

The Public Conscience, Intent, and the Protection of Civilians

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OBJECTIVE: To explore the role of intent and intentional targeting in the culpable or blameworthy harm of noncombatant civilians in war.

QUESTION: Why is the intentional targeting civilians in war prohibited, whereas unintended harm of civilians (collateral damage or incidental harm) is permitted?

QUOTE 1: “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.”

~ Article 51(2) (*Protection of the Civilian Population*), *Protocol to the 4th Geneva Convention of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977

QUOTE 2: “...the centrality of intention has contributed to a complacent stance toward the problem of collateral damage.”

~ Sahr Conway-Lanz, *Collateral Damage*, p. 230

QUOTE 3: “Nothing hinders one act from having two effects, only one of which is intended, while the other is beside the intention.”

~ Thomas Aquinas, *Summa Theologica*, II-II, Qu. 64, Art. 7

Relevant Dates:

1) 1899

Initial formulation of the “Martens Clause” found in Hague Convention (II) (concerning the Laws & Customs of Wars on Land) (see reverse for text)

2) 1949

Geneva Convention (IV) on Civilians (Related to the Protection of Victims of International Armed Conflicts)

3) 1977

Protocols Additional to the Geneva Conventions of 12 August 1949

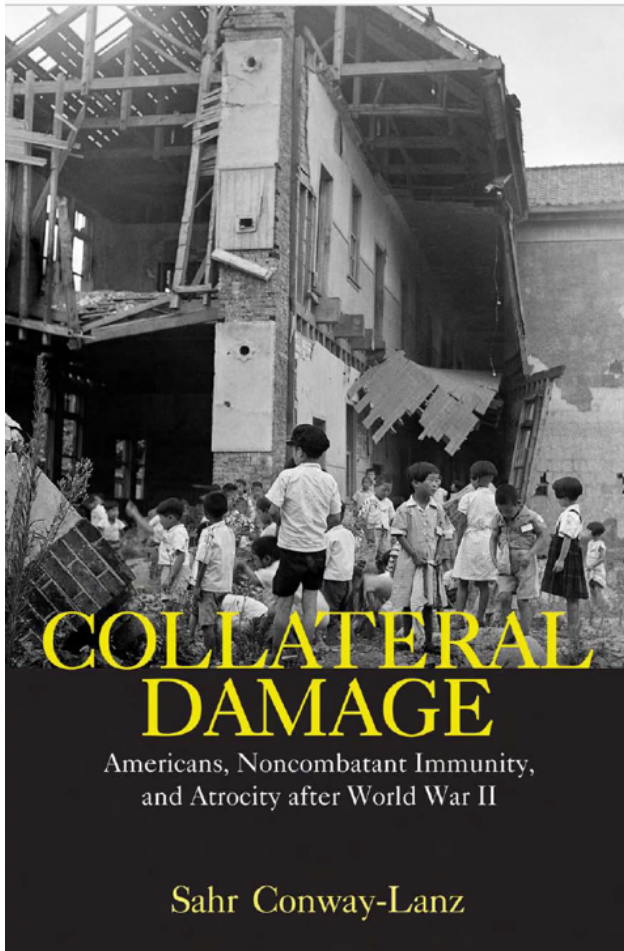
(Protocol I applies to International Armed Conflicts; see Quote 1 above for relevant provision. Protocol II applies to non-international armed conflicts)

4) July 2016

U.S. Executive Order 13732 (*United States Policy on Pre- and Post-Strike Measures To Address Civilian Casualties in U.S. Operations Involving the Use of Force*) and NATO Protection of Civilians Policy (Trump has reversed certain provisions of the EO)

5) December 2023

U.S. Department of Defense Instruction 3000.17, “Civilian Harm Mitigation and Response” Policy



1) Martens Clause:

“Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience.”

2) “The gap between the norms and the reality in human rights and humanitarian law has always been wide. Today the visibility and immensity of violations of international humanitarian law highlight issues of compliance that raise cynicism and doubt. In the long run, humanitarian norms must become a part of public consciousness everywhere. Education, training, persuasion, and emphasis on values that lie outside the law, such as ethics, honor, mercy, and shame, must be vigorously pursued. This job cannot be left to the law alone. Public opinion and the social consensus that have proved so effective in the development of the law should be geared to transforming practice as well. For that, the creation of a culture of values is

indispensable. Until such a culture becomes a reality, the international community may have no alternative, in some instances, to intervention, in its infinite varieties, to stop atrocities wherever they occur.”

~ Theodor Meron, “The Humanization of Humanitarian Law,” *The American Journal of International Law*, Vol. 94, No. 2 (April 2000), pp. 239-278

3) “The ‘just war’ concept has, at this point, required that soldiers shall not be commanded to kill, intentionally and knowingly, noncombatants among the enemy, especially innocent and defenseless people, chief among whom are babies and children. But modern war with its mass slaughter has already violated this principle quite badly and hydrogen warfare would make a mockery of any claim to morality for war.”

~ “An Adequate and Moral Program of National Defense,” *Special Supplement to the Peacemaker* I. No. 11 (March 15, 1950), Peacemakers Papers, Swarthmore College Peace Collection