

At Which Point Did the Hostilities in Syria Amount to an Armed Conflict Not of an International Character?

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In November 2011, the Report of the Independent International Commission of Inquiry on the Syrian Arab Republic expressed concern that the situation in Syria might rise to an armed conflict not of an international character.^[1] This paper means to standardize how academics analyze at which point hostilities transform into armed conflict. Although the term is used in the Geneva Conventions and the Additional Protocols, an armed conflict is not defined in either. The meaning of the term “armed conflict” in international law can be discovered in both the text

and the object and purpose of the Geneva Conventions. In this case, protracted armed violence started in July 2011 between governmental authorities and the Free Syrian Army (“FSA”). The events transformed from an uprising into an armed conflict upon the FSA’s ability to challenge the Assad regime consequently creating a civil war-like atmosphere.

In November of 2011, the commission was unable to verify the level of intensity of combat between the Syrian forces and the FSA, and it was also unable to confirm the level of organization of the opposition, and thusly did not apply International Humanitarian Law (“IHL”) to the events that had occurred.^[2] As summarized by the International Committee of the Red Cross (“ICRC”), “IHL is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare.”^[3] This paper describes the level of intensity of combat in Syria during the first 13 months, and the level of organization of the FSA to argue that the Syrian situation was an armed conflict as governed by Common Article 3 of the Geneva Conventions of 12 August 1949, subsequently necessitating the application of IHL in November of 2011.

Common Article 3 of the Geneva Conventions of August 1949 sets forth minimum provisions applicable “in the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties.”^[4] Common Article 3, its Commentary, and various cases will be used for the framework of this paper.^[5] Just as the existence of an armed conflict prompts the application of IHL to dictate the status of persons and the rights and obligations of parties to the conflict, the nature of the conflict—whether international or non-international—determines the extent of the applicable law.^[6] This paper serves to simply to

explain the point at which an armed conflict not of an international character existed in Syria in order to standardize analysis for future hostilities. Armed conflicts not of an international character are subject to the more limited legal regime of Common Article 3 and the steadily growing customary international law applicable include the principles of humanity, proportionality, distinction, and necessity.^[7]

In situations of armed conflict, IHL provides a range of protections for civilians and other persons *hors de combat* (outside of combat). It establishes a legal framework for the conduct of hostilities between the parties to armed conflict by, for example, prohibiting direct attacks against civilians or civilian objects. Under IHL, an attack directed against a military objective, a combatant, or a civilian directly participating in hostilities — even if it results in incidental civilian death — is not prohibited so long as the attack meets legal criteria under IHL. Those criteria include the prohibition of indiscriminate attacks and proportionality of the anticipated effects of the attack against civilians and civilian objects, precautionary measures to limit harm to civilians, and the prohibition of certain weapons and methods of warfare.^[8] When determining if a specific right has been violated during armed conflict, IHL usually prevails over other legal frameworks, such as international human rights law.

Under IHL, humanitarian organizations have solid grounds to engage in relief operations. Common Article 3 of the Geneva Conventions provides that independent and impartial organizations acting on a neutral basis may offer their services to all the parties in order to assist populations affected by the conflict. Therefore, analyzing at which point Syria transformed into an armed conflict not of an international character is really determining at which point IHL applies. Determining whether IHL applies subsequently leads to a controlled conflict rather than

indiscriminate violence. This paper means to suggest that there was armed conflict not of an international character between the Syrian regime and the FSA, and therefore IHL needed to apply during the timeline below.

Defining Armed Conflict

Neither Common Article 2 nor Common Article 3 specifically defines armed conflict.

The most commonly cited contemporary definition of armed conflict comes from the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) in *Prosecutor v. Tadic*, where the tribunal held that an armed conflict not of an international character exists when there is, “protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.”^[9] In the view of the ICTY, for an armed conflict not of an international character to exist, non-state armed groups must carry out protracted hostilities, and these groups must be organized. According to the Commentary of Common Article 3 (“Commentary”), no specific test for determining the applicability of Common Article 3 exists. The goal is to interpret Common Article 3 as broadly as possible.^[10] The conflicts referred to in Article 3 are similar to an international war, but take place within the confines of a single country. In many cases, each of the Parties is in possession of a portion of the national territory, and there is often some sort of front.”^[11]

Two considerations have proven to be particularly important to those courts and tribunals forced to work with the uncertainty about the existence of an armed conflict not of an international character: “the intensity of the conflict and the organization of the parties to the conflict.”^[12] For future conflicts, this analysis can save human lives. These measurements help to “distinguish an armed conflict from banditry, unorganized and short-lived insurrections, or

terrorist activities, which are not subject to international humanitarian law.”^[13] For example, the response of the state is a critical component.^[14] If the state employs its regular armed forces in combating the non-state actor and whether it has recognized the non-state actor as a belligerent are two oft-cited standards for an armed conflict not of an international character to exist. Also, several other considerations can provide useful guidance for understanding whether violence or hostilities have progressed beyond internal disturbances, like whether the non-state actor: 1) has an organized military force; 2) has an authority responsible for its actions; 3) acts within a determinate territory, having the means of ensuring respect for the Geneva Conventions; and 4) acts as a de facto governing entity with its armed forces prepared to obey the laws of war.^[15]

Intensity

To analyze the intensity of the fighting in Syria, the seriousness of the fighting must be measured in order to determine at what point it transformed from upheaval and other acts of randomized violence, to engagements that resemble regularized military action between two parties. The three main factors are: a) the seriousness of attacks and the increase in armed clashes; b) the distribution of clashes over territory and time; and c) the number and mobilization of government forces. The ICTY considered applicable factors like the number, duration, and intensity of individual confrontations; the type of weaponry and other military equipment used; the number of geographic and temporal distribution of the clashes; the territory which had been captured and held by the opposing parties; the number of casualties; the extent of material destruction; and the number of civilians who fled combat zones.^[16] The ICTY has also declared that the involvement of the United Nations Security Council (UNSC) may reflect the intensity of

a conflict.^[17] Other factors include the collective nature of the fighting, the state's resort to its armed forces, the duration of the conflict, and the frequency of military operations and acts of violence in the first 13 months.^[18]

Trial Chambers have also taken into account the number of civilians forced to flee from the combat zones; the type of weapons used or the use of heavy weapons, and other military equipment like tanks or heavy vehicles; the blocking or besieging of towns and the heavy shelling of these towns; the degree and number of casualties caused by shelling or fighting; the quantity of troops and units deployed; the occupation of territory, towns, and villages; the deployment of government forces to the crisis area; the closure of roads; cease fire orders and agreements, and the attempt of representatives from international organizations to broker and enforce cease fire agreements.^[19] The only factors which weigh in favor of Syria not meeting the threshold are the fact that the confrontations had been for only 13 months at the time of analysis, and the fact that the FSA had been inconsistent in holding territory. However, holding territory is not dispositive.

Seriousness of Attacks and Increase in Armed Clashes

Legal Precedent

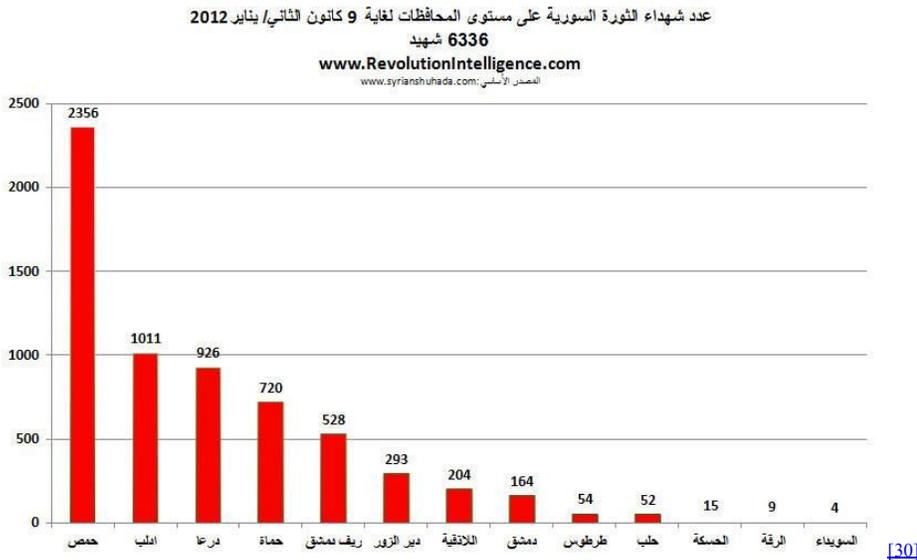
Past cases suggest that the types of clashes and ongoing violence in Syria could be categorized as an armed conflict not of an international character. For example, the ICTY examined the fighting between the Kosovo Liberation Army ("KLA") and the government of Yugoslavia in a variety of cases to determine if the situation in Kosovo amounted to armed conflict, thus giving the tribunal jurisdiction. In *Prosecutor v. Limaj*, the defendant argued that "regionally disparate and temporally sporadic attacks carried out over a broad and contested

geographic area should not be held to amount to an armed conflict.”^[20] The Trial Chamber held, however, that the nature of incidents and violence were intense enough to constitute an armed conflict. The Trial Chamber pointed to firefights that lasted twenty minutes, a clash resulting in sixteen deaths, and engagements involving fifty to one hundred rounds of ammunition to show that hostilities were “not accurately described as temporally sporadic or geographically disperse[d].”^[21] Rather, “periodic armed clashes occurred continuously at intervals averaging three to seven days over a widespread and expanding geographic area.”^[22] The Tribunal found that a KLA attack against a Serbian police station, the deployment of heavy weapons by Serbian government forces, and “heavy fighting...[that] continued for two days”^[23] constituted attacks serious enough to trigger jurisdiction. Another good example is when anti-government protestors attacked an Argentinian military barracks which led to a day and a half firefight. The Inter-American Commission of Human Rights differentiated the situation from one of “internal disturbances” because it was not equivalent to large scale violent demonstrations.^[24] The court concluded that “the concerted nature of the hostile acts undertaken by the attackers, the direct involvement of governmental armed forces, and the nature and level of the violence” rendered the attack on and the recapture of the barracks of La Tablada an armed conflict which triggered IHL.^[25]

Application

The clashes in Syria were serious and thus the hostilities met the first prong needed for the intensity threshold. The FSA had been able to capture territory, kill numerous security forces, and had inspired hundreds of soldiers to defect and join their ranks. There were ten important battles throughout that year and they were complicated skirmishes that had taken days

at a time and were in various territories throughout Syria. Attacks against intelligence complexes, raids against checkpoints, and general firefighting and grenade launching occurred throughout the country with the purpose of bringing down the government, protecting civilians, and encouraging army defection through armed action.^[26] This armed action had taken the form of ambushes, raids, and street battles to destroy logistical infrastructure to degrade the Syrian army's tactical advantages. In fact, in the areas of Deir ez-Zor, Al-Rastan and Abu Kamal, the FSA engaged in street battles with the Syrian army for days with no particular side gaining the advantage.^[27] The FSA had been equipped with AK-47s, RPG-7s, ammunition from raids on government checkpoints, M16s, FN FALs, shotguns, G3 assault rifles, and PK machine guns.^[28] Below is a graph that depicts the total deaths as of January 2012. Starting from the left, the places that had been most affected are: Homs, Idlib, Daraa, Hama, and the suburbs of Damascus.^[29]



The seriousness of the attacks and the increase in armed clashes should have been considered intense as they had cost the lives of thousands of people and had been categorized as

a civil war by the United Nations. Over 14,000 Syrians had fled to Turkey’s Hatay Province and a total of about 10,000 Syrians were moved to a refugee camp with housing units.^[31] On April 9, 2012 it was reported that refugees had been fired on and killed by the Syrian regime on Turkish territory.^[32]

The FSA had been recorded capturing government tanks in Homs by video footage. The tanks carried flags of the opposition and was seen firing with armed men in civilian clothing.

Various weapons had been coming in with the defection of soldiers per day and through various other channels. The hostilities and the clashes averaged 15 reported days of violence per month.^[33] In February 2012, the Assad regime announced the results of a referendum on a new constitution that Syrian authorities lauded as a step towards political reform in response to the mounting pressure. This shows that the government corroborated the seriousness of the situation at the time, and the escalation of the violence between the two parties. The number of fatalities according to the Syrian opposition’s Arabic website www.syrianshuhada.com was 11, 616 as of March 22, 2012.^[34] Other estimates have ranged from 6,000 to 9,000. Here is a table of the death toll from a range of sources:

Source	Casualties	Time period
Avaaz	9,000 killed ^[35]	15 March 2011 – 23 February 2012
Syrian government	5,6946,343 killed ^[36]	15 March 2011 – 12 March 2012
United Nations	9,779 killed ^[37]	15 March 2011 – 12 March 2012

Local Coordination Committees	9,700 killed ^[38]	15 March 2011 – 15 March 2012
Syrian Observatory for Human Rights	9,113 killed ^[39]	15 March 2011 – 15 March 2012
The Violation Documentation Centre	9,736 killed ^[40]	15 March 2011 – 15 March 2012

UN officials had described Syria as a state in civil war.^[41] The UN was in a dead-lock about issuing a resolution. However, the resolution was vetoed by Russia. Kofi Anna, UN-Arab League envoy to Syria, had been struggling to issue a resolution acceptable to the non-interventionist states and the states demanding that the death toll throughout Syria demands action.^[42] Weapons-distribution and violence had been pervasive and it is clear that the government had struggled to keep the resistance at bay.

Distribution of Clashes over Territory and Time

Legal Precedent

Small-scale clashes spreading over Kosovo proved that the KLA and the government of Serbia were engaged in an armed conflict not of an international character. The sporadic clashes between Serbian government forces and KLA fighters over a period of just one year were considered sufficiently constant. The total area of the clashes was also limited to mostly the center of the area, but the clashes, despite their limitations were held to be distributed enough to pass the intensity threshold. In considering the conflict relating to the events in op{tina Prijedor, the Trial Chamber was not bound to confine its attention to the immediate area of that op{tina or

to the time of the offences but could consider the ongoing conflict between the Government of the Republic of Bosnia and Herzegovina and the Bosnian Serb forces in its entirety. As the Appeals Chamber pointed out, “the temporal and geographical scope of both internal and international armed conflicts extends beyond the exact time and place of hostilities.”^[43] No general cessation of hostilities had occurred in the territory of the former Yugoslavia which was a standard applied in Prosecutor v. “Dule.”^[44]

Application

In Syria, the clashes were distributed over a vast amount of territory for the first 13 months. The number and distribution of deaths reported between March 18, 2011 and March 12, 2012 had been staggering:

Homs: 3,445	Damascus: 185
Hama: 1214	Hasaka: 93
Idlib: 1,275	As-Suweida: 50
Daraa: 1,005	Raqqa: 50
Damascus Suburbs: 881	Al-Qunaytirah: 17 ^[45]
Latakia: 379	
Dayr Az-Zor: 328	
Aleppo: 286	
Tartous: 173	

Those months had seen several large battles and small clashes between the Assad regime and the FSA. Ten different large events can be taken from the first months: the Battle of Rastan, the Battle of Zabadani, the Battle of Douma, the Homs clashes, the Battle of Al-Qusayr, the Damascus clashes, the Idlib Province clashes, the Daraa Province clashes, the Homs airbase attack and the Hama clashes. The Battle of Rastan was the first intense action that occurred in September of 2011 and lasted for one week. Clashes continued in the Idlib Province in October of 2011 and in November Syrian armored vehicles converged on a village in Idlib creating

intense fighting that killed at least 20 people. The continuing month was defined by defections from the army, checkpoint raids and the Damascus Intelligence complex attack, the Homs airbase attack, army convoy ambushes and by December of 2011 the FSA was making slight yet steady progress. December was characterized by the Idlib intelligence building raid, escalating clashes in Daraa, urban fighting in the city of Homs and the largest loss of life on the FSA's part when 72 defectors of the Syrian army were gunned down during their attempt to escape to the FSA.

Clashes around Damascus were rife at the beginning in the first few months. Even though the FSA declared a cease fire, they besieged two checkpoints belonging to security forces and captured dozens of loyalist troops.^[46] By mid-January, the FSA was able to capture and take control over the border town of Zabadani even in spite of security forces trying to assault the town several times. The end of January 2012 saw battles for the Damascus suburbs which cost hundreds of lives on both sides with the Syrian security forces ultimately taking control. In February, the FSA retook complete control of the city of Rastan, there was more fighting in the Damascus suburbs, and the city of Homs was bombed until renewed fighting began in the Idlib Province. Heavy fighting occurred at the Battle of Al-Qusayr in Homs around mid-February with the FSA capturing the headquarters of the secret service, killing five force members and twenty government soldiers.^[47] After a worsening of humanitarian conditions in the Baba Amr district in Homs, the FSA retreated from the area because of a lack of weaponry, ammunition, food, medicine, water and electricity.^[48] However, their increasing capability transformed the massacre against unarmed protestors into an armed conflict between a state party and a non-state actor. The FSA's increase in support directly contributed to their ability to destabilize the Syrian

regime subsequently leading to a merciless reaction by the Assad regime.

Increase in the Number and Mobilization of Government Forces

Legal Precedent

Important standards were described in *Prosecutor v. Ljube Boskoski and Johan Tarculovski* for meeting the intensity necessary to be categorized as an armed conflict.^[49] Two points include: any increase in the number of government forces and mobilization, as well as whether the conflict has attracted the attention of the UNSC and whether any resolutions have passed. In Israel, the Supreme Court held that “[s]ince the end of September 2000, fierce fighting had been taking place in Judaea, Samaria and the Gaza Strip.” The situation was not just mere policing, but rather an armed struggle.^[50] The court came to this reasoning by taking into account that since the end of September 2000 until 2002, more than 600 Israeli citizens had been killed and more than 4,500 injured, and that “many” Palestinians had also been killed and wounded.^[51] To counter the “terrorist” attacks, the Israeli Defense Forces, among other things,^[52] had conducted special military operations since June 2002 “to destroy the Palestinian terrorism infrastructure and to prevent further terrorist attacks.”^[53]

The Constitutional Court of the Russian Federation recognized in a 1995 judgment that Additional Protocol II (“AP II”) applied to the armed conflict in the Chechen Republic.^[54] The Court observed that the use of the armed forces under the Constitution did not require a link with a declaration of a state of emergency or a state of war. When the State Duma adopted a resolution in 1994 on the use of the armed forces, it had declared that the disarmament of the illegal regular armed units in the Republic, which were equipped with tanks, rocket installations, artillery systems and combat planes “is in principle impossible without the use of the forces of

the army.’^[55]

Application

The situation in Syria challenged an increase in the mobilization of the Assad regime. On March 31, 2012, CNN reported that Syria planned to keep its military in major cities for the time being despite a U.N. peace plan that called for the regime to start moving out its troops.^[56] The State internal security apparatus includes police forces under the Ministry of the Interior, Syrian Military Intelligence, Air Force Intelligence, the National Security Bureau, the Political Security Directorate and the General Intelligence Directorate. The latter consists of 25,000 members formally under the Ministry of the Interior but reporting directly to the President and his inner circle.

Even with the foregoing, the Syrian army was challenged repeatedly with the FSA’s raids, ambushes and recruitment tactics which disrupted Syrian security forces by inciting defection. The result was an increase in the mobilization and number of security forces that had been deployed to quell the anti-regime sentiment. The government steadily increased its presence throughout Syria and engaged in massacre mercilessly. Certain places like *Mezze* had a risk of arrest which was so high that even walking around was problematic.^[57] In the city of Homs, people were avoiding the outdoors because of the danger of the *shabiha* snipers, civilians armed by the government to suppress anti-regime sentiment.^[58] The increasing casualties in the city led to an increase in government security, arbitrary, and extrajudicial killings that in turn made clinics overwhelmingly full.^[59]

The Syrian army was definitely on the offensive around the country. In fact one of Kofi

Annan's plans included demands for the withdrawal of heavy armor from residential areas.^[60] The Armed Forces have used shelling, tank and mortar fire to repress opposition forces. The Syrian Observatory for Human Rights ("SOHR") explained that thousands of soldiers and over a hundred military vehicles were trying to enter the area of Lahat in the Daraa province as in late March 2012, and their clashes with the FSA continued to result in fatal and non-fatal casualties.^[61] On March 25 the SOHR reported 27 killed, 15 of which were civilians, during heavy shelling in the central city of Homs and in Idlib. House raids became typical in Deir al-Zor for Syrian troops to capture dissidents.^[62] On September 9, 2011 the Assad regime declared Operation "Bayrak al-Assad." Operation "Bayrak al-Assad" was implemented secretly, and was a "major military operation" requiring full mobilization of military forces in Syria for concentrated offensives on cities across the country in order to eliminate "terrorists who threaten us," according to the report.^[63] Assad's heavy mobilization showed his acknowledgment of the FSA's threat-level.

Organization

Courts look to a non-state party's level of organization as a second way to distinguish an armed conflict from short-lived rioting. First, there must be two or more parties—for example, government forces fighting an organized armed group, or two organized armed groups fighting each other. The level of organization is a key question for IHL to apply. The three factors during the timeline to consider were the FSA's: a) hierarchical structure; b) territorial control and administration; and c) operational complexity. Aspects that the ICTY identified as relevant to whether a group is sufficiently organized to be a party to an armed conflict includes a hierarchical structure,^[64] territorial control and administration,^[65] the ability to recruit and train

combatants;^[66] and the ability to enter peace or cease-fire agreements.^[67] In addition, the ICRC considers the authority to launch attacks bringing together different units and the existence or promulgation of internal rules.^[68] Jelena Pejic summarized other factors that can be analyzed as well: “disciplinary rules and mechanisms within the armed group; the existence of headquarters; and the group’s ability to plan, co-ordinate and carry out military operations including troop movements and logistics.”^[69] These factors were present in Syria and described the organization of the FSA.

Hierarchical Structure

Legal Precedent

The Army of the Republika Srpska (“VRS”) and the Kosovo Liberation Army (“KLA”), as examined in *Tadic* and *Limaj*, respectively, were strongly hierarchical. The Trial Chamber in *Limaj* discussed that the KLA had a general staff, divided Kosovo into districts of operation and was able to appoint district commanders who responded to KLA general staff commands.^[70] The Trial Chamber concluded that the KLA was sufficiently organized and able to engage in armed conflict not of an international character.^[71] The *Tadic* Trial Chamber concluded that the VRS was fundamentally composed of ethnic Serb units that had ceded from the disintegrating Yugoslav People’s Army (“JNA”).^[72] It should be noted that the ICTY did overlook some of the KLA’s organizational flaws. The ICTY expressed that those flaws were due to the subversive and underground nature of the KLA.^[73] The KLA also had a political and public relations operation that issued reports and press releases for communicating goals to its constituents. The key here is to identify what appears to be a sufficient set of characteristics that constitutes a hierarchically structured armed group in light of existing jurisprudence.

Application

The FSA had a hierarchical structure, a strategy, and channels of communication which their constituents could access. The FSA was at the time led by its founder, Colonel Riad al-Asaad, or the Commander, Colonel Malik Kurdi, the deputy, and Colonel Ahmed Hijazi, the Chief of Staff.^[74] The FSA had around 37 battalion units as of January 2012 and a little more than half of these units were actively engaged in combat.^[75] Lieutenant Colonels, Captains, and Lieutenants defected from the Syrian troops to lead battalions, superimposing their prior hierarchical structure to their new organization. The FSA had a relatively horizontal structure and field units were led by commanders who kept a close relation to Col. Riad al-Asaad and the FSA leadership in general.^[76] The leadership had the units general direction while the field commanders maintained a high level of autonomy and decided on when and how to launch their respective attacks.^[77] The FSA also had access to an extensive internet-based communication network that the Assad regime has yet to penetrate.^[78]

The FSA became a guerilla force with tactics that follow such a structure. There were around 300 to 400 fighters split in combat units of six to ten men with each man in the unit armed with a light weapon such as an AK-47, while the combat unit was equipped with an RPG launcher and light machine guns. The battalion unit carried out communications via walkie-talkies.^[79] The FSA started working closely with the local populations that regularly offered defects to join units. The FSA was closely intertwined with impromptu networks in liberated areas and it works with civilian-formed councils.^[80] The FSA has even interacted, to a very limited extent, through a governing lens. By late February 2012, the Syrian National Council (SNC), the partially recognized government in exile, established a military bureau to

oversee the military operations of the FSA. However, this initiative was met with controversy and criticism by FSA leaders. Finally, the Arab League, in their leaked mission report, described the FSA as an armed entity born from the excessive force the Syrian regime had employed.^[81]

Both the expansion of the FSA and attacks by the Syrian regime suggests that the hierarchical structure made the FSA attractive to one side of the hostilities and a threat to the other. Riad al-Asaad even met with Kofi Annan and the Arab League which further demonstrates the level of organization of the FSA during this timeframe. In the case of an armed conflict not of an international character occurring in the territory of one of the High Contracting Parties between their armed forces and dissident armed forces, AP II would apply. However, while the International Court of Justice (among others) has held that Common Article 3 reflects customary law, AP II applies only with respect to states parties. Syria has not become a party to AP II, so the hostilities could only trigger Common Article 3 and customary IHL.

Territorial Control and Administration

Legal Precedent

The ICTY explained that the VRS exercised control and administration over a sizeable portion of territory. The ICTY determined that armed entities called “Muslim forces” were organized enough to constitute a party to an armed conflict in *Lukic* simply because they “controlled territory in and around the Visegrad municipality.”^[82] Similarly, the Trial Chamber in *Tadic* found that the VRS exercised exclusive administrative control over the Serb-dominated areas of Bosnia.^[83] The KLA even established checkpoints on some highways in Kosovo.^[84] According to the *Tadic* criteria, the degree of organization required to engage in protracted violence can be lower than the degree of organization required for carrying out sustained and

concerted military operations. The particular importance of *Tadic* is that it lessened the requirement of “sustained military operations from Protocol II, Article 1 to protracted military operations, which is maintained in Rome Statute, Article 8(2) (f). The new standard allows for interruptions in a conflict, and leads to applying IHL earlier.^[85]

Application

The FSA began operating throughout the country in both urban areas and rural areas. Forces were mostly active in the northwest (Idlib and Aleppo), the central regions (Homs, Hama and Rastan), the south (Deraa and Houran), the east (Dayr al-Zawr and Abu Kamal) and in some parts of Damascus. The overall largest concentration was in the central region of Homs and Hama with over nine battalions active in the area.^[86] The FSA did not use tactics that were aimed to occupy areas once a fight finished, but by the end of 2011 large areas of Syria had fallen under partial control of the FSA.^[87] The FSA succeeded in taking control of Zabadani in the Damascus province after intense clashes with the Assad regime’s troops. On January 21st, the FSA temporarily captured the town of Douma near Damascus as well. For three months the FSA controlled about two-thirds of Homs, Syria’s third largest city and around the same time, many suburbs in Damascus fell to the FSA. Examples like Saqba showed that the FSA was able to control areas until the Assad regime responded with heavy bombardment.^[88] In late February 2012, the city of Idlib was under the FSA’s control with opposition flags flying in the city center, but partial control is all the FSA could hold. In a head to head battle with the Syrian army, it was almost always unable to hold territory for long. However, it controlled territory and administered local opposition networks throughout Syria.

Complexity of Operations

Legal Precedent

The ICTY discussed the complexity of the KLA's operations because of the KLA's fortified positions.^[89] The KLA also used rocket launchers in an attack, which indicated its ability to conduct operations that were sustained.^[90] The KLA was also able to offer resistance to the Serbian forces as well. The ICTY determined that the KLA had the ability to engage in a varied organizational capacity which indicated its level of organization. In *Lukic*, the ICTY highlighted the use of both offensive and defensive actions which indicated military planning in determining that the group was sufficiently organized.^[91] Other actions included fortifying and camouflaging positions, setting ambushes, attacking and holding villages and using mortars and other forms of ammunition to keep their resistance afloat.^[92]

Application

The FSA also operated in a fairly complex manner. They attacked logistics vehicles like tank transporters, fuel trucks, they cut coaxial communications cables servicing airfields, and destroyed telecommunications towers, sabotaged engines of combat and other vehicles used by government forces by sugaring the fuel tank and attacking railways and pipelines.^[93] In the Battle of Rastan there were reports that the FSA destroyed 17 large armored vehicles using RPGs and booby traps.^[94] In the clashes in the Idlib province, there was a report of rocket-propelled grenades by defected soldiers which killed nine soldiers.^[95] Ambushes in Idlib were also reported near the Turkish border.^[96] Notable attacks on Damascus intelligence and airbase staffs, in Homs by rocket propelled grenades and 50 cal. machine guns, and anti-aircraft weaponry respectively, had occurred in those first months as well.^[97] The FSA attacks were meant to destabilize the

Assad regime's strongholds by attempting to attack bases, convoys or headquarters. By 2012, the FSA managed to take control over the border town of Zabadani which is less than 15 miles away from the suburbs of Damascus and completely retook control of the city of Rastan. By the beginning of February, videos surfaced showing armored personnel carriers called BMP-2's (an infantry fighting vehicle) in Homs carrying Syrian independence flags firing at government forces.^[98]

In undermining the government by protecting civilian protesters, encouraging army defection and by carrying out armed attacks, the FSA was able to adopt guerilla-style tactics. The FSA actively ambushed security forces and the state's *shabiha* (sniper) militia. The FSA also confronted the army to encourage defection and recruit new members. Much of the attacks were on buses bringing in security reinforcements through planting explosives and carrying out attack and retreat operations. The FSA mounted attacks on government command and control and logistical infrastructure. A sabotage campaign on the Syrian regime's logistics assets like security service command centers and on Syrian social media sites was the strategy of the FSA. The FSA also defended neighborhoods opposed to the government by guarding the streets while protests took place, and attacks the *shabiha* which were an integral part of the government's efforts to suppress dissent.^[99] At the time, it was reported that at least 600 fighters of the National Liberation Army from Libya were dispatched to support and train the Free Syrian Army and had entered Syria through Turkey.^[100] Ultimately, the FSA managed successes and failures but had an operation that was complex enough to disenfranchise the Syrian army, a juggernaut of sorts, in many parts of the country. The complexity of their operations substantiates the argument that the from July 2011, Syria was already in a state of civil armed conflict not of an

international character.

Conclusion

Finding the point at which hostilities transform into an armed conflict will help drive the application of IHL. The application of IHL will in turn help protect civilians. On balance, the hostilities in Syria transformed into an armed conflict during the first 13 months, subject to Common Article 3, because they were intense and the parties were organized. The level of intensity was high enough because the hostilities can be characterized by factors described by legal precedent. Also, the opposition organized into a horizontally functioning structure with Colonels, Lieutenants and other ranks filing into battalions to destabilize Assad's regime. The application of IHL during the first 13 months would have ensured a greater ability by relief organizations and the international community to protect those in Syria whom are considered hors de combat. The hostilities in Syria transformed into an armed conflict during the first 13 months. Due to the intensity and the organization of the fighting parties, international humanitarian law, or the law of war, should have applied accordingly. This analysis should be standardized and accessible for future hostilities. By understanding what factors objectively define an armed conflict, IHL can be more easily and quickly applied. With the application of international humanitarian law, civilians outside of combat have a better framework to access safety.

[1] http://www.ohchr.org/Documents/Countries/SY/A.HRC.S-17.2.Add.1_en.pdf; A/HRC/S-17/2/Add.1

[2] http://www.ohchr.org/Documents/Countries/SY/A.HRC.S-17.2.Add.1_en.pdf; A/HRC/S-17/2/Add.1

[3] <http://www.icrc.org/eng/resources/documents/legal-fact-sheet/humanitarian-law-factsheet.htm>

[4] GC I, *supra* note 6, art. 3; GC II *supra* note 6, art. 3; GC III, *supra* note 6, art. 3; GC IV *supra* note 6, art. 3.

[5] Much of the framework of this paper comes from Laurie R. Blank and Benjamin R. Farley's Characterizing US Operations in Pakistan: Is the United States Engaged in an Armed Conflict?, Fordham International Law Journal, Vol. 34, Number 2, January 2011.

[6] *See supra* note 4 at 160-161.

[7] Prosecutor v. Tadic, Case No. IT-94-1-T, Decision on Defence Motion for Interlocutory Appeal on Jurisdiction

para. 100-27 (Int'l Crim. Trib. For the Former Yugoslavia [ICTY] Oct. 2, 1995) (highlighting the development and applicability of necessity, distinction, humanity, and proportionality to internal armed conflict); LINDSAY MOIR, *THE LAW OF INTERNAL ARMED CONFLICT* 133-34 (2002); Geoffrey S. Corn & Eric T. Jensen, *Untying the Gordian Knot*, 81 TEMP. L. REV. 788, 827 (2008); Christopher Greenwood, *International Law and the Tadic Decision*, 7 EUR. J. INT'L L. 265, 275-78 (1996); see *Abella v. Argentina (La Tablada)*, Case 11.137, Inter-Am. C.H.R., Report No 55/97, para. 176-77 (1997); Maj. Ian G. Core, *The Fine Line between Policy and Custom: Prosecutor v. Tadic and the Customary International Law of Internal Armed Conflict*, 166 MIL. L. REV. 145 (2000); Cullen, *supra* note 9, at 66; William A. Schabas, *Punishment of Non-State Actors in Non-International Armed Conflict*, 26 FORDHAM INT'L L.J 907 (2003).

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[9] *Supra* note 11 at para. 6.

[10] GC IV COMMENTARY, *supra* note 5, at 36 ("Does this mean Article 3 is not applicable in cases where armed strife breaks out in a country, but does not fulfill any of [the suggested criteria]? We do not subscribe to this view, We think, on the contrary, that the Article should be applied as widely as possible.").

[11] *Supra* note 11 at para. 7.

[12] *Tadic*, Case No. IT-94-1-T, Judgment, para. 562 (ICTY May 7, 1997); Vite, *supra* note 9, at 75-76.

[13] *Tadic*, Case No. IT-94-1-T, Judgment, para. 562. Government forces are presumed to be sufficiently organized to be a party to an armed conflict. *Haradinaj*, Case No. IT-04-84-T, Judgment, para. 60; Vite, *GC IV Commentary*, at 77.

[14] Corn, *supra* note 9, at 17.

[15] See *supra* note 4 at 163. See also GC IV COMMENTARY. See also *Prosecutor v. Haradinaj*, Case No. IT-04-84-T Judgment, para. 49 (ICTY Apr. 3, 2008).

[16] *Haradinaj*, Case No. IT-04-84-T, Judgment, para. 49.

[17] *Haradinaj*, Case No. IT-04-84-T, Judgment, para. 49.

[18] Vite, *supra* notes 4 and 20.

[19] See *supra* note 11.

[20] *Prosecutor v. Limaj*, Case No. IT-03-66-T, Judgment, para. 168 (ICTY Nov. 30, 2005).

[21] *Id.* para. 168; see *id.* paragraphs 138, 140.

[22] *Id.* para. 168.

[23] *Id.* para. 138-9, 142.

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