

UNDER SIEGE: LOAC obligations of a besieged armed force



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BACKGROUND:



LIEBER INSTITUTE
WEST POINT



ARTICLES OF WAR

To besiege:

Highly controversial topic in light of recent events, attracting significant attention.

But to *be besieged*?

UNDER SIEGE: LOAC OBLIGATIONS OF THE BESIEGED PARTY

by Michael N. Schmitt, Rosa-Lena Lauterbach | Jul 5, 2024

Siege from an *attacker's* point of view.

- Siege may provide an appealing option to secure an enemy force's **submission / neutralization** while avoiding open battle.
- Siege may also serve to **contain hostilities** by keeping adversarial forces confined.
- The besieging force can apply **various means**, including starvation, blocking resupply of military supplies, and preventing breakout or reinforcement.
- Siege may present the only viable option if an armed force has retreated into an **urban area**.

Siege from a *defender's* point of view.

- The civilians trapped with an armed force will **consume supplies** that could otherwise prolong the besieged force's ability to withstand and defend.
- Thus, there is an **incentive** to allow, even force, civilians to evacuate the area.
- However, on the other hand, the presence of the civilian population and civilian infrastructure **limits the besieging force's operations** *de jure* and *de facto*.
- Additionally, civilian suffering and destruction of urban terrain, even when lawful, can affect perception of a besieging force's operations (**intentional warfare**).

An implicit prohibition on being besieged?

When civilians are involved, the LOAC provides for a set of protective rules, constraining a defender's options when under siege.

➤ My initial question:

Is the LOAC **so restrictive** concerning a defender's obligations, that it leaves but one lawful option: **Surrender**?

Passive precautions

Article 58 AP I (“Precautions against the Effects of Attacks”), sets forth the defender’s passive precautions obligation for parties to the instrument.

“The Parties to the conflict shall, to the maximum extent feasible:

- (a) [...] *endeavour* to remove the civilian population, individual civilians and civilian objects under their control from the vicinity of military objectives;
- (b) **avoid locating military objectives within or near densely populated areas;**
- (c) take the other necessary precautions to protect the civilian population, individual civilians and civilian objects **under their control** against the dangers resulting from military operations.”

Passive precautions

- What of the “**maximum feasibility**” requirement?

“‘Feasible precautions’ are those precautions which are *practicable* or *practically possible* taking into account all circumstances ruling at the time, including humanitarian and military considerations.”

See Article 1(5) of Protocol III (incendiary weapons) to the Convention on Certain Conventional Weapons (CCW), numerous statements on the adoption of AP I.

- Balance of military necessity and humanitarian concerns under the given circumstances.

An obligation to evacuate civilians?

Refraining from *human shielding*

Parties **shall agree** to facilitate evacuation (Articles 58 AP I, 17 GC IV). Yet, **forced displacement** is prohibited (in occupied territory Article 49 GC IV, in NIAC 17 AP II for members).

- A defending armed force may not **prevent** civilian departure, for instance, to heighten their suffering and thereby increase external pressure on the besieging force.

Particularly if civilians choose to stay:

- Intentionally operating from a civilian location to deter attack distinguishes lawful urban warfare from unlawful *shielding*.

The prohibition to starve civilians as a method of warfare:

Article 54 para. 1 API I (“Protection of objects indispensable to the survival of the civilian population”):

“Starvation of civilians as a method of warfare is prohibited.”

➤ Central question concerning **both** parties:

Does the prohibition require a *subjective* or *intentional* element?

An obligation to facilitate humanitarian relief action?

Article 23 GC IV: the **besieging** party need not allow relief to enter the besieged area if it has “serious reason for fearing” that

- 1) the besieged forces will use the supplies in question;
- 2) they will offer the besieged party’s military effort or economy a definite advantage by substituting goods which would otherwise be provided or produced by the enemy; or
- 3) control over its distribution will be ineffective.

Interpreting Article 70 AP I: **Must** a besieged force **agree** to facilitate humanitarian relief action?

Marking

Article 27 Hague Regulations, 1907: In sieges,

“all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, **provided they are not being used at the time for military purposes.**”

It is the duty of the besieged to **indicate the presence of such buildings or places by distinctive and visible signs**, which shall be notified to the enemy beforehand.”

- Loss of protection occurs when such objects are used for military purposes; yet they must be marked.

Custom?

A few relevant excerpts from the ICRC's 2005 *Study of Customary IHL*:

Rule 22.

Principle of Precautions against the Effects of Attacks

Rule 22. The parties to the conflict must take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks.

Rule 23.

Location of Military Objectives outside Densely Populated Areas

Rule 23. Each party to the conflict must, to the extent feasible, avoid locating military objectives within or near densely populated areas.

Rule 53.

Starvation as a Method of Warfare

Rule 53. The use of starvation of the civilian population as a method of warfare is prohibited.

Rule 55.

Access for Humanitarian Relief to Civilians in Need

Rule 55. The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control.

Underlying *interplay:*

Besieging armed force:

Obligations from treaty and customary law on refraining from targeting civilians and indispensable objects, starvation, and taking precautionary measures.

Besieged armed force:

Obligations from treaty and customary law on refraining from starvation and taking precautionary measures.

- Both armed forces must remain open to discussing humanitarian concerns.

Our conclusions on a defender's obligations (subject to *feasibility*):

- Moving military objectives / personnel **away** from civilians and civilian objects.
- **Refraining** from conducting military operations near civilians / civilian objects.
- Creating **safety zones** for the wounded or sick and civilians to enhance their protection; securing an agreement to this effect with the besieging party.
- **Evacuating** wounded and sick civilians, so long as their health is enhanced.
- **Evacuating** civilians if safety or health is at risk, so long as the location to which the evacuation occurs enhances safety or health.
- **Allowing** humanitarian relief action as necessary.
- **Marking** certain buildings and locations to enhance their protection in the face of enemy operations into the besieged area.

Thank you for your
attention.

