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Taking Donetsk – The impending siege of Donetsk and IHL

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Fokus

While it is unclear whether or not a siege will take place, international law already provides the legal framework for this course of action. Accordingly, the legality of the siege is even more unlikely than the siege itself.

CNN, [Ukraine begins military offensive as cease-fire ends](#); Al Jazeera, [Ukraine signals offensive as rebels regroup](#); Human Rights Watch, [Eastern Ukraine: Questions and Answers about the Laws of War](#)

Will Ukraine lay siege on the rebel stronghold of Donetsk? Will the state's armed forces encircle Ukraine's fifth-largest city, home to about one million inhabitants? While the Kiev's strategy remains unclear, international law sets boundaries to a potential siege.

The Oxford Dictionary defines 'siege' as "a military operation in which enemy forces surround a town or building, cutting off essential supplies, with the aim of compelling those inside to surrender". Besieging cities has long been a part of warfare. As such, its legality under international humanitarian law (IHL) is beyond debate.

After the initial phases of the crisis in Eastern Ukraine, the situation has already met the threshold of non-international armed conflict, making IHL applicable. Under Additional Protocol II (AP II), to which Ukraine is a party, a non-international armed conflict is to be understood as a conflict that takes place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement Additional Protocol II. In addition, there needs to be a sufficient degree of intensity in hostilities. All criteria are fulfilled with regard to the conflict between Ukraine as a state actor and the South-East Army and Donetsk People's Army (cf. Human Rights Watch, Eastern Ukraine: Questions and Answers about the Laws of War). For lack of hostilities between Ukraine and Russia, there is no international armed conflict with regard to Eastern Ukraine.

Thus, the legality of a potential siege of Donetsk depends on the adherence to IHL. In war, the right of the Parties to choose methods or means of warfare is not unlimited. Belligerents have to respect the principle of distinction and the prohibition to cause superfluous injury or unnecessary suffering – IHL's cardinal principles. These principles apply to sieges as well. States and scholars, almost unanimously, agree that siege warfare remains a lawful method of warfare. In practice, however, it seems as if laying a siege on a city with a million inhabitants will automatically violate the two cardinal principles of IHL. How can a siege, which by definition cuts off supply-lines into a city, be realized without targeting the civilian population? History has shown that successful sieges almost never spare the civilian population.

The two Additional Protocols of 1977 regulate siege warfare in that vein. Under those treaties, the protection of the civilian population is broader than under the Geneva Conventions: Art. 54 (1) AP I and Art. 14 AP II prohibit starvation of civilians as a method of combat. To break that down: The main aspects of a siege, cutting off supply-lines to compel those inside to surrender, need to be directed at enemy fighters. In a large city, such as Donetsk, it is rather impossible to comply with the law and to only target enemy fighters and lawful military targets while sparing the civilian population. One possibility to ensure legality would be for the Ukrainian armed forces to provide food and other vital resources solely to the civilian population while not providing these resources to enemy fighters. It remains a mystery how this can be achieved in real life. Another possibility would be to let the civilian population leave the city before the siege begins.

Thus, while a siege may be per se legal, there is almost no case imaginable where a siege is at the same time lawful and makes military sense. The Ukrainian government should keep in mind the hardship on the civilian population as well as IHL and its strict requirements.

Verantwortung

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