite the Minsk Protocol, and its conditions of ceasefire, following the siege of Ilovaik, fighting

¹²⁰ *Supra* note 131.

¹²¹ *Id.*

¹²² *Id.*

¹²³ "Internal Conflicts or Other Situations of Violence – What is the Difference for Victims?" *International Committee of the Red Cross*, Available at [https://www.icrc.org/en/doc/resources/documents/interview/2012/12-10-niac-non-international-armed-conflict.htm#:~:text=A%20non%20international%20\(or%20%22,the%20territory%20of%20a%20State](https://www.icrc.org/en/doc/resources/documents/interview/2012/12-10-niac-non-international-armed-conflict.htm#:~:text=A%20non%20international%20(or%20%22,the%20territory%20of%20a%20State). [accessed 3 April, 2022, 12 October, 2012].

persisted in and around Donetsk Airport.¹²⁴ Elements from Ukraine's ninety-third Mechanised Brigade, as well as irregular forces operating for Kyiv, maintained a foothold at the airport. By September, the DPA and Russian land forces controlled a significant portion of Donetsk oblast, the airport being a major outlier.¹²⁵

On 28 September, the DPA and Russian forces initiated an assault to wrest control of the airport from Ukrainian forces. The attack began with a large barrage of artillery and multiple launch rocket system (MLRS). Under this fusillade, the DPA and Russian land forces advanced from staging sites in Donetsk to seize the airport. During the first week of combat, the DPA–Russian dyad applied a three-pronged plan: (1) pin the Ukrainian defenders within the airport's perimeter; (2) methodically encircle the airport; and (3) secure their lines of communication to Donetsk.¹²⁶

Through October, the DPA–Russian partnership tightened its hold on the airport, increasing the isolation wrought on the Ukrainian forces. For reasons unknown, however, the DPA–Russian forces did not seal the road running from the airport, northwest to the small town of Pisky.¹²⁷ As a result, Ukrainian forces used Pisky as a staging base, resupply location and medical evacuation hub during most of the contest.

The situation at the airport simmered through the remainder of October and into mid-November. By 28 November, the DPA–Russian forces initiated a concerted attack on the airport's old terminal, which was housing the Ukrainian forces.¹²⁸ The 3-day attack forced the Ukrainians to withdraw on 5 December, relocate to the airport's new terminal and again assume a defensive posture.¹²⁹ Low-level fighting continued through December 2014 and into January 2015.

On 10 January, the DPA–Russian forces conducted another offensive.¹³⁰ Portending the near-term future of

the Ukrainian armed forces at Donetsk Airport, the air traffic control tower failed to withstand the attack, and fell on 12 January.¹³¹ The DPA, which had established a foothold of its own in the new terminal, issued an ultimatum to the Ukrainians on 13 January.¹³² The ultimatum directed the defenders of Donetsk Airport to surrender, or face extermination. The Ukrainians refused and the siege continued.¹³³

On 17 January, the Ukrainian armed forces attempted a last-ditch attempt to break free from the airport and flip the table on the DPA–Russian forces.¹³⁴ The attack caught the DPA–Russian force off guard, resulting in a brief balance of the situation. Nevertheless, Russia dispatched an additional two battalion tactical groups of 600 soldiers to counteract Ukraine's brief success.¹³⁵ The Russian reinforcements were the stake in the heart of the Ukrainian armed forces at Donetsk Airport. To the both' 19 and 21 January, the DPA–Russian force tightened its hold over the airport and completely overran the new terminal. Out of options, the Ukrainian soldiers fled the airport in a mix of desperation and chaos. The airport, now destroyed, transitioned hands from the Ukrainian armed forces to the DPA and their Russian protectors.¹³⁶ With this transition, victory slipped from Ukraine's grasp, and passed into the hands of the DPA and Russia.

This is an important place to momentarily pause and ask why a belligerent actor, such as the Russian–DPA force in the current example, would leave a release valve, or supply route, open during a siege. The first, and most simple, answer is that unlike the Coalition during the battle of Mosul, they possessed insufficient force to entirely encircle their opponent.

Available at <https://www.airport-technology.com/news/newsair-trafficcontrol-tower-at-ukraines-donetsk-international-airport-collapses-amid-shelling-4489130/>.

131 *Donetsk Airport Tower Collapses Amid Shelling*, Kyiv Post, Jan. 13, 2015, Available at <https://www.kyivpost.com/article/content/war-against-ukraine/donetsk-airport-tower-collapsesamid-shelling-377296.html>.

132 *Supra* note 146.

133 *Id.*

134 Jennifer Dunn, Threat Tactics Report Compendium: ISIL, North Korea, Russia, and China, at 133 (TRADOC G-2 ACE Threats Integration, 2015).

135 "Russia Sends New Army Troops into Ukraine War, Kyiv Says." 2015. Atlantic Council. January 20, 2015. Available at <https://www.atlanticcouncil.org/blogs/ukrainealert/russia-sends-new-troops-into-ukraine-war-kyiv-says/>.

136 *Reuters*. 2015. "Ukrainian Troops Retake Most of Donetsk Airport from Rebels," January 18, 2015, sec. Emerging Markets. Available at <https://www.reuters.com/article/us-ukraine-crisis-military/ukrainian-troops-retake-most-of-donetsk-airport-from-rebels-idUSKBNOKRODH20150118>.

124 "Ukraine and Separatists Blame Each Other after Ceasefire Broken." 2014. The Guardian. September 7, 2014. Available at <https://www.theguardian.com/world/2014/sep/07/ukraine-rebels-cease-fire-broken-shelling>.

125 Amos Fox, "Cyborgs at Little Stalingrad": A Brief History of the Battles of Donetsk Airport 26 May 2014 to 21 January 2015, Land Warfare Paper 125, at 5–11, (The Institute of Land Warfare at the Association of the United States Army, May 2019).

126 *Id.*

127 *Id.*

128 *Ukraine Crisis: New Battle Rages at Donetsk Airport*, BBC News, Dec. 1, 2014, Available at <https://www.bbc.com/news/world-europe-30275259>.

129 *Supra* note 146, at 5–11.

130 *Air Traffic Control Tower at Ukraine's Donetsk International Airport Collapses amid Shelling*, Airport Technology, Jan. 13, 2015,

Nevertheless, it is equally likely they wanted the Ukrainians to continue to devote resources of men and material into an area where the Russian–DPA force could set the tone of the battle. Using this logic, the goal of the porous siege was to gradually increase the cost of war—personnel, materiel, equipment, prestige and faith in the government—to the point where Kyiv and the Ukrainian army became overcommitted, yet unable to extricate itself from the combat zone, uselessly throwing limited resources at a hopeless cause. Furthermore, operating in this way allowed the Russian–DPA to slowly defeat Ukraine while not drawing a large amount of attention to the situation, keeping the international community at bay in a vastly different way than if Moscow was bombing Donetsk or Luhansk. In addition, the reliance on proxy forces helped Russia operate under the radar and with a degree of deniability, one it would not have had if it was blatantly attacking from the eastern side of the Ukraine–Russia border.

In the end, the siege of Donetsk Airport lasted 115 days. The siege destroyed not only several Ukrainian army units and volunteer battalions but also the towns of Pisky and Opytne, two major basing locations used throughout the siege.¹³⁷ Additionally, Donetsk Airport, coupled with the siege of Debal'tseve a week later, served as the proverbial stake in the heart of Ukraine in relation to overturning Russian and Russian proxy force gains in Ukraine's Donbas. Those two campaigns triggered the Minsk II protocol and set the arc for July 2020's Trilateral Cooperation Group agreement, which in essence solidified the Russian proxies as the ruling body in the Donbas' breakaway regions, and accepted the existing frontlines.¹³⁸ In short, the siege of Donetsk Airport, as part of a larger military strategy, enabled Russia to fulfil its policy objectives in Ukraine. In turn, the Donbas campaign was the womb in which Russia's February 2022 reinvasion of Ukraine incubated.

From a legal perspective, the siege of Donetsk Airport is a case which was a true belligerent-on-belligerent engagement, where civilians did not outnumber the combatants. At Donetsk Airport, the belligerent parties made clear and determined efforts to evacuate civilians from the battlefield.¹³⁹ However, there were still civilian casualties

as DPA–Russian forces did not evacuate all civilians from their controlled territory. In at least one documented instance, Russian–DPA forces set up an artillery piece next to a school which was still in use, though in this instance no children were killed.¹⁴⁰ Arguably, however, this would be a violation of the principle of distinction.

7 Summarising the case studies

Analysing the case studies indicates that sieges, as a matter of course, will continue to occur, regardless of whether the conflict is a NIAC or IAC. While not a siege in the classical sense, the essential elements remain the same; constricting an enemy force's freedom of movement and eventually forcing their retreat or surrender through attrition. However, the danger to the civilian population, as well as the cost in terms of personnel, resources and time, has resulted in Western militaries showing an extreme aversion to characterising an event as a siege. Despite participation in several sieges in the past few years, the leading Western militaries lack a framework for operating in a siege from a tactical and legal standpoint.

Doctrine, like theory, is important for several reasons. First, it provides a common language which policymakers and practitioners can use for clear, effective communication. Further, it provides a framework for understanding macro- and micro-level environments, relationships, interactions and tactics. Finally, doctrine, if rooted in a cogent theory, allows policymakers and practitioners to construct useful models and plans to forecast rational and irrational assumptions, actions and implications. Professor Vladimir Rauta summarises the idea best, stating that to prevent or prevail in each form of war, a strategic understanding of why (and how) a given form of war is waged is required.¹⁴¹ For this reason, Western militaries must not shy away from recognising the importance of formulating doctrinal theory to deal with sieges, but instead incorporate solid frameworks on sieges into doctrine, ensuring that the doctrine is not only tactically sound but also legally informed.

¹³⁷ VICE News, *Holding the Line for Another DNR Assault: Ukraine's Failed Ceasefire (Part 2)*, YouTube (July 29, 2015), Available at https://www.youtube.com/watch?v=O_L0mzW4dIQ.

¹³⁸ "Press Statement of Special Representative Grau after the Regular Meeting of Trilateral Contact Group on 22 July 2020." n.d. Www.osce.org. Available at <https://www.osce.org/chairmanship/457885>.

¹³⁹ Writer, Staff. 2015. "Ukraine Evacuates Civilians from Key Town as Rebel Attack Mounts." *Columbia Daily Herald*. The Daily

Herald. February 3, 2015. Available at <https://www.columbiadailyherald.com/story/news/local/2015/02/03/ukraine-evacuates-civilians-from-key/25710418007/>.

¹⁴⁰ "Ukrainian Forces and Pro-Russia Rebels Clash over Donetsk Airport." 2014. *The Guardian*. October 1, 2014. Available at <https://www.theguardian.com/world/2014/oct/01/ukrainian-forces-pro-russia-rebels-donetsk-airport>.

¹⁴¹ Vladimir Rauta, *Proxy Warfare and the Future of Conflict: Take Two*, 165 *RUSI J.* no. 2 (2020).

8 Conclusion

Sieges work. Despite the utility and increased parity found in the confines of urban combat, the besieging force typically defeats the besieged force. There are many variables that factor into why this is the case. First, the besieged force is usually smaller and less robust than the besieging force. Second, they generally only have access to the supplies and resources within their encircled footprint, or access to what they can smuggle in through porous lines. Third, as historian Trevor Dupuy notes, ‘Flank or rear attack is more likely to succeed than frontal attack.’¹⁴² Applied pressure across an encircled force replicates flank and rear attacks. This is especially true when one views localised offensives, such as the DPA’s attacks on Ukrainian forces holed up in Donetsk Airport’s terminals, as frontal attacks; under such circumstances, Dupuy’s verity is much more justifiable. Furthermore, Dupuy contends that depth and reserves are paramount for a defence to succeed.¹⁴³ When the perimeter is effectively sealed, the defender is isolated, and the besieging force possesses resources and the ability to sustain those resources at a rate greater than what the defender can resupply. As a result, the besieging force can effectually dislocate the defender’s depth and reserve.

Sieges will happen and civilians will be placed in harm’s way, subject to deprivation and death. Even if one belligerent makes determined efforts to avoid civilian casualties, as was the case in Mosul, it is essentially inevitable that civilians become subject to harm during a siege. How a legal advisor in a siege assists the commanders and policymakers depends on the circumstances on the ground. A few key points on the legality of sieges in war follow.

Isolate. As previously discussed, the principle of distinction is incumbent on all parties to a conflict.¹⁴⁴ However, in a siege scenario, the international community will likely view the attacker as the party upon whom the burden is greatest.¹⁴⁵ As an attacker in a siege scenario,

physically isolating the besieged should be the priority (in the absence of strong tactical reasons such as in Donetsk). During initial isolation periods, it is imperative the attacking force identify key supply routes, waterlines and electrical lines. When used in coordination with the law prescribed in the GC, these resources can be manipulated to prevent or restrict their access by a military force, but not access by non-combatants. It is important to note that restricting access to these resources will cause various organisations to question the legality of isolation operations; thus, practitioners seeking to manipulate those resources must ensure that they are doing so in deference to international law and the GC. This is of particular importance in a NIAC, where the likelihood of non-government forces adhering rigidly to the principle of distinction and GCs is a dubious proposition at best. Isolation operations should not be undertaken in a vacuum and must be coordinated closely with the next priority, which is to remove civilians from the battlefield.

Remove. Prior to severing supply conduits and electronic communications, the attacking force should make every effort to communicate, as much as operational security will allow, the need for civilians to evacuate the area. Prior coordination must be made with NGOs and aid organisations to set up displaced person camps and humanitarian corridors. Having numerous avenues of escape for civilians, however, presents a major security concern, and effective screening is necessary. The battle of Mosul as well as belligerent evacuations at Donetsk should be used as a framework. Another potential option is evacuation agreements such as those used in Eastern Ghouta.

Additionally, an attacking force should make every effort to communicate with the enemy forces to allow the evacuation of civilians. This should include proactive measures such as those adopted by the Russian Federation and the Anti-ISIS Coalition, such as dropping of leaflets, radio announcements and other measures that announced humanitarian corridors and their location as well as IDP camps.¹⁴⁶ Obviously, this method poses incredible dangers to the attacker (infiltrators, weakening of defensive lines) and to civilians. One could argue that cutting off supplies to force the civilians to leave a besieged area would serve a valid military purpose, i.e., enforcing distinction, particularly when an opposing force is actively using civilians as human shields or attempting to indirectly target the civilians. However, this decision must also consider whether the civilians can evacuate the area safely; in the case of Mosul, this was not always possible. Furthermore, prior to the termination of

¹⁴² *Id.* at 3.

¹⁴³ *Id.* at 5.

¹⁴⁴ “Treaties, States Parties, and Commentaries - Additional Protocol (II) to the Geneva Conventions, 1977 - 13 - Protection of the Civilian Population.” n.d. Ihl-Databases.icrc.org. Available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=A366465E238B1934C12563CD0051E8A0>. [accessed 22 February, 2022].

¹⁴⁵ Despite ISIS’s numerous atrocities, the international community also regularly criticized the Coalition. Merrit Kennedy, *Amnesty Says U.S.-Led Coalition May Have Committed War Crimes In Mosul*, Nat’l Pub. Radio, July 12, 2017, Available at <https://www.npr.org/sections/thetwo-way/2017/07/12/536870827/amnesty-says-u-s-led-coalition-may-have-committed-war-crimes-in-mosul>.

¹⁴⁶ *Supra* note 131, pg. 11.

water, electricity or other supply routes, the besieger must conduct a very thorough proportionality analysis. Is the concrete and definite military advantage gained, in proportion to the damage inflicted? In coordination with the removal of civilians, the besieger must regularly conduct and maintain information operations.

Information Operations. Information operations are a key facet of any siege operation. With the profusion of cell phones and the accessibility to the internet, it is vital for an attacking force to broadcast actively and continuously what it is doing to mitigate civilian casualties and/or conversely place the blame on the enemy. The siege of Mosul is a prime example of the intelligent use of information operations. The Coalition to defeat ISIS was very transparent with information. They regularly broadcast updates on their operations and civilian protection measures.¹⁴⁷ While not always feasible, transparency of plans regarding removal of civilians at least shows that the attacker is making efforts to mitigate civilian casualties. In contrast, the Syrian Arab Army has been condemned

¹⁴⁷ Sahr Muhammedally, Policy Brief on Civilian Protection in the Current Mosul Campaign (Feb. 27, 2017), Available at <https://civiliansinconflict.org/publications/policy/policy-brief-civilian-protection-current-mosul-campaign/>.

for causing civilian casualties.¹⁴⁸ The Syrian government failed to properly address how the insurgents were using civilians as shields, or alternatively, seeking to indirectly target civilians in Eastern Ghouta.

Due to the prevalence of sieges, it is incumbently necessary to develop a solid doctrinal base, tactically and legally, for the prosecution of sieges. In all the case studies discussed above, the operational cost can be catastrophic when assaulting or defending urban terrain. Additionally, a disregard for the international humanitarian law can lead to international condemnation and an erosion of domestic support. Having a solid playbook to build from will expedite planning, as well as assist in mitigating civilian casualties and damage to infrastructure.

Disclaimer

The views expressed are those of the authors, and do not reflect the official position of the Department of the Army, or Department of Defense.

¹⁴⁸ U.N. Human Rights Council, Report of the Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, U.N. Doc. A/HRC/28/69 (Feb. 5, 2015).