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Abstract

The Iranian Revolution of 1979 provides a pertinent case study for such analysis, considering its distinct revolutionary phases, well-documented events (due to attention of the international community at that time), and similarities to other internal conflicts. Thus, this paper will begin by providing an historical overview of the Iranian Revolution and analysing the status of the conflict. Focus will then shift to an examination of the status of civilians involved in the revolution and associated protections. The legality (at LOAC) of the prosecution and punishment of former government officials and counter-revolutionary civilians, following the establishment of the Republic of Iran, are also considered. Finally, gaps and ambiguities in LOAC are identified before proposing recommendations to promoting greater protections and obligations for those who participate in intrastate revolutions. The emergence of an unregulated, or at least under-regulated, form of violent armed conflict must be prevented to ensure the principles of LOAC are upheld.

Keywords

LOAC, counter-revolutionary civilians, armed conflict, Iran, International Humanitarian Law, uprising, Shah Reza Pahlavi, Tudeh party, protection

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LAWS OF ARMED CONFLICT AND CIVILIAN PARTICIPATION IN INTRA-STATE REVOLUTIONS: THE IRANIAN REVOLUTION 1979

HOLLI EDWARDS

INTRODUCTION

Violent intra-state revolutions involving civilians are a prevalent form of intra-state armed conflict during the modern era. Although the number of intra-state conflicts has surpassed inter-state international armed conflicts,¹ the Laws of Armed Conflict (LOAC or International Humanitarian Law) remains framed by inter-state conflicts of the past. Analysis of the law applicable to civilians involved in such conflicts, is therefore increasingly important to ensure LOAC develops to reflect contemporary armed conflicts. This paper reveals the legal position of civilians who participate in intra-state revolutions remains vague and confers insufficient rights and obligations. This paper further argues that urgent development of LOAC is required to provide greater protection for civilian revolutionaries and ensure compliance with LOAC principles. The Iranian Revolution of 1979 provides a pertinent case study for analysis due to its distinct revolutionary phases, well-documented events (due to attention of the international community at that time), and similarities to other internal conflicts. Thus, this paper will begin by providing an historical overview of the Iranian Revolution and analysing the status of the conflict. Focus will then shift to an examination of the status of civilians involved in the revolution and associated protections. The legality (at LOAC) of the prosecution and punishment of former government officials and counter-revolutionary civilians, following the establishment of the Republic of Iran, are also considered. Finally, gaps and ambiguities in LOAC are identified before proposing recommendations, which promote greater protections and obligations for those who participate in intrastate revolutions. The emergence of an unregulated, or at least under-regulated, form of violent armed conflict must be prevented to ensure the principles of LOAC are upheld.

¹ Emily Crawford, *Hot Topics 80: International Humanitarian Law* (2012), Legal Answers - Library Council of New South Wales < http://www.legalanswers.sl.nsw.gov.au/guides/intnl_humanitarian_law/>; Uppsala Universitet, *Department of Peace and Conflict Research – Program Overview* (2014) Uppsala Universitet <http://www.pcr.uu.se/research/ucdp/program_overview/>.

I HISTORICAL OVERVIEW OF THE IRANIAN REVOLUTION

The Iranian Revolution of 1979 witnessed a discontented Iranian population overthrow their monarch - Shah Reza Pahlavi - and his government, in a violent mass-uprising which established the Republic of Iran. Severe economic issues, political tensions, and foreign influences are identified as the main causes of dissatisfaction with the Shah's governance which culminated in the widespread protests of 1978-1979. The Iranian economy suffered from high inflation (reaching 40% two years prior to the Revolution²), stagnation of the agricultural industry, declining oil prices, and subsequent widespread unemployment. Historian, Fred Halliday, suggest these economic issues arose from a combination of external market pressures, mismanagement, over-urbanisation, and corruption of the Shah.³ Allegations of corruption also tainted the Shah's 'White Revolution'⁴ reforms of the 1960s.

Although the Shah's 'White Revolution' achieved some significant social, economic, health, and education reforms across Iran, it was highly criticised. The White Revolution greatly improved women's access to education, including allowing women to attend university.⁵ The White Revolution also: redistributed rural land-holdings of the upper-class (which encompassed Islamic clergymen) to poor peasants and farmers; established a public health system;⁶ and attempted to transition Iran's economy from an agrarian foundation to one centred on manufacturing and oil production.⁷ However, many viewed the sweeping reforms of the White Revolution as valueless because of beliefs it was either poorly implemented or imposed Western culture on Iran. In particular, some Islamic religious leaders were also concerned the reforms undermined Islamic principles by, for example, abolishing Sharia laws which required women to wear certain clothing,

² L P Elwell-Sutton, 'The Iranian Revolution' (1979) 34(3) *International Journal* 405, 422.

³ Fred Halliday, 'The Genesis of the Iranian Revolution' (1979) 1(4) *Third World Quarterly* 1, 1-16; John Farndon, *Everything You Need to Know: Iran* (Icon Books Ltd, 2006), 117.

⁴ V Petrossian, 'Dilemmas of the Iranian Revolution' (1980) 36(1) *The World Today: Royal Institute of International Affairs* 19, 25.

⁵ Hammed Shahidian, *Women in Iran: Gender Politics in the Islamic Republic* (Greenwood Publishing Group, 2002), 37; E Abrahamian, 'Structural Causes of the Iranian Revolution' [1980] 87 *Middle East Research and Information Project: Iran's Revolution* 2, 13; Fred Halliday, 'The Iranian Revolution and its Implications' (1987) 1 (166) *New left Review* 20, 33; John Farndon, *Everything You Need to Know: Iran* (Icon Books Ltd, 2006), 90.

⁶ John Farndon, above n 5.

⁷ Stephanie Cronin, *Reformers and Revolutionaries in Modern Iran: New Perspectives on the Iranian Left* (Routledge, 2013), 192.

such as hijabs or chadors, and the growing popularity of Western styles of dress and products, such as ‘Pepsi-Cola’.⁸

Ayatollah Khomeini, an Islamic cleric who became the face of the Revolution, also vehemently denounced the reform policies as ‘forced Westernisation’ of Iran. He also regarded the Shah as a mere imperialist puppet. This view was propounded by criticism of the Shah’s close relationship with America,⁹ particularly as the American CIA (Central Intelligence Agency) had assisted the Shah to return to power in 1953 by a coup d’état, against Prime Minister Mossedeq, to whom the Shah had lost power in 1951.¹⁰ Tensions were heightened by legislation which granted extraterritorial rights to American servicemen,¹¹ which Khomeini claimed:

reduce[d] the Iranian people to a level lower than that of an American dog, since if anyone in America ran over a dog they would be prosecuted for it, while if an American ran over an Iranian he would be immune.¹²

Khomeini was exiled from Iran during the 1960s for his anti-Shah views, however, he continued to expound criticisms and encourage Iranians to rise up in a Revolution. Audio-cassette tapes, which recorded Khomeini reciting speeches to inspire revolution, were smuggled into Iran and distributed throughout mosques and public gatherings.

The growing and unsatisfied desire of the middle-class and youths for greater involvement in the political process,¹³ further increased the population’s discontent. Criticism of the Shah’s government was firmly suppressed with the ‘jailing and torturing [of] some 20,000 political prisoners with the help of Iran’s security and intelligence organization, the SAVAK.’¹⁴ Nevertheless, rebel political groups such as the ‘People’s Fedayeen, People’s Mojahedin guerillas,

⁸ Cara Parks, *Once Upon a Time in Terhan* (15 February 2012) Foreign Policy.com <http://www.foreignpolicy.com/articles/2012/02/15/once_upon_a_time_in_tehran#8>.

⁹ Milton Viorst, ‘The Limits of the Revolution’ (1995) 74(6) *Council on Foreign Relations: Foreign Affairs* 4, 9.

¹⁰ Fred Halliday, ‘The Genesis of the Iranian Revolution’ (1979) 1(4) *Third World Quarterly* 1, 1-16.

¹¹ *Ibid.*

¹² John Farndon, *Everything You Need to Know: Iran* (Icon Books Ltd, 2006) 117.

¹³ Steve Inskeep, Interview with Kasra Najji (Radio Interview, 2009) 120.

¹⁴ Nandini Bhattacharya, *Iranian Revolution, 1979* [2009] *International Encyclopedia of Revolution and Protest* 1, 25.

and the Communist Tudeh Party, [emerged to play] a leading role in mobilizing urban subaltern revolts.”¹⁵

The discontent of the Iranian people finally culminated in the mass protests during late-1978 and 1979. Millions of civilians from all levels of society were involved: young students, intelligentsia, merchants (Bazaaris), Mullahs (Islamic clergy), labourers, professionals, and the unemployed.¹⁶ Military and air-force personnel also began to join the Revolution - defecting from the armed-forces of the government - as the revolution, and Ayatollah Khomeini's popularity, intensified.¹⁷ Initially civilians participated in peaceful protests, and government forces attempted to disperse the crowds with warnings and tear-gas. However, the Revolution became increasingly violent, particularly after the events of 'Black Friday' (8th September, 1978) during which between 500 and 4000 people were killed after Iranian security personnel opened fire on demonstrators.¹⁸ Revolutionaries engaged in larger-scale attacks against public officials and foreigners. Public places, such as restaurants, cinemas, banks, stores, and government offices were also targeted as revolutionaries sought to demonstrate their opposition towards the government and 'Western' culture.¹⁹ Revolutionaries also began distribution weapons throughout Tehran after breaking-into the machine-gun factory near Zhaleh Square on 21st February.²⁰ As the violence worsened the government declared martial law and many revolutionaries were arrested; however, the scale of the Revolution continued to grow.²¹ Clashes also occurred *between* protestors. For example, anti-Shah revolutionaries attacked government supporters at the Amjadiyeh Sports Stadium.

¹⁵ Ibid; H Firouz bakhch, 'A Structural-Demographic Approach to Revolution: The Case of the Iranian Revolution of 1979' (1988) 38(2) *Civilizations* 85, 104.

¹⁶ H Firouz bakhch, 'A Structural-Demographic Approach to Revolution: The Case of the Iranian Revolution of 1979' (1988) 38(2) *Civilizations* 85, 104; E Abrahamian, 'Structural Causes of the Iranian Revolution' [1980] 87 *Middle East Research and Information Project: Iran's Revolution* 2, 22; Milton Viorst, 'The Limits of the Revolution' (1995) 74(6) *Council on Foreign Relations: Foreign Affairs* 10, 40; Said Amir Arjomand, 'The Causes and Significance of the Iranian Revolution' (1985) 1(3) *Springer: State, Culture, and Society* 41, 60.

¹⁷ Fred Halliday, 'The Iranian Revolution and its Implications' (1987) 1 (166) *New left Review*; BBC World Service, *Part 1: Ayatollah Khomeini Returns* (May 2001, BBC) <http://www.bbc.com/persian/revolution/rev_01.shtml>.

¹⁸ K. Rasler, 'Concessions, Repressions, and Political Protest in the Iranian Revolution' (1996) 61(1) *American Sociological Review* 130, 133.

¹⁹ Fred Halliday, above n 17; Theda Skocpol 'Rentier State and Shi'a Islam in the Iranian Revolution' (1982) 11(3) *Springer: Theory and Society* 256, 261.

²⁰ BBC World Service, *The comments of The Joint Chief of Staff, General Qarabaghi* (May 2001, BBC) <<http://www.bbc.com/persian/revolution/qaraba.shtml>> [6].

²¹ John Farndon, *Everything You Need to Know: Iran* (Icon Books Ltd, 2006), 133.

Following Ayatollah Khomeini's return from exile in January 1979, he declared a new provisional government under Mehdi Bazargan. Finally, in mid-1979 a referendum was held which transformed Iran into the theocratic Republic of Iran.

II CLASSIFICATION OF THE CONFLICT

The LOAC protections and obligations relevant to an armed conflict, particularly those of the Geneva Conventions and Additional Protocols, depends upon the conflict's classification or status.

2.1 Armed Conflict – Applicability of LOAC

In order for the laws and customs of LOAC to be applicable, the situation must first satisfy the definition of an 'armed conflict'. According to *Prosecutor v Tadić*, an armed conflict requires the existence of 'protracted violence'.²² Although the Iranian Revolution seems quite rapid, occurring from late-1978 to mid-1979, a broader historical view indicates much earlier murmurings of the Revolution, perhaps as early as 1963, when the Shah began to implement his 'White Revolution' policy. The wider population's discontent certainly became evident during the mid-1970s, when small-scale protests resulted in violence between government forces and demonstrators, and rebel political groups – such as the Tudeh Party - attacked government officials. The Iranian Revolution therefore seems sufficiently protracted to constitute an armed conflict. Attention must then turn to determination of the conflict status of the Iranian Revolution.

2.2 International or Non-International Armed Conflict

The Iranian Revolution was a non-international armed conflict, despite foreign influences. A non-international armed conflict²³ (NIAC) encompasses all conflicts other than those referred to by Common Article 2 of the Geneva Conventions, or international armed conflicts (IAC), which occur between two or more states.²⁴ In 1962, the Commission of Experts clarified that "the existence of an armed conflict, within the meaning of article 3, cannot be denied if the hostile action, directed against the legal government, is of a collective character and consists of a minimum amount of

²² *Prosecutor v Tadić (Decision on Defense Motion for Interlocutory Appeal on Jurisdiction)* (International Criminal Tribunal for the Former Yugoslavia, Appeals Chamber, Case No IT-94-1-A, 2 October 1995), [70].

²³ Geneva Conventions opened for signature 12 August 1949, I-IV Geneva Conventions (entered into force 21 October 1950) art 3.

²⁴ *Ibid*, art 2.

organisation;”²⁵ this criteria is also reflected in Article 1 of Additional Protocol II (APII).²⁶ The mass uprising of the population against the Shah’s government in the Iranian Revolution, including violent acts on both sides, clearly satisfy this criteria and therefore the Revolution represents an Common Article 3 (CA3) NIAC. Although the groups of civilians involved in the Revolution were highly diverse, encompassing rebel groups - such as the Mojahedin²⁷ – and ordinary people, the organisation of the revolutionaries seems to meet the required minimum level of organisation. The mass demonstrations of civilians, whom displayed posters and signs while marching, indicates organisation of all revolutionaries within the diverse groups to act in a concerted effort to depose the Shah. Khomeini’s speeches, in which he directed revolutionaries – such as instructing civilians to disobey the government imposed curfews,²⁸ may further indicate the minimum level of organisation required by CA3 is satisfied.

Whilst argument may be made that American and British interference, by restoring the Shah to power in 1953 via a coup d’état, undermines the legality of the Shah’s government and thus the application of CA3, this is an erroneous view as the Shah’s government was recognised as the government of Iran by the international community throughout the Revolution. Also, despite the significant assistance provided by America and Britain to maintain the Shah’s power, the conflict of the Revolution remained between Iran and its people, rather than between two states (as required by Common Article 2 of the Geneva Conventions).²⁹ Similarly, Soviet influences on the Iranian communist party or Tudeh party,³⁰ do not appear to have been sufficient to alter the status of the conflict as neither the ‘overall control test’ of *Tadić* or ‘sending on behalf of’ test of *Nicaragua* are fulfilled, especially as the Tudeh party was only one of numerous groups involved in the Revolution. Thus, the limited protections and obligations of CA3 seem to apply.

²⁵ Lindsay Moir, *The Law of Internal Armed Conflict: Legal protection of Civilians During Internal Armed Conflict* (Cambridge University press, 2001), 33.

²⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) opened for signature 8 June 1977, II AP (entered into force 7 December 1978) art 1.

²⁷ H Firouzbakhch, ‘A Structural-Demographic Approach to Revolution: The Case of the Iranian Revolution of 1979’ (1988) 38(2) *Civilizations* 85-104.

²⁸ BBC World Service, *The comments of The Joint Chief of Staff, General Qarabaghi* (May 2001, BBC) <<http://www.bbc.com/persian/revolution/qaraba.shtml>> ; John Farndon, *Everything You Need to Know: Iran* (Icon Books Ltd 2006), 54.

²⁹ Geneva Conventions opened for signature 12 August 1949, I-IV Geneva Conventions (entered into force 21 October 1950), art 2.

³⁰ Shapour Ghasemi, *History of Iran: Pahlavi Dynasty* (2015) Iran Chamber Society <<http://www.iranchamber.com/history/pahlavi/pahlavi.php>>.

III PROTECTIONS AND OBLIGATIONS OF CIVILIANS INVOLVED IN REVOLUTIONS

3.1 Status of Civilians Involved in the Revolution

The protection afforded to an individual within a conflict depends upon his or her ‘battlefield’ status.³¹ As Boehland suggests, it is also important to consider that “an individual’s legal status in war has a number of important implications that go beyond targeting....such as those related to legal redress, safety, financial assistance for injuries or property damage, or even international sympathy.”³² Civilians enjoy a protected status, as recognised by customary international law and enshrined in the Geneva Conventions and Additional Protocols.³³ However, as highlighted by Article 13(3) of APII, such protection will not apply in cases where, and for such time, as the civilian take a direct part in hostilities.³⁴

3.2 Direct participation in hostilities

No formal definition of ‘taking a direct part in hostilities’ has yet been agreed upon at international law, however, case law provides some guidance. Case law indicates there are three main elements to ‘direct participation in hostilities’: a hostile act or acts against one of the parties to the conflict, a causal link between the act and the consequence, and a temporal element which considers the duration of the individual’s participation in hostilities. Firstly, what in fact constitutes a hostile act remains a highly contentious issue; as Wenger and Mason elucidate ‘the grey zone between hostile and non-hostile and the way in which it is measured and defined has great implications and will remain a highly political issue.’³⁵ The Interpretive Guidance document, published by the ICRC in

³¹ Solis, *The Law of Armed Conflict* (Cambridge University Press, 2010) 186-239.

³² Nicolette Boehland, ‘The people’s Perspectives: Civilian Involvement in Armed Conflict’ (Report, Center for Civilians in Conflict, 1 May 2015) 28.

³³ Geneva Conventions opened for signature 12 August 1949, I-IV Geneva Conventions (entered into force 21 October 1950); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) opened for signature 8 June 1977, II AP (entered into force 7 December 1978).

³⁴ Geneva Conventions opened for signature 12 August 1949, I-IV Geneva Conventions (entered into force 21 October 1950) art 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) opened for signature 8 June 1977, II AP (entered into force 7 December 1978) art 13(3).

³⁵ Andreas Wenger and Simon J A Mason, ‘The Civilianization of Armed Conflict: Trends and Implications’ (2008) 90(872) *International Review of the Red Cross* 850, 865.

2009, stated that the act/s must be specifically designed to adversely affect military operations/capacity of a party to the armed conflict or to cause death, injury or destruction.³⁶ Additionally, the act/s must be done in support of one party to the detriment of another.³⁷ For example, in the *Fuel Tankers* case, the German Federal Court held that civilians whom had collected fuel for private gain were not supporting the Taliban, and therefore not directly participating in hostilities.³⁸ Determining the nature of the large-scale strikes by oil workers, used by some to enhance pressure on the Shah and by others to seek better wages,³⁹ is difficult. Meanwhile, the Inter-American Commission on Human Rights found the civilians whom attacked the Argentine army base at La Tablada, in 1989, had taken a direct part in hostilities and therefore forfeited their protected status for the duration of their participation.⁴⁰ The civilian storming of the machine-gun factory near Zahleh Square and attacks on government officials, during the Iranian Revolution, would constitute a direct participation in hostilities. However, as the Supreme Court of Israel emphasised, ‘the “direct” character of the part taken should not be narrowed merely to the person committing the physical act of attack.’ Indeed, the Court indicated that individuals who incited or directed those whom conducted the hostile act/s would also be considered to have taken a direct part in hostilities. Therefore, Ayatollah Khomeini and others, who may be viewed as having incited violence⁴¹ in the Iranian Revolution, or those who merely assisted in organising the mass protests, could have lost their civilian protections as direct participants in hostilities. On the other hand, as demonstrated by a UN Sub-Commission on Human Rights resolution, adopted in 1985, civilians will not lose their protected status merely due to sympathising, accompanying, supplying food or living in areas controlled by insurgents.⁴² Distribution of revolutionary propaganda by Mullahs and others may not constitute direct participation.

³⁶ Emily Crawford, *The Treatment of Combatants and Insurgents Under the Law of Armed Conflict* (Oxford University Press, 2010), 90.

³⁷ ICRC, *Practice Relating to Rule 6. Civilians’ Loss of Protection from Attack* (2015) ICRC <https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule6>.

³⁸ *Fuel Tankers*, German Federal Court of Justice, Federal Prosecutor General (*Decision*), 16 April 2010 reported in (2010).

³⁹ Fred Halliday, ‘The Genesis of the Iranian Revolution’ (1979) 1(4) *Third World Quarterly* 1, 1-16.

⁴⁰ ICRC, *Practice Relating to Rule 6. Civilians’ Loss of Protection from Attack* (2015) ICRC <https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule6>.

⁴¹ BBC World Service, *The Speeches of Ayatollah Khomeini* (May 2001, BBC) <<http://www.bbc.com/persian/revolution/khomeini.shtml>> .

⁴² ICRC, *Practice Relating to Rule 6. Civilians’ Loss of Protection from Attack* (2015) ICRC <https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule6>.

Secondly, several courts including the Supreme Court of Israel⁴³ and the German Federal Court⁴⁴ have stated that a ‘nexus’ or causal link between the activities and an adverse military consequence is required.⁴⁵ In the 2010 *Fuel Tankers case*, the German Federal Court considered that such a link must be one of close proximity, in order to constitute a ‘direct’ participation in hostilities. Thirdly, the greater the duration of the individual’s participation in such hostile acts, the more likely he or she is to be stripped of their civilian status protections.⁴⁶ However, as the Israeli Supreme Court elucidated in the *Public Committee Against Torture case* ‘...one finds...“grey” cases, about which customary international law has not yet crystallized. There is thus no escaping examination of each and every case.’⁴⁷

Civilians whom take a direct part in hostilities will not only lose their protected status, but will generally not gain the status of a combatant either. Instead, civilians who participate in hostilities are often viewed as unlawful combatants. Emily Crawford and other eminent scholars often criticises such a categorisation as placing individuals outside the law,⁴⁸ a result which is both unacceptable and illogical. The judgment of the United States’ Supreme Court in *Hamdan* stated ‘it is doubtful that such a legal category exists. The term ‘unlawful combatant’ serves a descriptive function only.’⁴⁹ In any case, civilians who directly participate in hostilities are not always considered unlawful combatants, subject only to domestic criminal penalties.

⁴³ *Public Committee against Torture in Israel v. Government of Israel*, Case No. HCJ 769/02, (Supreme Court of Israel, 13 December 2006).

⁴⁴ *Fuel Tankers*, German Federal Court of Justice, Federal Prosecutor General (*Decision*), 16 April 2010 reported in (2010).

⁴⁵ *Public Committee against Torture in Israel v. Government of Israel*, Case No. HCJ 769/02, (Supreme Court of Israel, 13 December 2006).

⁴⁶ *Ibid.*

⁴⁷ *Ibid* [40].

⁴⁸ Emily Crawford, *The Treatment of Combatants and Insurgents Under the Law of Armed Conflict* (Oxford University Press, 2010) 6.

⁴⁹ *Ibid.*

3.3 Combatant Status: *Levee en masse* and Civil War

Civilians whom participate in *levee en masse* are lawful combatants and are therefore afforded the same protections as armed forces of the state.⁵⁰ Wallace and Reeves describe *levee en masse* as ‘occur[ing] when inhabitants of a non-occupied territory, without time to form into a regular armed unit, spontaneously take up arms to resist an invading force.’⁵¹ Due to their nature as internal uprisings against the government, rather than defending against an invading force, revolutions such as the Iranian Revolution do not satisfy the definition of *levee en masse*.

Article 1 of APII also recognises that certain organised armed groups which engage in conflict against their state will be afforded certain rights and obligations, as these armed groups form recognised parities to the conflict. According to Antonio Cassese, eminent scholar of international law, APII requires satisfaction of a high threshold: it must be a prolonged conflict of great intensity and the insurgents must be organised armed groups under responsible command and control over territory. It is a threshold, which Cassese claims, is only likely to be satisfied by conflict of such a scale as the Spanish Civil War or the Nigerian conflict.⁵²

Although civil war is usually prohibited at domestic law, as high treason,⁵³ those whom participate in such conflict may be afforded the protections of lawful combatant. de Vattel aptly defines civil war: ‘A civil war breaks the bands of society and government, or at least suspends their force and effect: it produces in the nation two independent parties, who consider each other as enemies, and acknowledge no common judge.’⁵⁴ de Vattel purports that civil war represents a situation wherein the conflict between the parties is of such a level as to constitute a conflict as if between separate nations.⁵⁵ While scholars have attempted to distinguish between civil wars and revolutions, as

⁵⁰ ICRC, *Practice Relating to Rule 6. Civilians’ Loss of Protection from Attack* (2015) ICRC <https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule6>.

⁵¹ David Wallace and Shane R. Reeves, ‘The Law of Armed Conflict’s “Wicked” Problem: Levée en Masse in Cyber Warfare’ (2013) 89 *International Law Studies – U.S. Naval War College* 30, 53.

⁵² Antonio Cassese, ‘The Status of Rebels under the 1977 Geneva protocol on Non-International Armed Conflicts’ (1981) 30(2) *The International Comparative Law Quarterly*.

⁵³ Erik Castrén, *Civil War* (Finnish Academy of Science and Letters, 1966).

⁵⁴ Emer de Vattel, *The Law of Nations, Or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, with Three Early Essays on the Origin and Nature of natural law and on Luxury* (Liberty Fund 2008 ed, 1797) [293].

⁵⁵ *Ibid* [295].

Castren suggests, no ‘clear dividing line’ has been drawn between the two forms of conflict.⁵⁶ This is highlighted by the fact ‘a [great] intensity of armed conflict, extended over a wider area, and headed by some sort of Government using organized and disciplined troops as distinctive features of revolution...’⁵⁷ The similar situational origins of civil wars and revolutions, due to widespread discontent amongst the population due to economic and political reasons, and a lack of peaceful changes,⁵⁸ further demonstrate the vague distinction between the two. Returning to the threshold required by APII, the Iranian Revolution does not appear to be sufficiently coherent in its organisation nor intense in its conflict to satisfy the threshold. Nevertheless, CA3 may still apply as the ‘provision would be valid...in insurrections, and in other internal disturbances in which it is not merely a question of riot, disorder or minor demonstrations, but where a warlike situation which the police forces are unable to quell has arisen.’⁵⁹

Whether civil war or revolution, if the individuals participating in the hostilities are recognised as belligerents, either by the opposing forces of the state or by another state, the ‘doctrine of belligerency’ affords them the protections of lawful combatants. However, it is important to consider that while lawful combatant status affords protections, such as immunity from prosecution for combatant activity and POW status if captured, lawful combatant status also carries the burden of being a ‘lawful target.’

3.4 Protections and Obligations

Common Article 3 of the Geneva Conventions and Additional Protocol II provide inadequate protections and obligations for civilians involved in revolutions. CA3 provides minimum protection of ‘humane treatment’, and only affords this to non-combatants, including those rendered *hors de combat*. The Article elaborates that ‘violence to life and person’, ‘torture’, ‘taking of hostage’, and ‘outrages upon personal dignity’ are prohibited.⁶⁰ CA3 also provides that proper judicial process before ‘the passing of sentences and carrying out of executions’ and the wounded and sick are to be cared for.⁶¹ Of those civilians involved in the Iranian Revolution, only those who were not direct participants in the conflict (as seen may be a difficult determination) or *hors de combat* would be

⁵⁶ Erik Castrén, *Civil War* (Finnish Academy of Science and Letters, 1966) 29.

⁵⁷ *Ibid.*

⁵⁸ *Ibid* 17.

⁵⁹ Erik Castren, *abov n* 56, 85.

⁶⁰ Geneva Conventions opened for signature 12 August 1949, I-IV Geneva Conventions (entered into force 21 October 1950) art 3.

⁶¹ *Ibid.*

afforded these limited protections. Meanwhile a wealth of protections are afforded to combatants in international conflicts, such as the 125 substantive articles provided by Geneva Convention III for the care and protection of those with POW (Prisoner of War) status.

No further protections for civilians whom participate in armed conflict are offered by APII, as it only provides rights for non-combatants. This seems somewhat paradoxical as Article 1 states that APII applies to conflicts in which certain ‘organised armed groups’ fight against their state, yet those whom constitute these armed groups are only afforded minimum protections and only if rendered *hors de combat*.⁶² While recognition of the armed groups as *belligerents* ‘bring[s] into force the major part of the laws and customs of war,’⁶³ and may therefore offer additional protections, achieving such recognition encounters many difficulties (*see page 17*). Thus, as the often cited ICTY’s (International Criminal Tribunal for the Former Yugoslavia) *Tadić* judgment explicates, ‘the distinction between interstate wars and civil wars is losing its value.’⁶⁴ Nevertheless, the distinction remains, and scarce rights are afforded to civilian revolutionaries.

3.5 Post-Revolution: Prosecution and Punishment of civilians

Following the establishment of the Republic of Iran, on 1 April 1979, many civilians whom had opposed or abstained from the Revolution were punished by the new government. Kasra Naji, a student demonstrator at the time recalls “a few months after the Revolution, they were executing about 100, 150, 160 people a day and they would announce and print their names in the afternoon papers.”⁶⁵ Former government officials, military officers, and counter-revolutionaries were the main targets of punishment.⁶⁶

Amnesty International’s *Law and Human Rights* report, published in 1980, lists the names of 438 people who were executed following the Revolution - mostly former government ministers, military

⁶² Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) opened for signature 8 June 1977, II AP (entered into force 7 December 1978) art 1.

⁶³ Francois Bugnion, ‘Jus ad Bellum, Jus in Bello and Non-International Armed Conflicts’ (2004) 6 *Yearbook of International Humanitarian Law* 18.

⁶⁴ *Prosecutor v Tadić (Decision on Defense Motion for Interlocutory Appeal on Jurisdiction)* (International Criminal Tribunal for the Former Yugoslavia, Appeals Chamber, Case No IT-94-1-A, 2 October 1995) 97.

⁶⁵ Steve Inskeep, Interview with Kasra Naji (Radio Interview, 2009).

⁶⁶ Iran Chamber Society, *History of Iran: Iran after the victory of 1979’s Revolution* (2015) Iran Chamber Society <http://www.iranchamber.com/history/islamic_revolution/revolution_and_iran_after1979_1.php> .

personnel, and police.⁶⁷ Such significant executions do not appear consistent with the recommendation by Article 6(5) of APII that ‘at the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict...’⁶⁸ The report by Amnesty International also claims many of those prosecuted and/or executed were ‘held without...[being] allowed to see a legal representative’ nor provided ‘adequate facilities for the preparation of the defence case.’⁶⁹ Several of the courts which were passing sentences were also not regularly constituted, but rather ‘revolutionary courts’, established for the purpose of prosecuting counter-revolutionaries.⁷⁰ This conduct may constitute a violation of CA3, which provides that minimum judicial processes and guarantees are to be upheld. Furthermore, Amnesty International suggested ‘psychological torture’ was conducted in the form of ‘mock executions.’⁷¹ This indicates further possible violations of CA3, particularly the prohibition of torture. The Rome Statute of the International Criminal Court (ICC), Article 8 establishes that such violations, where sufficiently serious, constitute war crimes.⁷²

⁶⁷ Amnesty International, ‘Law and Rights in the Islamic Republic of Iran’ (Report, Amnesty International, 1 February 1980) 136-170.

⁶⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) opened for signature 8 June 1977, II AP (entered into force 7 December 1978) art 6(5); M Cherif Bassiouni, ‘Criminal law: The New Wars and the Crisis of Compliance with the Law of Armed Conflict by Non-State Actors’ (2008) 98(3) *The Journal of Criminal Law & Criminology* 15, 20; Lindsay Moir, *The Law of Internal Armed Conflict: Legal protection of Civilians During Internal Armed Conflict* (Cambridge University press, 2001) 236.

⁶⁹ Amnesty International, ‘Law and Rights in the Islamic Republic of Iran’ (Report, Amnesty International, 1 February 1980) 7.

⁷⁰ Ibid.

⁷¹ Amnesty International, ‘Law and Rights in the Islamic Republic of Iran’ (Report, Amnesty International, 1 February 1980) 12.

⁷² *Rome Statute of the International Criminal Court*, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002) art 8(2)(c).

IV GAPS AND AMBIGUITIES

4.1 Difficulties of CA3 and APII Application

Application of CA3 and the provisions of APII to revolutions is difficult. Firstly, both CA3 and APII only afford protections to non-combatants, therefore excluding most of the civilians involved in revolutions. Secondly, these treaties remain unclear as to their ability to bind such non-state actors. Several scholars, including Lindsay Moir⁷³ and Sandesh Sivakumaran,⁷⁴ argue that because many of the principles of CA3 and APII have become customary law, and therefore no assentation is required to bind parties, states and non-state actors are equally bound. However, others suggest neither the protections nor obligations of these treaties bind non-state actors which have not themselves declared an intent to be bound.⁷⁵ In any case, the provisions of APII may not apply to the Iranian Revolution as Iran is not a signatory of APII.⁷⁶

4.2 Belligerency Status Issues

Belligerent status may offer revolutionaries protections, however, its application is at the discretion of states. Usually, the state in conflict with the armed group is reluctant to grant this status due to a variety of political and legal reasons, including concerns of enhancing legitimacy of the armed group. Scholars also identify reciprocity issues as a concern of both state and non-state actors. Each is wary of imposing on themselves greater obligations than would otherwise apply, or which they have the capacity to fulfil.⁷⁷

⁷³ Lindsay Moir, *The Law of Internal Armed Conflict: Legal protection of Civilians During Internal Armed Conflict* (Cambridge University press, 2001) 65.

⁷⁴ Sandesh Sivakumaran, 'Re-envisaging the International Law of Internal Armed Conflict' (2011) 22(1) *The European Journal of International Law* 176, 181.

⁷⁵ M. Cherif Bassiouni, 'Criminal law: The New Wars and the Crisis of Compliance with the Law of Armed Conflict by Non-State Actors' (2008) 98(3) *The Journal of Criminal Law & Criminology* 15, 22; Francois Bugnion, 'Jus ad Bellum, Jus in Bello and Non-International Armed Conflicts' (2004) 6 *Yearbook of International Humanitarian Law* 1, 97.

⁷⁶ ICRC, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977 (2015) ICRC <https://www.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=475>.

⁷⁷ Erik Castrén, *Civil War* (Finnish Academy of Science and Letters, 1966) 41; Lindsay Moir, *The Law of Internal Armed Conflict: Legal protection of Civilians During Internal Armed Conflict* (Cambridge University press, 2001) 309; M Cherif Bassiouni, 'Criminal law: The New Wars and the Crisis of

V RECOMMENDATIONS

LOAC must be revised in order to provide a sufficient legal framework for the rights and obligations of civilians whom participate in revolutions. While Sivakumaran suggests some of the gaps can be filled by customary international law and by drawing analogies with other types of conflicts, he and many other scholars emphasize the risks associated with failing to provide non-state actors with adequate protection under international law.⁷⁸ The risks of non-compliance with the fundamental principles of LOAC, such as protection of innocent civilians and care for POWs, the wounded, and the sick, is heightened as no inducement or encouragement to comply with such standards is offered to the non-state actors. The violence of the conflict may then descend into brutal chaos.

Further development of LOAC is required in order to avoid its principles being disregarded. Provisions additional to CA3 and APII should be created to provide those who directly participate in hostilities with more comprehensive rights and obligations, such as provision of POW status for those captured by enemy forces. Also, improved guidance as to what constitutes ‘direct participation in hostilities’ is necessary to ensure innocent civilians and those whom engage in combatant activity are afforded the rights appropriate to each category. Civilians whom engage in mass-scale revolutions should be recognised as a new form of combatant, subordinate to lawful combatants of the state, but nevertheless entitled to many of the same protections. Only in cases where the revolution reaches proportions similar to a civil war would combatant’s immunity be allowed for both the state and non-state forces. While providing greater protections for civilian revolutionaries, greater obligations should also apply, such as the requirement to uphold the principles of distinction, proportionality, military necessity, and prohibition of unnecessary suffering. Moreover, greater recognition that ‘armed groups are not monolithic entities’⁷⁹ – composition, organisation, and leadership, may vary within a revolutionary uprising, such as the Iranian Revolution – is required. Finally, although inherently difficult, attempts should be made to

Compliance with the Law of Armed Conflict by Non-State Actors’ (2008) 98(3) *The Journal of Criminal Law & Criminology* 15, 28.

⁷⁸ Sandesh Sivakumaran, ‘Re-envisaging the International Law of Internal Armed Conflict’ (2011) 22(1) *The European Journal of International Law* 109, 290; Lindsay Moir, *The Law of Internal Armed Conflict: Legal protection of Civilians During Internal Armed Conflict* (Cambridge University press, 2001) 90; M Cherif Bassiouni, ‘Criminal law: The New Wars and the Crisis of Compliance with the Law of Armed Conflict by Non-State Actors’ (2008) 98(3) *The Journal of Criminal Law & Criminology* 15, 21.

⁷⁹ Sandesh Sivakumaran, ‘Re-envisaging the International Law of Internal Armed Conflict’ (2011) 22(1) *The European Journal of International Law* 256, 258.

improve the clarity and certainty of domestic punishment of revolutionaries, or counter-revolutionaries. LOAC currently allows for the ‘authority in power’ to prosecute and punish individuals after the conflict; this may enhance the intensity of the fighting as it produces the situation in which the victorious party determines the criminality of the acts and guilt of the individuals once the conflict has ended.

Developing of LOAC remains a challenging task, however, as Emily Crawford explains:

States will adopt new practices when it serves their manifold political, social, and cultural interests. The onus thus rests on academics, practitioners, State leaders, and all other interested parties to advocate for such new practices to be more humane, more equitable, and more inclusive.⁸⁰

Therefore, analysis of whether LOAC adequately reflects the current forms of conflict, which continue to evolve, must continue to ensure the principles of LOAC and humanity are respected.

VI CONCLUSION

The legal protections and obligations of civilians involved in intra-state revolutions, such as the Iranian Revolution, are inadequate. Examination of the status of revolutionary civilians revealed difficulties in applying the protections offered by Geneva Convention Common Article 3 and Additional Protocol II. Additionally, analysis of the legality of prosecution and punishment of civilians after the Revolution illustrated further issues and possible violations of LOAC. Identification of numerous gaps and ambiguities regarding LOAC’s application to intra-state revolutions demonstrated that urgent development of LOAC is required to ensure its principles are upheld. As revolutions become increasingly common as a form of non-international armed conflict, the necessity for a greater legal framework under LOAC will grow.

⁸⁰ Emily Crawford, *The Treatment of Combatants and Insurgents Under the Law of Armed Conflict* (Oxford University Press, 2010) 169.