



Critical Analysis on the Application of International Humanitarian Law in Armed Conflicts in Syria

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ABSTRACT

This article examines the law governing siege warfare and its application to sieges enforced by parties to the Syrian conflict. Elements of the Syrian Democratic Forces (SDF), a coalition of Syrian Kurds, Arabs, Turkmen, and other minorities that included members of the Kurdish Peoples Protection Units (YPG), reportedly engaged in acts of corruption, unlawful restriction of the movement of persons, and arbitrary arrest of civilians, as well as attacks resulting in civilian casualties. There is compelling evidence to conclude that the war crime of starvation and the crime against humanity of extermination have been committed during siege warfare. These crimes ideally should be prosecuted by international judges through the establishment of an ad hoc international criminal tribunal or immediately through universal jurisdiction. It is on this note that the article calls for organizations involved in managing the conflict to keep discovering different torture areas and getting rid of them and informing all those involved in protection of human rights of the people since it's the job of the United Nations and Red Cross.

Keywords: Armed conflict, human rights violations, international humanitarian law, parties, Syria

INTRODUCTION

Humanitarian law is contained in the four Geneva Conventions of 1949. Nearly every State in the world has agreed to be bound by them. The Conventions have been developed and supplemented by two further agreements: the Additional Protocols of 1977 relating to the protection of victims of armed conflicts. Other agreements prohibit the use of certain weapons and military tactics and protect certain categories of people and goods [1]. These agreements include: the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, plus its two protocols; the 1972 Biological Weapons Convention; the 1980 Conventional Weapons Convention and its five protocols; the 1993 Chemical Weapons Convention; the 1997 Ottawa Convention on anti-personnel mines; the 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict[2]. Many provisions of international humanitarian law are now accepted as customary law - that is, as general rules by which all States are bound. The Syrian civil war, now in its seventh year, continues to present new challenges for U.S. policymakers. Following a deadly chemical weapons attack in Syria on April 4, 2017, and subsequent U.S. defensive strikes against Syrian military infrastructure and pro-Syrian regime forces, several Members of Congress have called on the President to consult with Congress about Syria strategy[3]. Some Members have questioned the President's authority to launch strikes against Syria in the absence of specific prior authorization from Congress. In the past, some in Congress have expressed concern about the international and domestic authorizations for such strikes in Syria, their political unintended consequences, and the possibility of undesirable or unavoidable escalation of the Syria conflict[4]. In January 2017, President Trump has stated his intention to "destroy" the Syria- and Iraq-based insurgent terrorist group known as the Islamic State (IS, also known as ISIL, ISIS, or the Arabic acronym Da'esh), and the President has ordered actions to "accelerate" U.S. military efforts against the group in both Syria and Iraq[3]. In late March, senior U.S. officials signaled that that the United States would prioritize the fight against the Islamic State and said that Syria President Bashar al Asad's future would be determined by the Syrian people. Senior members of the Trump Administration have spoken critically of the Syrian president's leadership but call for de-escalation of the underlying conflict and a negotiated settlement, rather than seeking to compel Syrian president Asad's departure from power [5]. Since late 2015, Syrian president Asad and his government have leveraged military, financial, and diplomatic support from Russia and Iran to improve and consolidate the Syrian government's position relative to the range of antigovernment insurgents arrayed against them. These insurgents include members of the Islamic

State, Islamist and secular fighters, and Al Qaeda-linked networks in Syria [3]. While Islamic State forces have lost territory to the Syrian government, to Turkey-backed Syrian opposition groups and to U.S.-backed Syrian Kurdish and Arab fighters since early 2016, they remain capable and dangerous. The IS "capital" at the Syrian provincial capital has been isolated and is being liberated, but large areas of eastern Syria under the group's control. The presence and activities of Russian military forces and Iranian personnel in Syria create complications for U.S. officials and military planners, and raise the prospect of inadvertent confrontation inside Syria with possible regional or global implications [6]. Since March 2011, the conflict has driven nearly 5.2 million Syrians into neighboring countries as refugees (out of a total prewar population of more than 22 million). More than 6.3 million other Syrians are internally displaced and are among more than 13.5 million Syrians in need of humanitarian assistance. The United States is the largest donor of humanitarian assistance to the Syria crisis (which includes assistance to neighboring countries hosting Syrian refugees), and since FY2012 has allocated nearly \$7.4 billion to meet Syria-related humanitarian needs [7]. In addition, the United States has allocated more than \$500 million to date for bilateral assistance programs in Syria, including the provision of nonlethal equipment to select opposition groups. President Trump has requested \$191.5 million in FY2018 funding for such assistance and \$500 million in FY2018 defense fund, train and equip anti-IS forces in Syria [8]. U.S. officials and Members of Congress continue to debate how best to pursue U.S. regional security and counterterrorism goals in Syria without inadvertently strengthening U.S. adversaries or alienating U.S. partners. The Trump Administration and Members of the 115th Congress like their predecessors-face challenges inherent to the simultaneous pursuit of U.S. nonproliferation, counterterrorism, civilian protection, and stabilization goals in Syria's evolving conflict [9]. Parties to the armed conflict in Syria continued to commit with impunity serious violations of international humanitarian law, including war crimes, and gross human rights abuses. Government and allied forces carried out indiscriminate attacks and direct attacks on civilians and civilian objects using aerial and artillery bombing, killing and injuring hundreds of people in Idlib and Hama in north-west Syria. Government forces continued restricting access to humanitarian and medical aid to civilians living in government-controlled areas. Security forces arbitrarily arrested civilians and former fighters who had reconciled with the government and continued to detain tens of thousands of people, including peaceful activists, humanitarian workers, lawyers and journalists, subjecting many to enforced disappearance and torture or other ill-treatment, and causing deaths in detention [10]. Armed groups working with the support of Turkey continued to subject civilians in Afrin to a wide range of abuses, including confiscation and looting of property, and arbitrary detention. They and Turkey were likely responsible for indiscriminate attacks during hostilities in north-east Syria. In the same region, the Autonomous Administration carried out several arbitrary detentions [11]. The US-led coalition failed to investigate the many civilian deaths caused by its 2017 bombing campaign on Raqqa against the armed group calling itself the Islamic State (IS). Military offensives in north-west and north-east Syria internally displaced 684,000 and 174,600 people respectively. Tens of thousands of displaced people continued to live in makeshift camps, schools and mosques that did not provide an adequate standard of living [12]. The war in Syria has brought a lot of discussions and issues in that it is considered as a war violating International Humanitarian law one of the key principles of international law. Once a war states in a country, it is a must for international humanitarian law to be applied and also consider if it's an international armed conflict or a non-international armed conflict. This article analyses the application of international humanitarian law in armed conflicts in Syria.

The Syrian Armed Conflict: Nearing the End? The War Report 2018

The Syrian conflict has been marred by human rights abuses and crimes committed by many of the parties involved. The Syrian Government has been accused of using chemical weapons on several counts. The first accusation came in 2013 when Assad's government used a sarin nerve agent in Eastern Ghouta, near Damascus, killing 1,400 people. The US president pushed for a strike but could not convince Congress. Nevertheless, the UN Security Council decided on a diplomatic solution, ordering Assad to destroy Syria's chemical weapons and sign the 1993 Chemical Weapons Convention (CWC). Syria agreed to sign the CWC, which prohibits countries from using, stockpiling or developing chemical weapons [13]. Around 1,300 tons of chemical weapons were destroyed; nevertheless, not all the stockpile was eliminated, leaving Syria with the possibility of replenishing its stores. Since then, chemical attacks have not stopped, the most notable of which took place in April 2017, leading to US airstrikes in retaliation and, in April 2018, leading to strikes by the US, France and Britain. Islamic State has also used chemical weapons on at least two counts in 2015 and 2016. The Commission of Inquiry on the Syrian Arab Republic has counted, as of January 2018, at least 'documented incidents of the use of chemical weapons by various parties to the conflict' [14]. In July 2018, the Syrian Government published documents with the names of prisoners that have died while in government custody. No comment on how the prisoners died and how many there are overall has been made. The Syrian Network for Human Rights has confirmed 312 recent cases but claims that the Government has detained at least 800,000 people, so many names will follow. Most of the documents claim that these people died years ago, at the beginning of the conflict. Human rights groups say that since the conflict began, many people have died in the Government's jails, where torture and mistreatment

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are rife [13]. Furthermore, a recent report on human rights violations during the siege and recapture of Eastern Ghouta has been produced by the Commission of Inquiry on the Syrian Arab Republic. According to the report, when recapturing the city, which was subject to the longest siege (five years) in modern history, government forces carried out war crimes, such as launching indiscriminate attacks and attacking protected objects. Government missiles have fallen on homes, markets and hospitals. It is estimated that between 18 February and 11 March 2018, attacks by pro-government forces killed around 1,100 civilians and injured 4,000. For example, on 19 March, pro-government forces launched an airstrike, hitting a school and killing at least 17 children, 4 women and 1 man. Access to food and medicine for the citizens under siege has also been denied, which the Commission has called a 'crime against humanity of inhumane acts causing serious mental and physical suffering' [15].

Legal and international framework on humanitarian law

Two types of armed conflict are recognized under IHL: an IAC and a NIAC, each governed by different bodies of rules. Some commentators argue that a generic concept of armed conflict exist in international law, one which can then further be sub-qualified into either an IAC or a NIAC [16]. However, according to what is perhaps the more common view, there is no generic definition of armed conflict in international law. Rather, the two distinct types of armed conflict are not subcategories of a broader concept, or of each other, but separate legal categories [17]. In other words, "an 'armed conflict' exists wherever there is an IAC or a NIAC, not the other way around. ("In order to decide whether IHL is applicable, the existence of an armed conflict must first be established. Once an armed conflict exists, the applicable regime is determined by the question of whether it is an international or a non-international armed conflict.") [16]. Common Article 2 of the Geneva Conventions does not provide any definition of the categories of IAC and NIAC. Common Article 2 (CA2) of the Geneva Conventions [1], states that the conventions "shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties. This includes "all cases of partial or total occupation". The institution of declaration of war, however, has fallen into desuetude, and the application of IHL is in any case not dependent on such a declaration. However, while the Geneva Conventions [1], (and by extension CA3) have been universally ratified, a number of States have not ratified AP II, including the United States, Israel, and Turkey, further decreasing its potential application. Furthermore, although two different types of NIACs exists as a matter of positive law CA3 NIACs and AP II NIACs, it seems that States do not distinguish between them in [18]. For example, in its Study on customary IHL, ICRC only lists rules applicable in IACs and NIACs, without distinguishing between two types of NIAC, and the Rome Statute of the ICC does not employ the distinction. The second type of armed conflict under IHL is a NIAC. According to CA3 [1], it applies to "armed conflict(s) not of an international character occurring in the territory of one of the High Contracting Parties". It follows from the wording and context of CA3 that the preceding provision, CA2, applies to conflicts of inter-State nature—that NIACs are conflicts that do not involve two opposing States; instead, at least one of the parties to a NIAC is a non-State group [19]. In contrast to IAC, NIACs are as a matter of treaty law covered primarily by CA3 (which provides for a minimum level of protection to the victims of conflict) as well as a few other IHL treaties [16]. Certain NIACs will also be subject to the provisions of Additional Protocol IHL, which develops and supplements" CA3 22. First of all, AP II only applies to conflicts between the armed forces of a State and non-State armed group(s), but not to conflicts between such groups. Secondly, AP II requires that the armed group exercise control over part of the territory of the State that it is fighting against, the control being such as to enable the group to carry out sustained and concerted military operations. And finally, the applicability of AP II is dependent on the ability of the non-State group to implement the Protocol. As a consequence of these differences, far fewer conflicts will qualify as AP II conflicts than will CA3 conflicts [20].

Scope of application of humanitarian law

The international law of armed conflict applies in all armed conflicts; however, they are characterized, and applies to all parties in a conflict, irrespective of the legality of the resort to force. There is no doctrinal relationship between jus ad bellum and jus in bello: the application of the latter in no way depends upon the former, and the legality of a conflict as such has no bearing whatsoever on the use of IHL, although justifications publicly offered by States for their military operations in recent years have increasingly tended to blur the boundaries between these two bodies of international law, especially in the tendency to base actions like drone strikes on the right of individual or collective self-defense under Article 51 of the United Nations Charter (or customarily international law) [21]. It would thus be quite incorrect to suggest that, for instance, every individual attack (such as an airstrike) undertaken as part of an operation illegal under the jus ad bellum is ipso facto also illegal under the jus in bello, or conversely, that the victim of an act of aggression has the right to attack the civilian population of the aggressor [22]. The question, however, of when and how humanitarian law applies ('scope of application') is not as straightforward as it might initially seem. This is partly because of some uncertainties surrounding the definition of armed conflict itself, and partly because of the different types of armed conflicts that are recognized in the contemporary law. Traditionally, application of the law of war was triggered by a declaration of war, which

had the legal effect of suspending most peacetime legal relations between belligerent States. Although a declaration of war did not invariably precede the actual start of hostilities, it usually followed in due course once hostilities were under way; conversely, although there did not need to be active hostilities in progress at all times after a declaration of war had been issued, the existence of such declaration was conclusive evidence as to the existence of a formal state of war [23]. The state of war would normally be terminated only by a peace treaty, at which point the international law of peacetime relations would resume and the law of war would no longer be operative. However, as has been suggested in recent years, with some understatement. Developments in international law since 1945, notably the United Nations (UN) Charter, including its prohibition on the threat or use of force in international relations, may well have made the declaration of war redundant as a formal international legal instrument [24]. In point of fact, there have been no formal declarations of war since the Soviet declaration of war on Japan in August 1945; the association of such declarations with the appearance of an unlawful use of force under the Charter, or an act of aggression, has led to the procedure becoming defunct. The kind of confusion implicit in British Prime Minister Anthony Eden's statement in 1956, that the UK was not at war with Egypt during the Suez Crisis but merely in a state of armed conflict with that country, is now a thing of the past in international law, the term 'armed conflict' is preferred to the term 'war' as the former is a purely factual description of a situation, without connotations of right and wrong as regards the jus ad bellum [25]. It is additionally often perceived to be in a state's interest to refrain from such an unequivocal declaration of hostile intent. This may be the case especially in a 'low intensity conflict', wherein neither side provokes the other into escalation, resulting in a conflict that is relatively limited and easily contained, from which belligerents may back away without necessarily appearing to have been defeated in a military sense. During Indonesia's policy of Konfrontasi ('Confrontation') with Malaysia from 1962 to 1966, British troops were actively engaged in armed hostilities against Indonesian forces in North Borneo, but diplomatic and commercial relations between the UK and Indonesia continued throughout the four years over which the Confrontation persisted. In any event the application of humanitarian law in no way affects the legal status of parties to a given conflict; it depends on neither the legality of the initial resort to force, nor the formal recognition of a state of war or armed conflict by the belligerents [26].

The Geneva Conventions, for example, are expressly stated to apply to 'declared war or any other armed conflict'[1]. In 1982 during the Falklands War, the UK publicly denied that it was at war with Argentina, yet it applied the law of armed conflict in all its military operations[27]. The difficulty lies in the fact that the law of armed conflict nowhere defines precisely what an 'armed conflict' is for the purposes of application of the law, despite the use of the phrase in the Geneva Conventions and other treaties that constitute this body of law. The ICRC indicated that, any difference arising between States and leading to the intervention of members of the armed forces is an '[international] armed conflict'[18], but this is problematic because it implies that even a very limited military operation of only a few hours' duration and not followed by any other hostilities would have to be considered an armed conflict, a position which is not supported by State practice. Although there are court decisions on point from various national jurisdictions (including the UK), these invariably have been concerned with defining 'war' in municipal law for such purposes as interpreting liability exclusion clauses in insurance contracts, rather than having anything to do with IHL [16]. In 1995 the International Criminal Tribunal for the Former Yugoslavia (ICTY) [28], held that: an armed conflict whenever there is a resort to armed conflict between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory under the control of a party, whether or not actual combat takes place there [29]. The statement in Tadic has since come to be widely accepted as a useful formulation of the concept of an armed conflict in customary international law. At least implicit in the formulation is the requirement that hostilities be 'substantial', 'protracted' and 'large-scale'. Thus, it is doctrinally possible for a very brief or limited military operation to take place, yet for there to be no armed conflict between the States involved, as in the Entebbe Raid (1976), when Israel mounted a military operation to rescue hostages being detained by hijackers on Ugandan territory. Although Ugandan soldiers did resist the Israelis and there were some exchanges of fire between them, resulting in casualties on both sides and the destruction of several Ugandan Air Force fighters, it was never accepted that there was an armed conflict between Israel and Uganda [30]. Similarly, armed incidents across international borders in connection with the civil war in Syria, such as repeated exchanges of artillery fire between Turkish and Syrian Government forces and the shooting down of a Turkish reconnaissance jet by Syrian anti-aircraft artillery in 2012, and the shooting down of a Russian attack aircraft by a Turkish fighter jet in 2015, have not been treated as constituting an armed conflict between those States [31]. A maritime law enforcement operation involving the use of force might also not qualify as an armed conflict, even if it meets with armed resistance. Nevertheless, it would surely be wrong to argue that States in such circumstances should actually be

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free to disregard substantive rules of IHL on the grounds that there is no formal situation of armed conflict; thus, in the last named incident, the killing of one of the Russian pilots by ground fire attributed to the Free Syrian Army was a violation of customary IHL, at the very least [32]. It is not necessary for there to be actual fighting at all times in an armed conflict for the law to be applicable. Some of the treaties that constitute LOAC also apply in situations where actual fighting may no longer be taking place: eg prisoners of war continue to benefit from protection under the 'law' until their final release and repatriation, while the law relevant to military occupation and protection of the civilian population continues to apply as long as an occupation subsists, even if other substantive military operations ceased at an earlier date [33, 34]. The Geneva Conventions are silent as to the end of armed conflict, but Convention IV's mention (in Article 6) of 'the general close of military operations' has acquired great practical significance with the modern decline in the practice of concluding treaties of peace [1].

CONCLUSION

Areas under the control of armed opposition groups, human rights abuses, including killings and extreme physical abuse, continued to occur due to the unstable security situation and continued to foster an environment in which human rights abuses were committed, including killings, extreme physical abuse, and detention. Armed terrorist groups, such as al-Qaida-linked Hayat Tahrir al-Sham (HTS), committed a wide range of abuses, including massacres, unlawful killings, bombings, and kidnappings; unlawful detention; extreme physical abuse; and forced evacuations from homes based on sectarian identity. Despite the territorial defeat of the Islamic State of Iraq and Syria (ISIS) in March, ISIS continued to carry out unlawful killings, bombings, and kidnappings, attack members of religious minority groups, and subject women and girls to routine rape, forced marriages, and sex trafficking. Elements of the Syrian Democratic Forces (SDF), a coalition of Syrian Kurds, Arabs, Turkmen, and other minorities that included members of the Kurdish Peoples Protection Units (YPG), reportedly engaged in acts of corruption, unlawful restriction of the movement of persons, and arbitrary arrest of civilians, as well as attacks resulting in civilian casualties.

RECOMMENDATION

It is on this note that the article calls for organizations involved in managing the conflict to keep discovering different hot areas and getting rid of them and informing all those involved in protection of human rights of the people since it's the job of the United Nations and Red Cross.

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