

THE STATUS OF ARMED CONFLICTS. CASE STUDY: THE CONFLICT IN SYRIA

Cosmin IVANCIU*

*„Henri Coandă” Air Force Academy, Braşov, Romania (cosmin_ivnc@yahoo.com)

DOI: 10.19062/2247-3173.2016.18.2.13

Abstract: *Even though international humanitarian law targets to diminish the consequences of the armed conflicts, it does not provide us a definition of those situations of armed violence that falls under its field of application. While the Geneva Conventions from 1949 offer some legal outlines on this issue, we need, also, a beam of light directed over this much-debated concept of armed conflict and its multiple particular aspects met within nowadays jurisprudence.*

The objective of this article is to display how distinctive statuses of armed conflicts may be reviewed in the light of contemporary decisions taken in international legal practice. It, also, investigates the particular case of the conflict in Syria, whose placement under a specific branch of armed conflicts gave birth to a vivid controversy and has been much contested.

Keywords: *armed conflict, international, non-international, Syria.*

1. INTRODUCTION

As a general rule, enforcement of the laws of armed conflict (or of international humanitarian laws) is strictly related to its existence as such. The situations of violence which are not considered to be armed conflicts, by law, fall under the authority of the human rights. Therefore, determining the applicable procedure in a particular situation is of crucial importance.

As an example, violence that occurs within the borders of a state will be, first of all, considered to be a matter of internal regulation for that particular state. In such a situation, the use of force by state authorities will be governed by the observance of human rights which allows the use of force only as a means of self-defense.

Consequently, *armed conflict*, as a term, is conditioned by certain criteria applied in its definition: the armed violence occurs between two or more states (international armed conflict), between a state and one or more non-state actors, or between two or more such groups (non-international armed conflict).

2. INTERNATIONAL ARMED CONFLICT

The criteria determining the existence of an international armed conflict ensue from Common article 2 of the 1949 Geneva Convention that stipulates that the “... *present convention 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, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total*

occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.)”^[1]

In other words, in order for armed violence to qualify as *international armed conflict*, the hostilities should occur between two or more states as the opposing parties. The minimum level of violence which determines two or more states to be declared as participants in a conflict is still ardently debated. From the author’s point of view, the comment provided by the International Committee of the Red Cross over Common article 2 of the 1949 Geneva Conventions can be considered a valid one: “*Any difference arising between two States and leading to the intervention of armed forces is an armed conflict. [...] It makes no difference how long the conflict lasts, or how much slaughter takes place. The respect due to human personality is not measured by the number of victims.*”^[2] The remarks are ever so pertinent, since, from a legal point of view, it is difficult to establish a threshold of violence that determines a state of *armed conflict* to come into force.

From case to case, the situations analyzed below can take the shape of a direct conflict between states, or that of an intervention into an already existing internal conflict. In the second case we are referring to an internationalized armed conflict, that is, a case when a foreign power sends its troops to a territory in order to support a group that opposes a form of local government.

Another possible situation is that in which a foreign power remotely supports the opposing group, guiding the actions of the latter^[3]. In this case, it is essential that the level of intrusion from the foreign power be determined in order to establish the existence of an international armed conflict since not every form of influence leads to an internationalized conflict. The criteria of the foreign intervention leading to the internationalization of the conflict are considered to be standing when the foreign power has a role in the organization, coordination, and planning of the group’s/opposing movement’s military actions, completed with financial support, training and providing equipment to the group^[4].

2.1 Occupation. Whenever the actions of a belligerent party are successful, the armed conflict turns into an occupation by the victorious party.

Article 42 of the 1907 Hague Convention stipulates that a territory is considered to be occupied when it “*is actually placed under the authority of the hostile army*”^[5].

According to the quoted article, there are two conditions for the occupation to take effect: a) the invader wields control over a territory that is not his, and, b) the intervention has not been approved and accepted by the sovereign, legitimate authority of the opposing state.

Efficient territorial control, the essence of occupation, presupposes a substitution of governing powers. This condition is fulfilled when two conditions cumulate: 1. the defeated government is incapable of exercising authority over the invaded territory and, 2. when the invader is able to replace the former (defeated) government with one of its own.

^[1] Common Article 2 to the four Geneva Conventions of 1949. Text available (in English) on International Committee of the Red Cross official site, at: <https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=41229BA1D6F7E573C12563CD00519E4A> (last accessed on 14 April 2016)

^[2] Jean Pictet *et al.*: *Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field: Commentary*, International Committee of the Red Cross, Geneva, 1952, p. 32.

^[3] International Criminal Tribunal for the former Yugoslavia (ICTY): *Prosecutor v. Tadić*, Case no. IT-94-1, Appeals Chamber Judgement, 15 July 1999, para. 84. Available at: <http://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf> (last accessed on 13 April 2016).

^[4] *Ibidem* 13, para. 137.

^[5] *Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land*. Hague, 18 October 1907, art. 42. Available at: <https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=01D426B0086089BEC12563CD00516887> (last accessed on 13 April 2016).

Implicitly, this condition presupposes that the invading troops are deployed into the territory in question, and, that they are successfully imposing the stability necessary to exercise authority as an invader.

A further possibility is the situation of a belligerent power that doesn't effectively invade a territory but installs an interposed form of authority under the form of a puppet government^[6].

In such cases it is difficult to determine the degree of influence that could help establish a legal situation of occupation. As a matter of fact, the influence over an existing form of government on a certain territory does not necessarily qualify as a state of occupation. Such a state, of occupation, would exist if a state could demonstrate "overall control"^[7] over the local institutions which concretely govern the territory in question.

An example of the situation described above is the case of the Nagorno-Karabakh region. The state of Azerbaijan could no longer exercise authority over this territory due to its conflict with opposing forces supported by Armenia, which were defeated in 1994. This territory was practically ruled (concrete control over the territory) by the government of the Republic of Nagorno-Karabakh, self-proclaimed on January 6, 1992. At that time several aspects pointed towards a possible subordination of the self-proclaimed republic to Armenia. For example, there were Armenian military structures in the Nagorno-Karabakh region and a significant number of military personnel were stationed in the area. Consequently, the role of Armenia was not limited to a mere logistic support but it also meant the organization, coordination and planning of the actions undertaken by the institutions in the Nagorno-Karabakh region. This situation can be considered to be one of occupation^[8].

Therefore, in order to determine a situation of occupation a case-to-case evaluation is necessary to establish the intensity of control and the degree of influence of a state over a group or an authority in another state.

3. NON-INTERNATIONAL ARMED CONFLICT

Two essential instruments should be employed in the analysis of the notion of non-international armed conflict: Common article 3 of the 1949 Geneva Conventions and article 1 of the 1977 Additional Protocol II to the 1949 Geneva Conventions. My purpose in this chapter is to analyze the criteria contained in the two texts and the way these criteria can be applied in common practice.

3.1 Common Article 3 of the 1949 Geneva Conventions. The stipulations of this article are applied in cases of "armed conflict not of an international character occurring in the territory of one of the High Contracting Parties"^[9].

The negative phrasing used at the beginning of this stipulation establishes from the very start that its scope of authority refers to "armed conflicts not of an international character"^[10]

^[6] International Criminal Tribunal for the former Yugoslavia (ICTY): *Prosecutor v. Tadić*, Case no. IT-94-1, 07 May 1997, para. 584. Available at <http://www.icty.org/x/cases/tadic/tjug/en/tad-ts70507JT2-e.pdf> (last accessed on 13 April 2016).

^[7] International Criminal Tribunal for the former Yugoslavia (ICTY): *Prosecutor v. Blaškić*, Case no. IT-95-14, Trial Judgement, 3 March 2000, para. 149. Available at: <http://www.icty.org/x/cases/blaskic/tjug/en/blatj000303e.pdf> (last accessed on 13 April 2016).

^[8] United Nations Security Council Resolution 884/12 November 1993, para. 2. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N93/631/20/PDF/N9363120.pdf?OpenElement> (last accessed on 14 April 2016). United Nations Security Council Resolution A/RES/62/243 adopted on 14 March 2008, para. 5. Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/62/243 (last accessed on 14 April 2016).

^[9] Common Article 3 to the four Geneva Conventions of 1949. Available at: <https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=BAA341028EBFF1E8C12563CD00519E66> (last accessed on 15 April 2016)

Consequently, the article makes an implicit reference to Common article 2 of the 1949 Geneva Conventions, which refers to the armed conflicts between states.

The conflicts that qualify as non-international are those in which at least one of the parties involved is not a governmental one. The armed conflict occurs between one or more armed groups and governmental forces or only between armed groups.

Common Article 3 of the 1949 Geneva Conventions presupposes the installation of an armed conflict, that is, a state that distinguishes it from other forms of violence (“*situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature*”^[11]).

How can the difference be established between internal tensions and disturbances, on one hand, and non-international armed conflicts, on the other? The present judiciary practice sheds some light on the matter by the analysis of two fundamental criteria: a) the intensity of the acts of violence and, b) the degree of organization of the parties^[12]. The analysis of the two conditions cannot be a theoretical, abstract one; concrete and specific data of each particular situation is necessary.

Throughout the history and evolution of the 1949 Geneva Conventions relevant comments and analyses have been added to the original texts. One such comment enumerates a series of criteria that enables a distinction between the situations of internal tension/disturbance and non-international armed conflict:

1) The party which is in a relation of conflict with the rightful government of a state disposes of organized military forces and of an authority responsible for the actions undertaken by the group within a defined territory and which disposes of the necessary means to observe the stipulations of the 1949 Geneva Conventions;

2) The rightful government of the state is forced to use its regular armed forces against the insurgents;

3) The rightful government qualifies the insurgents as belligerent;

4) Conflicts between an insurgent group and a rightful government have been submitted for debates on the agenda of the United Nations Security Council as a threat to international peace;

5) The insurgent group is organized in a structure similar to that of a state;

6) The civilian authority of the insurgent group exercises its authority over the population of a particular territory.^[13]

Concerning the criteria of intensity, it can be observed that the provided data relates to the organized nature of the conflict, mentioning a rightful government compelled to use its military forces in cases when the police can no longer handle the situation.

Other relevant data: the frequency of the acts of violence, the nature of the weapons used in the conflict, the transfer of the civilian population, the territory controlled by the insurgents, the number of victims. Obviously, these details allow a measurement of the intensity of violence and the cumulative presence of all indicators mentioned above is not necessary for an armed conflict to be declared non-international.

^[10] *Idem* 9.

^[11] *Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977, art. 1, para. 2. Available at: <https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=93F022B3010AA404C12563CD0051E738> (last accessed on 14 April 2016).

^[12] International Criminal Tribunal for the former Yugoslavia (ICTY): *Prosecutor v. Tadić*, Case no. IT-94-1, Trial Judgement, 7 May 1997, para. 562. Available at: <http://www.icty.org/x/cases/tadic/tjug/en/tad-ts/70507JT2-e.pdf> (last accessed on 14 April 2016).

^[13] Jean Pictet: *Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field – Commentary*, International Committee of the Red Cross, Geneva, 1952, pp. 49-50.

Concerning the criteria of the organized military forces of the parties involved in the conflict, it is assumed, without ulterior analysis, that the governmental forces fulfill this condition. As for the insurgent group, the condition for its military structure to qualify as organized, it is necessary to identify an organizational chart that demonstrates the existence of a command structure with the authority to launch various actions, to coordinate the movement of various units, and to recruit and train fighters based on a set of internal organizational standards^[14].

If the two conditions are not fulfilled (intensity of violence and organized military structures of the parties), the conflict can be identified as an internal tension/disturbance.

3.2 Article 1 of the 1977 Additional Protocol II to the 1949 Geneva Conventions. The Additional Protocol II of 1977 is applicable in cases of non-international armed conflicts “*which take 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 this Protocol*”^[15]. The text of this article does not refer to conflicts of national emancipation that fall within the scope of international armed conflicts, according to article 1 par. 4 of the Additional Protocol I^[16].

Similarly to the stipulations of Common article 3, the Additional Protocol II defines a non-international armed conflict by the intensity of violence, identifying a threshold that distinguishes it from internal disturbances^[17].

Contrary to the Common article 3, article 1 of the Additional Protocol II has a more limited area of applicability. The conditions apply if the non-governmental forces have a superior level of organization, performing “*under responsible command*”^[18] taking action within a defined territory in such a way that it is enabled “*to carry out sustained and concerted military operations and to implement this Protocol*”^[19].

Another detail to be mentioned is that the Additional Protocol II limits the area of its applicability to the cases in which the armed conflict occurs between governmental forces and insurgent armed groups. Consequently, the definition of article 1 of the Additional Protocol II is not applicable for conflicts between non-governmental groups.

Moreover, article 1 of the Additional Protocol II restates the criteria formulated by Common article 3, according to which the stipulations are applied in the cases of non-international armed conflicts “*which take place in the territory of a High Contracting Party*”^[20]. A rigorous reading of this condition can pose a question: does article 1 of the

^[14] International Criminal Tribunal for the former Yugoslavia (ICTY): *Prosecutor v. Boškoski*, Case no. IT-04-82, Trial Judgement, 10 July 2008, para. 199. Available at:

http://www.icty.org/x/cases/boskoski_tarculovski/tjug/en/080710.pdf (last accessed on 14 April 2016).

^[15] *Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977, art. 1, para. 1. Available at: <https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=93F022B3010AA404C12563CD0051E738> (last accessed on 14 April 2016).

^[16] Text of art. 1, par. 4 of the Additional Protocol I available at:

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=6C86520D7EFAD527C12563CD0051D63C> (last accessed on 14 April 2016)

^[17] Text of art. 1, par. 2 of the Additional Protocol II (*This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts*) available at:

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=93F022B3010AA404C12563CD0051E738> (last accessed on 14 April 2016)

^[18] Text of art. 1, par. 1 of the Additional Protocol II available at:

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=93F022B3010AA404C12563CD0051E738> (last accessed on 14 April 2016)

^[19] *Idem* 18.

^[20] Text of art. 1, par. 1 of the Additional Protocol II available at:

Additional Protocol II apply to governmental forces of a High Contracting Party that are acting on the territory of another state in order to offer support to the government of that state in its fight against a group of insurgents? In this case, the governmental forces are not acting on the territory of their own state. I consider, the phrase “*its armed forces*”^[21] - referring to the governmental forces of a state – should also include, beside its own forces, those acting in its name and with its authorization, even if they belong to another, supporting state.

4. CASE STUDY: THE CONFLICT IN SYRIA

With preliminary events related to the *Arab Spring* as a background, in Syria, the first protests start in March, 2011, in areas around Damask, the capital city, and in Dar’a, a town situated in the southern part of the country, near the border with Jordan. The protesters are demanding the release of the political prisoners and the reformation of the political system. Despite the peaceful nature of the protests, the governmental forces resort to harsh methods and used real ammunition to suppress the demonstrations which have already spread to other parts of the country. In order to restrain the wave of discontent, president Bashar al-Assad announces a series of concessions, like the dismissal of the government, the release of 240 political prisoners and the revocation of the state of necessity that had been in force since 1963^[22].

Towards the end of the spring and the beginning of the summer, in 2011, the level of violence used by governmental forces intensifies. The access to the towns where the demonstrations are taking place is blocked by armored vehicles in order to prevent the distribution of food and medicine.

In August 3, 2011, the UN Security Council issues a statement condemning the violence against the protesters by the governmental forces^[23]. At the same time, the European Union and other non-member states impose sanctions on Syria: the boycott on Syrian oil, the blocking of bank accounts outside the country, the interdiction to travel for some Syrian officials.

At the beginning of November, the Syrian government agrees to stop violence against the protesters and to apply a Plan of Action to reestablish peace, advanced by the League of Arab States^[24]. Nevertheless, the violence continues, and the UN High Commissioner for Human Rights estimates a minimum number of 3,500 victims among the civilian population in the period between March and November 2011^[25]. In December 2011, Syria accepts international observers on its territory, commissioned to monitor the implementation of the Plan proposed by the League of Arab States. In January 2012, however, the mission is

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=93F022B3010AA404C12563CD0051E738> (last accessed on 14 April 2016).

^[21] Additional Protocol II, art. 1, para. 1. Available at:

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=93F022B3010AA404C12563CD0051E738> (last accessed on 16 April 2016)

^[22] Frédéric Pichon: *Siria. De ce s-a înșelat Occidentul*. Trad. Simona Brânzaru, Editura Corint, București, 2015, p. 14.

^[23] Statement of the President of the Security Council, no. S/PRST/2011/16, 3 August 2011. Available at: <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Golan%20Heights%20SPRST%202011%202011%202016.pdf> (last accessed on 15 April 2016).

^[24] Arab League Council Resolution 7438 [Plan of Action], 2 November 2011. Available at:

http://www.lcil.cam.ac.uk/sites/default/files/LCIL/documents/arabspring/syria/Syria_33_AL_Council_Resolution_7438.pdf (last accessed on 15 April 2016).

^[25] Human Rights Council report of the independent international commission of inquiry on the Syrian Arab Republic, no. A/HRC/S-17/2/Add.1, p. 8, para. 28. Available at:

http://www.ohchr.org/Documents/Countries/SY/A.HRC.S-17.2.Add.1_en.pdf (last accessed on 15 April 2016).

suspended and the observers leave the country due to the increased level of violence that spreads throughout Syria. On April 21, 2012 the UN Security Council adopts the 2042 Resolution, authorizing the UNSMIS (United Nations Supervision Mission in the Syrian Arab Republic)²⁶. In June 2012, the mission is suspended due to the intensified violence.

As a consequence of the spread and the intensification of violence, the number of refugees and internally displaced persons is growing from one month to the other. In June, 2011 Turkey reports on more than 4,000^[27] Syrian refugees crossing its border in order to seek shelter from the violence of Syrian governmental forces. In August 2012, the estimated number of internally displaced persons is approximately 1.5 million and more than 100,000 refugees cross borders towards Turkey, Lebanon, Jordan and Iraq. Six months later the updated numbers are two million internally displaced Syrians and other 670,000 refugees^[28].

4.1 The hostile armed organizations. In the period between March and June 2011 some members of the Syrian armed and security forces are starting to openly manifest their disapproval towards the lethal tactics employed by the governmental forces and they commit desertion. In June 2011, these deserters announce the constitution of the Free Syrian Army (FSA). More and more members of the armed forces are deserting, they are joining the FSA, alongside civilians, with the intention to fight governmental forces, many times constituting *ad-hoc* armed groups. The months following its formation, the group, together with other, adjacent ones, assumes responsibility for the attacks against governmental forces^[29]. There haven't been trusted sources of information concerning the size or the structure of these groups, or their capacity to carry out coordinated military actions. It is possible that these groups have acted within a limited command structure in certain geographical areas but there is little evidence that such a structure, organized according to military rules, exists. Furthermore, there is no solid evidence that demonstrates that civilian militias (called *Shabbeeha*) have received orders from FSA leaders on the territory of the Syrian state or outside it.

The founders of FSA, including the leader of the group – colonel Riad al-Assad – have continued to act on the territory of Turkey where they established their headquarters after their desertion. Their role has been limited in what pertains to the coordination of the various armed groups on the territory of Syria. Yet, the leaders have had no role whatsoever in the decision-making process. With regards to the observance of the laws of armed conflict, the FSA leaders from Turkey declare that the deserters taking positions of leadership within the FSA in Syria issued their own rules of engagement relying on the training that soldiers have received within the Syrian armed forces. Nevertheless, FSA requests support in order to formulate new rules of engagement, congruent with the norms of international humanitarian laws^[30].

^[26] United Nations Security Council Resolution S/RES/2042/2012 available at: <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Syria%20SRES%202042.pdf> (last accessed on 15 April 2016).

^[27] *Syrian Army 'cracking' amid crackdown*, Al Jazeera, 11 June 2011. Available at: <http://www.aljazeera.com/indepth/features/2011/06/201161118126791811.html> (last accessed on 15 April 2016)

^[28] Data available on United Nations High Commissioner for Refugees official site. Available at: <http://data.unhcr.org/syrianrefugees/regional.php> (last accessed on 15 April 2016).

^[29] Human Rights Watch report: *By all means necessary – Individual and Command Responsibility for Crimes against Humanity in Syria*, December 2011, p. 3. Available at: https://www.hrw.org/sites/default/files/reports/syria1211webwcover_0.pdf (last accessed on 15 April 2016).

^[30] Human Rights Council report of the independent international commission of inquiry on the Syrian Arab Republic, no. A/HRC/19/69, p. 20, para. 107. Available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-69_en.pdf (last accessed on 15 April 2016).

It seems that in January 2012 there isn't a formal command and control structure between FSA leaders and the various armed groups that claim to be subordinated to FSA. Moreover, there is little coordination among armed groups acting on Syrian territory^[31], which doesn't necessarily entail that the groups are inefficient. For instance, towards the end of 2011 the governmental forces are forced to temporarily withdraw from Rif, Dimashqm, Idlib and Homs because of the counteroffensive executed by the local militias^[32]. In March 2012, FSA took measures to improve its command and control structure. The Joint Military Command of the Syrian Revolution is established with the aim of unifying and organizing all the armed groups, and, also, to coordinate and reconcile the military goals with the political ones. In certain areas of Syria, the FSA founds *military councils* which claim to be the leaders of the military groups acting in those areas, assuming responsibility for operational decisions.

Certainly not all armed groups operating in Syria are organized. More than that, these groups are very different in terms of capability, organization or the tactics they use. Some groups are relatively small, operating on a local level, constituted by local deserters fighting alongside a few civilians. These groups avoid direct confrontation with governmental forces^[33].

During this period the anti-governmental armed groups are intensifying their actions, getting involved into conflicts with governmental forces on several fronts, simultaneously. The offensive action of the rebels at Idlib, Hama, and Damask demonstrates the capacity of the groups to launch into coordinated attacks over governmental force positions and engage into direct conflict with them^[34].

Until the spring of 2012 the armed groups benefit from an improvement of their weapons, partially obtained from the attacks on governmental force posts (rocket-propelled grenades, mortars and anti-tank missiles). A significant amount of weapons reach the rebels from outside the borders of Syria, Jordan and Lebanon, more exactly. Further plausible evidence reveals that Turkey, Qatar and Saudi Arabia provide weapons to insurgent groups, even if such allegations have been denied by them. It is unclear whether these states are merely used for transit by smugglers or they deliver the equipment themselves. At the same time, there is convincing evidence that Saudi Arabia and Qatar have been paying FSA fighters' salaries since 2012^[35].

Despite the dynamic tactical situation, until the spring of 2012, the FSA controls few territories. The rural region, north of Aleppo until the border with Turkey, is held by the rebels after the retreat of the governmental forces. On the other hand, the governmental forces hold authority over Aleppo. The FSA maintains effective control over the rural regions around Homs, Dar'a, Idlib and Hama. Until the middle of 2012 the governmental forces withdraw from the north-east of Syria as well. Still, in March 2013 the forces of the al-Assad regime wield authority over the coastal regions, the area of Tartus, Hamah, the center of Damask, the territories near the Lebanese border and the area around As-Suwayda.

^[31] *Idem* 30, p. 2, para. 108.

^[32] *Idem* 30, pp. 7-8, paras 19-20.

^[33] Human Rights Watch report of the independent international commission of inquiry on the Syrian Arab Republic, no. A/HRC/21/50, Annex III, p. 61, paras 9-10. Available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-50_en.pdf (last accessed on 15 April 2016).

^[34] Joseph Holliday: *Syria's Maturing Insurgency*, Middle East Security Report 5, Institute for the Study of War, Washington, 2012, p. 19. Available on: http://www.understandingwar.org/sites/default/files/Syrias_MaturingInsurgency_21June2012.pdf (last accessed on 15 April 2016).

^[35] *Qatar bankrolls Syrian revolt with cash and arms*, Financial Times, 16 May 2013. Available at: <http://www.ft.com/intl/cms/s/0/86e3f28e-be3a-11e2-bb35-00144feab7de.html#axzz45tb8Y2vD> (last accessed on 15 April 2016).

4.2 Indication of an armed conflict. Towards the end of the spring and the beginning of the summer, in 2011, violence escalated to such a level that it is justified to claim that the threshold we have referred to earlier has been reached and that Syria is the site of an armed conflict. The evidence in support of this statement includes the types of weapons used against the protesters (tanks and real ammunition), the facts that the government deployed armed forces in order to maintain control and that it used methods employed in military operations against protesters (bombing the areas inhabited by those who opposed the al-Assad regime). The great number of armed forces deployed into the hot areas of Syria, with the purpose of quenching the protests, indicates the government's belief that these manifestations could not be contained by regular public order actions. The increased number of armed confrontations between governmental and rebel forces have led to a rise of the number of victims and the destruction of private property, indicating a state of generalized hostilities. Also, the growing numbers of those seeking shelter outside the borders of Syria indicates the wide geographical spread of the conflict, as well as the increased frequency of the hostilities. Nevertheless, an armed conflict to be declared non-international is not only conditioned by the intensity of the violence but also by the identification of the organized armed groups that oppose the governmental forces.

Even if FSA founders named a spokesperson, as early as March 2011, they issued political declarations and press releases and established their headquarters in Turkey, there was little evidence to suggest that the leaders were issuing orders to armed groups on Syrian territory, even if the latter were declaring their affiliation to FSA. Yet, in March 2012, FSA fighters established a command structure in Syria which enabled the increasingly frequent cooperation among the different armed groups, and their capacity to conduct military actions against governmental forces. Starting with March 2012, the FSA was able to recruit and train new members. It is also true that the FSA was regularly supplied with weapons from abroad.

The analysis of all these factors demonstrates that starting with March 2012, at any rate, there was a non-international armed conflict in Syria between governmental forces and organized armed forces that were acting under the FSA umbrella, which calls for the application of the laws of armed conflict.

It is difficult to establish if it was *only* the rules of the non-international armed conflict that were applicable in Syria, since such an assessment requires details on the level of implication by other states. There is sufficient evidence to establish that some state supported the Assad regime while others endorsed the FSA.

The Russian Federation continues to sell weapons to the Syrian government and to fulfill its contract agreements on military equipment.

Iran offers support through military equipment and by providing counseling to the Syrian government. At the same time, it backs pro-Assad groups of militia^[36].

On the other hand, since the beginning of the violence, Turkey has supported the groups that were opposing governmental forces. It has provided shelter to the FSA leaders, as early as July 2011. FSA leaders have had a considerable freedom of movement between Turkey and Syria. Moreover, Turkey has accepted the highest number Syrian refugees.

Similarly to Turkey, Jordan supports rebel groups, allowing free movement of FSA leaders on its territory.

As already mentioned above, there is a high probability that Saudi Arabia and Qatar may also be financially supporting the FSA.

^[36] Will Fulton, Joseph Holliday, Sam Wyer: *Iranian Strategy in Syria*, Institute for the Study of War, Washington, 2013. Available at: <http://www.understandingwar.org/sites/default/files/IranianStrategyinSyria-1MAY.pdf> (last accessed on 17 April 2016).

The European Union and the United States of America are also providing the FSA non-lethal military support and technical assistance, including bulletproof vests, night time vision equipment and communication equipment^[37].

On November 13, 2012 France admitted that the oppositional Syrian National Coalition is the only group that is legally representing the Syrian people. Within the period of a few weeks this position of acceptance was assumed by Turkey, Great Britain, The United States of America, Italy, Spain, Denmark, Norway, as well as the Council of the European Union^[38].

CONCLUSIONS

Despite the political and material support received by the two parties of the conflict in Syria, it is my conclusion that, for the moment, the non-international nature should be maintained since there is no evidence to suggest that any of the anti-Assad groups should be totally controlled by another state. The level and nature of foreign intrusion could constitute violations of the international law, nevertheless, this does not modify, as of now, the nature of the conflict. Syria has not signed the 1977 Additional Protocol II and, consequently, the non-international armed conflict falls under the scope of authority of Common article 3 of the 1949 Geneva Conventions, referring to the observance of the fundamental human rights included into the UN Charter as well as the customary international law.

REFERENCES

- [1] Fulton, Will, Holliday, Joseph, Wyer, Sam, *Iranian Strategy in Syria*, Institute for the Study of War, Washington, 2013. Available at <http://www.understandingwar.org/sites/default/files/IranianStrategyinSyria-IMAY.pdf>, accessed on 17 April 2016;
- [2] Holliday, Joseph, *Syria's Maturing Insurgency*, Middle East Security Report 5, Institute for the Study of War, Washington, 2012. Available at http://www.understandingwar.org/sites/default/files/Syrias_Maturing_Insurgency_21June2012.pdf, accessed on 15 April 2016;
- [3] Pichon, Frédéric, *Siria. De ce s-a înșelat Occidentul*. Trad. Simona Brânzaru, Editura Corint, București, 2015;
- [4] Pictet, Jean *et al.*, *Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field: Commentary*, International Committee of the Red Cross, Geneva, 1952;
- [5] *** International Committee of the Red Cross. *The four Geneva Conventions of 1949*. Available at <https://www.icrc.org/en/document/geneva-conventions-1949-additional-protocols>, accessed on 27 April 2016;
- [6] *** International Committee of the Red Cross. *The Additional Protocols I and II of 1977 to the four Geneva Conventions of 1949*. Available at <https://www.icrc.org/en/document/geneva-conventions-1949-additional-protocols>, accessed on 27 April 2016;
- [7] *** International Committee of the Red Cross. *Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land*. Hague, 18 October 1907. Available at <https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=01D426B0086089BEC12563CD00516887>, accessed on 13 April 2016;
- [8] *** International Criminal Tribunal for the former Yugoslavia (ICTY). *Prosecutor v. Tadić*, Case no. IT-94-1, Appeals Chamber Judgment, 15 July 1999. Available at <http://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf>, accessed on 13 April 2016;

^[37] *EU paves way for the Syrian opposition aid*, BBC news, 18 February 2013. Available at: <http://www.bbc.com/news/world-middle-east-21500837> (last accessed on 17 April 2016). *US government assistance to Syria*, US Department of State Fact Sheet, Office of the Spokesperson, Washington, 7 September 2013. Available at: <http://www.state.gov/r/pa/prs/ps/2013/09/213927.htm> (last accessed on 17 April 2016).

^[38] Council of the European Union, document no. 16392/12, 19 November 2012. Available at: <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2016392%202012%20INIT> (last accessed on 17 April 2016).

- [9] *** International Criminal Tribunal for the former Yugoslavia (ICTY). *Prosecutor v. Blaškić*, Case no. IT-95-14, Trial Judgment, 3 March 2000. Available at <http://www.icty.org/x/cases/blaskic/tjug/en/blatj000303e.pdf>, accessed on 13 April 2016;
- [10] *** International Criminal Tribunal for the former Yugoslavia (ICTY): *Prosecutor v. Boškoski*, Case no. IT-04-82, Trial Judgment, 10 July 2008. Available at http://www.icty.org/x/cases/boskoski_tarculovski/tjug/en/080710.pdf, accessed on 14 April 2016;
- [11] *** *United Nations Security Council Resolution 884/12*, November 1993. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N93/631/20/PDF/N9363120.pdf?OpenElement>, accessed on 14 April 2016;
- [12] *** *United Nations Security Council Resolution A/RES/62/243*, 2008. Available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/62/243, accessed on 14 April 2016;
- [13] *** *United Nations Security Council Resolution S/RES/2042*, 2012. Available at <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Syria%20SRES%202042.pdf>, accessed on 15 April 2016;
- [14] *** *Arab League Council Resolution 7438* (Plan of Action), 2 November 2011. Available at http://www.lcil.cam.ac.uk/sites/default/files/LCIL/documents/arabspring/syria/Syria_33_AL_Council_Resolution_7438.pdf, accessed on 15 April 2016;
- [15] *** United Nations Human Rights, Office of the High Commissioner, *Human Rights Council report of the independent international commission of inquiry on the Syrian Arab Republic*, no. A/HRC/S-17/2/Add.1. Available at http://www.ohchr.org/Documents/Countries/SY/A.HRC.S-17.2.Add.1_en.pdf, accessed on 15 April 2016;
- [16] *** Human Rights Watch, Report: *By all means necessary – Individual and Command Responsibility for Crimes against Humanity in Syria*, December 2011. Available at https://www.hrw.org/sites/default/files/reports/syria1211webwcover_0.pdf, accessed on 15 April 2016;
- [17] *** *Human Rights Council report of the independent international commission of inquiry on the Syrian Arab Republic*, no. A/HRC/19/69. Available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-69_en.pdf, accessed on 15 April 2016;
- [18] *** *Human Rights Watch report of the independent international commission of inquiry on the Syrian Arab Republic*, no. A/HRC/21/50, Annex III. Available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-50_en.pdf, accessed on 15 April 2016;
- [19] *** Council of the European Union, *Document no. 16392/12*, 19 November 2012. Available at <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2016392%202012%20INIT>, accessed on 17 April 2016.

SOCIO –
HUMANITIES