

Educator's Guide for *Crimes of War: What the Public Should Know*

Violence against civilians: sieges and sanctions

Corresponding Chapters from *Crimes of War*:

- "Bosnia" by Florence Hartmann (pp. 66-72)
- "Civilian Immunity" by Heike Spieker (pp.103)
- "Collateral Damage" by Horst Fischer (pp. 107)
- "Combatant Status" by A.P.V. Rogers (pp. 115-116)
- "Hors de Combat" by Kurt Schork (pp. 218-219)
- "Humanitarian Aid, Blocking of" by David Rieff (pp. 225-226)
- "Immunity from Attack" by Emma Daly (pp. 234-235)
- "Jus ad Bellum/Jus in Bello" by Karma Nabulsi (p. 275)
- "Legitimate Military Targets" by Gaby Rado (pp. 278-280)
- "Military Necessity" by Françoise Hampson (pp. 297-298)
- "Military Objective" by Hamilton DeSaussure (pp. 299-301)
- "Pillage" by Thomas Goltz (pp. 322-323)
- "Siege" by Tom Gjelten (pp. 384-386)
- "Starvation" by Marita Vihervuori (pp. 392-394)
- "Willful Killing" by Peter Maass (pp. 427-428)

Essential Question: Are laws to protect civilians during times of war strong enough?

Learning Objectives:

Students will gain an understanding of the *principle of distinction*, and of the different documents associated with the definition and protection of civilians

Students will be able to identify and investigate violence against civilians in specific cases

Students will gain an understanding of the conflict in Bosnia, specifically the siege of Sarajevo, through reading, discussion, and analysis of the crisis in the context of international humanitarian law

Students will extend their knowledge of these issues and apply this knowledge to other cases in order to predict the consequences of warfare against civilians and take action to prevent them

Methodology

This chapter will assist in teaching about violence against civilians in its many forms. When international humanitarian law is violated, violence against civilians often occurs. In fact, the issue of violence against civilians is present throughout most of the cases in *Crimes of War*. We will focus specifically on the use of violence against civilians as an illegal, intentional method of war.

Included in this chapter is background information about the legal definitions related to violence against civilians, the distinction between legal and illegal forms of violence against civilians, background information on siege and a case study on the siege of Sarajevo. These sections are meant to complement the chapters in *Crimes of War* on the same topics and to enhance student critical thinking about each. Following the introduction are discussion questions to be used either for discussion, as part of a worksheet, essay, or small group presentations assignment. Finally, several activities are suggested which aim to engage students with the case material in a more personal, reflective way. Resources for further study are listed at the end of the chapter.

Introduction: What is Violence Against Civilians?

Violence against civilians during wartime has occurred throughout recorded history in most international and internal armed conflicts. Historically acceptable and unquestioned, during the twentieth century it has been a focus of international humanitarian law. The definitions, categories, and circumstances detailed below are commonly accepted as the guiding principles for determining whether violence against civilians during wartime is legal or illegal and whether those who commit violence against civilians should be tried for their acts.

Before “violence against civilians” can be clearly articulated, students must understand the **principle of distinction**, the legal obligation of combatants and military leaders to distinguish between **civilians** and **combatants**. This distinction involves an understanding of the legal definition of each category of people, the ability to recognize civilians and civilian objects during times of war, and the obligation to protect civilians once identified.

The civilian population is made up of persons who are not members of the armed forces or who are not combatants. There exists in IHL a legal definition of who is a member of an armed force or combatant; all others are then, by definition, civilians. Civilian status extends to individuals and populations.

Those accorded “civilian” status shall enjoy **civilian immunity** from attacks. As stated in the Additional Protocol to the Geneva Conventions related to the Protection of Victims of International Armed Conflicts of 1977, civilians shall have: “general protection against dangers arising from military operations” and “shall not be the object of attacks.” It is important to note that when defining civilians, “In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.” However, civilians lose their protection under the law if they join in the fighting themselves (in legal terms, if they “take a direct part in hostilities”).

However, these protections do not mean that all civilian casualties are crimes of war, or even illegal. Several notable exceptions exist. International humanitarian law, although in large part a framework for protection of civilians against violence, does allow armed forces in some cases to carry out attacks that result in civilian deaths. While it may seem inevitable or necessary that some civilians will be inadvertently killed during armed conflict, these instances should be minimized.

Within this framework of laws, an important part of protecting civilians from violence during armed conflict is the threat to combatants of future legal repercussions for crimes committed. Still, the number of people who have been brought to justice for crimes against civilians is pitifully low compared to the millions of civilians who have died during wars in the 20th century.

The following legal concepts are meant to both protect combatants from prosecution for the "necessary" killings of civilians, and also to limit the extent to which civilians and civilian objects can legally be killed or injured.

The term **collateral damage** refers to any harm to civilians or damage to civilian structures that occur during an attack on an otherwise legitimate **military objective**. The issue of **proportionality** comes into play when determining whether the collateral damage caused by an attack is enough to render the attack unlawful. It is forbidden to launch an attack that is expected to cause loss of civilian life, injury to civilians, or damage to civilian objects that is "excessive in relation to the concrete and direct military advantage" that is anticipated from the attack. This military and philosophical concept of proportionality is applied within two frameworks of war:

Jus ad Bellum: The set of principles that applies to *why* a war is fought.

Jus in Bello: The set of principles that applies to *how* a war is fought.

Within *jus ad bellum* (why a war is fought), proportionality determines the lawfulness of the military and strategic goals; thus, an attacker must explore whether the overall level of a military objective is proportionate to the level of threat against which it is supposed to be a response. Within *jus in bello* (how a war is fought), the concept determines the lawfulness of attacks that cause civilian casualties; thus, measures have to be taken to limit the harm military actions cause civilian populations.

Intentional Violence against Civilians

Although international humanitarian law expressly prohibits the use of violence against civilians as an intentional method of warfare, it is a commonly practiced atrocity. Many cases of intentional violence against civilians can be found in *Crimes of War*, including terrorism, disappearances, ethnic cleansing, and sexual violence. Because these acts are expressly illegal, they are not dealt with in this chapter. However, these acts constitute a large portion of the atrocities that occur during war, and justice should be sought for those who violate article 51 of the 1977 Additional Protocol I to the Geneva Conventions:

The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

Such acts, when proven, are crimes of war, and should be punishable as such.¹

¹ See *Crimes of War* chapter "Courts and Tribunals", Garraway.

Siege: Violence against Civilians?

Although **siege** is not a legally defined term under IHL, it is generally understood to mean the surrounding of a city or geographic area by one party to an armed conflict, and the subsequent exertion of pressure upon that area in an attempt to force surrender.

Historically, tactics used to force surrender have included starvation, bombing, destruction of civilian objects (water systems, etc.) and a blocking of humanitarian relief from entering the area. Typically, the area under siege is defended by combatants but populated by civilians. Some military commanders claim that siege tactics spare more civilian lives than would street-by-street physical attacks, but the lawfulness of these activities is questionable at best.

This is particularly true in light of legal developments that have taken place since 1945. Starvation, destruction of objects that are indispensable for civilian survival, the deliberate targeting of civilians, and blocking of essential humanitarian aid are all now considered to be crimes of war, forbidden under both treaty law and customary international law. However, it is not always easy to draw a line between resources that are essential for civilian survival, which are protected by the law, and resources that sustain the armed forces defending the besieged city or area, which can legitimately be attacked under the doctrine of **military necessity**. Also, a besieged city will contain military targets subject to attack, even if that causes **collateral damage** to the civilian population.

Several key questions and obligations come into play when determining whether a siege is lawful.

Is the civilian population at risk of starvation? Starvation of civilian populations as a *method of warfare* is prohibited in all armed conflicts (1977 Additional Protocols).

Is the civilian population receiving humanitarian aid, as necessary? Humanitarian aid should enjoy free passage if intended for children under the age of 15 and mothers (Article 23, Fourth Geneva Convention).

Is the civilian population in danger of forced movement (because of inadequate living conditions)? Actions which “may be expected to leave the civilian population with such inadequate food or water as to cause starvation or force its movement” are prohibited (Additional Protocol I, Article 54).

Case Study: Sarajevo – Crime Scene or Collateral Damage?

The conflict during the early nineties between Serbia, Croatia, and the people of Bosnia is extremely complex, and still hotly debated. It involves allegations of many different types of crimes, particularly violence against civilians, including concentration camps, genocide, indiscriminate bombing against civilians, terror, deportations, and the blocking of humanitarian aid. While it has been documented that crimes of war were committed by all sides to the conflict, the most exhaustive U.N. report, as well as an

assessment by the United States' Central Intelligence Agency (CIA), estimates the following proportions: 90% of the crimes committed were by Serb fighters, 6% by Croat fighters, and 4% by Muslim forces.² The most notable of the charges brought against any party to the conflict were brought to the public eye during the recent trial of Slobodan Milosevic for genocide, crimes against humanity and war crimes. Milosevic died in prison in 2006 shortly before his trial was to be concluded.

Under the control of Yugoslavia's former president Josip Broz Tito, ethnically diverse peoples lived in relative harmony in the three largest republics of Yugoslavia: Serbia, Croatia, and Bosnia. After his death, however, the balance of diversity was weakened by nationalist feelings among several ethnic communities and nationalist movements in each. After several years of fighting between Serbia, led by Milosevic, and Croatia, led by Franjo Tudjman, the two reconciled. Both had been recognized as independent countries by the European Community, and reconciled with the help of a U.N. peacekeeping mission. After reconciliation, they combined forces to enable Serb domination of Bosnia, which, at the start of the conflict, was 44% Muslim, 31% Serb, and 17% Croat.³

After an attempted military takeover of Sarajevo, which was thwarted by the improvised efforts of various Bosnian militia groups, the Bosnian Serb Army (formed largely from former members of the Yugoslav People's Army, and supported by Serbia) began a siege of Sarajevo on the very day that the European Community recognized Bosnia as an independent country.

The purpose of this siege and of the Serbian and Croat interference in Bosnia was the continuation of "ethnic cleansing".⁴ The resulting horrors of this ethnic cleansing include the intentional bombing of a maternity clinic while 70 pregnant women and 173 babies were asleep inside, firing on a busload of schoolchildren, 17 known rape camps where it is estimated that 20,000 women were sexually violated, including girls as young as three or four years old, and the killing and mass deportations of Muslims.⁵

Specifically, the siege of Sarajevo involved the cutting off of most links between the civilian population and the outside world, a blocking of commerce and aid, and a military attack from the Bosnian Serb Army.

Some aspects of the siege were clearly illegal: the indiscriminate shelling of residential areas and deliberate civilian attacks by snipers provide two such examples. As the following case demonstrates, issues of food and humanitarian aid are somewhat more difficult to categorize legally.

As many different aid organizations attempted to get food and other humanitarian relief through the Serb checkpoints into Sarajevo, they were met with a dilemma. Serb

² Glover, Jonathan, (1999). *Humanity: A Moral History of the Twentieth Century*. New Haven: Yale Nota Bene, Yale University Press.

³ *Ibid.*

⁴ One could say that the ethnic cleansing campaign rose to the level of genocide in the case of the Srebrenica massacre but otherwise no court has found that genocide was committed in Bosnia.

⁵ *Ibid.*

commanders told relief workers that they must turn over thirty percent of the goods to the Serb combatants. **Pillage**, the siphoning off of food intended for civilians, is considered a war crime in international conflict and a prohibited act in an internal conflict. (In the case of Bosnia, it was not always clear into which of these two categories the conflict fell.)

Two provisions of IHL come into conflict when determining the legality of these aspects of the Sarajevo siege. The laws of war have traditionally recognized the right of a besieging army to cut off supplies destined for defending military forces, a right which is upheld in the Fourth Geneva Convention. However, the Additional Protocols of 1977 expressly prohibit the starvation of a civilian population as a method of warfare.

Although starvation of civilians as an act of war is expressly prohibited by the two 1977 Additional Protocols to the Geneva Conventions, a military force which controls the flow of goods into enemy territory is under no obligation to assist its enemy's military forces. This tension not only creates conflict within the international community on how to handle these situations, it also commonly results in victimization of civilians due to lack of food and other necessary goods.

An additional difficulty in interpretation: Article 23 of the Fourth Geneva Convention mandates that food and aid shall be made available to children under fifteen and expectant mothers, and to the broader population only if civilians are "inadequately supplied." The definition of "inadequately supplied" is usually interpreted quite strictly, resulting in much suffering by civilians.

The tensions between these different provisions of IHL created a dilemma for aid workers – should they allow the Serbs to take a large percent of the food intended (and desperately needed) for the besieged civilian population or risk mass starvation by denying the Serbs? Most aid organizations gave in to the blackmail tactics, and in so doing, prevented much of the starvation that might have occurred otherwise.

Discussion Questions

1. Who qualifies as a civilian? How is a combatant defined?
2. Who is obligated to differentiate between civilians and combatants?
3. If it is unclear if a person is a civilian, how should they be treated according to international humanitarian law?
4. What permanent obligation does the concept of proportionality force upon combatants and military commanders?
5. According to the concept of collateral damage, what kinds of attacks are permissible? What types of attacks are unlawful?
6. How could use of the term "collateral damage" function as a legal shield for armed forces, combatants, or nations in defense of their actions?

7. Why are civilians in internal armed conflicts more vulnerable to collateral damage? What challenges do internal conflicts pose for IHL?
8. How can a siege help one party to win a war?
9. In which ways can a siege harm civilians?
10. Why has the use of siege been strictly regulated in international humanitarian law? Is a siege which is intended to cut off food and humanitarian aid lawful?
11. How does the act of siege compare to other forms of violence against civilians? Consider the motivating forces behind each tactic, the reaction of the international community, and the ability to hold accountable the governments which erect sieges.
12. To you, how much lost civilian life constitutes an "excessive" amount? Does the use of the word "excessive" in these laws make these distinctions ambiguous? How? What problems might this create?
13. What does *hors de combat* mean? How do persons who fall into this category of protection compare with civilian and combatants? (Resource: "Hors de Combat" by Kurt Schork)
14. Explain the compromises that were made by aid workers to the Serb forces in Bosnia. What justifications for these compromises were given by aid workers? As a humanitarian aid worker, what would you have done? Justify your choice.
15. Can you think of examples in history where proportionality and the principles of distinction were adhered to in the conduct of war?

Extension Activities

1. Although it is widely understood that Slobodan Milosevic committed grave crimes against humanity, he died in custody in March of 2006. All the charges against him, which were in the process of being tried, were terminated. Have students write a letter to the International Criminal Tribunal for the former Yugoslavia that includes their comments on the following quote"

The death of Slobodan Milosevic, a few weeks before the completion of his trial, will prevent justice to be done in his case...That is regrettable for all witnesses, for all survivors, for all victims that are expecting justice.

- Carla del Ponte, the U.N. Tribunal's Chief Prosecutor

Questions to consider when writing the letter:

1. Do you believe justice has been served for the victims of violence in Sarajevo?
2. How might we continue to seek justice for the victims of this violence?

3. What should the policy be for those who die before a verdict is decided in trials for crimes against humanity?
4. If Milosevic had been found guilty and sentenced to death, would justice have been served?
5. Who is responsible for making sure that justice is sought for the victims of violence against civilians during war?

Direct letters to:

International Criminal Tribunal for the former Yugoslavia
Churchillplein 1
2517 JW The Hague
The Netherlands.

2. Former U.N. Secretary General Kofi Annan offered these words at a Sarajevo Memorial ceremony in 2002:

"We remember the hundreds of thousands of people from Bosnia and its neighbors, of different faiths and ethnicities, who died in this tragic conflict. The pain the people of this city endured, and the shame of what happened to their compatriots in Srebrenica, has etched itself on the conscience of the world. This memorial will serve to reinforce our own determination -- as peacekeepers, citizens and members of the human family - to build better lives for succeeding generations."

Students might erect their own literary, poetic, visual, film, musical or web-based memorial to honor the victims of violence against civilians, in Sarajevo, if they choose.

Questions for students while planning their project:

1. Recall your own experience of witnessing a memorial of some kind. How did it affect you?
2. What qualities make a memorial most effective?
3. What qualities can make a memorial insulting or insincere?
4. How can a memorial "reinforce our own determination...to build better lives for succeeding generations?"

Take Action

Plan a project in small groups to educate the greater community about violence against civilians as a crime of war.

Suggested activities and topics:

- Organize a film screening of one of the films listed in the Additional resources section or another film that deals with violence against civilians, followed by a Q and A session with a local human rights activist.
- Create posters with images and words of civilian victims to place throughout the school.

- Read “Zlata’s Diary” with local middle schoolers (included in “Additional resources”).

ADDITIONAL RESOURCES

FILMS

Miss Sarajevo, directed by Bill Carter (Dreamchaser Productions, 1995).

This documentary chronicles an elaborate beauty contest carried out under mortar fire. The film captures the dark humor of the besieged Sarajevans and their stubborn refusal to be demoralized.

Romeo and Juliet in Sarajevo, written and directed by John Zaritsky (PBS Frontline documentary, 1993). The true story of a Muslim girl and a Serbian boy who fell in love defying the hatred in their country, but died in each other’s arms at the hands of snipers’ bullets trying to escape.

Savrseni krug (The Perfect Circle), by Ademir Kenovic (Argus Film Produktie, 1997)

During war time, the bonds forged by those struggling to survive the ravages of battle can be stronger than blood ties. An emotionally-distant Bosnian poet discovers this bond when he befriends a pair of war orphans and helps them search for their last surviving family member.

Welcome to Sarajevo by Michael Winterbottom (Channel Four Films, 1997, UK)

The story of an American reporter in Sarajevo and his attempt, along with an American aid worker, to help 200 hundred orphaned children to escape their conditions.

WEB RESOURCES:

International Criminal Tribunal for the former Yugoslavia

<http://www.un.org/icty/>

Convention (IV) relative to the Protection of Civilian Persons in time of war

<http://www.icrc.org/ihl.nsf/FULL/380?OpenDocument>

Draft Rules for the Limitation of the Dangers incurred by the Civilian Population in Time of War

<http://www.icrc.org/ihl.nsf/FULL/420?OpenDocument>

Respect for Human Rights in Armed Conflicts. Resolution 2444 (XXIII) of the United Nations General Assembly

<http://www.icrc.org/ihl.nsf/FULL/440?OpenDocument>

Articles from the 1977 Additional Protocol (I) to the Geneva Conventions:

<http://www.icrc.org/ihl.nsf/FULL/470?OpenDocument>

48. “In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian

population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.”

(also known as the **Principle of distinction**)

49. “A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 (A) of the third convention:

(1) Members of the armed forces of a Party to the conflict... militias or volunteer corps ... of such armed forces.

(2) Members of other militias and members of other volunteer corps [that]... fulfill the following conditions:

(a) commanded by a person responsible for his subordinates;

(b) having a fixed distinctive sign recognizable at a distance;

(c) carrying arms openly;

(d) conducting their operations in accordance with the laws and customs of war.

(3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.

(6) Inhabitants of a non-occupied territory, who ... spontaneously take up arms to resist the invading forces, ... provided they carry arms openly and respect the laws and customs of war.

(Taken from the Third Convention)

“In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.”

51.

(2) The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

(3) Civilians shall enjoy the protection afforded by this Section, unless and for such time as they take a direct part in hostilities.

(4) Indiscriminate attacks are prohibited...

(5) Among others, the following types of attack are to be considered as indiscriminate:

(b) An attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

PRINT RESOURCES:

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