

**THE LEGAL STATUS OF HEZBOLLAH IN THE SYRIAN CONFLICT:
AN INTERNATIONAL HUMANITARIAN LAW PERSPECTIVE**

Mohamad Ghazi Janaby*

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I. INTRODUCTION

The ongoing Syrian Armed Conflict (Conflict) is one of the most complicated crises around the world due to its multifaceted nature in terms of the actors and the many legal and political issues involved. It is not just a simple armed conflict occurring between government forces and rebels; it divides the

* Mohamad Ghazi Janaby is a lecturer at the University of Babylon's College of Law in Iraq and holds a PhD in international law from the University of Aberdeen, UK.

countries into two groups, one supporting the government, and the other the rebels. Key controversial issues involved in the war are: the responsibility to protect civilians; humanitarian intervention; violations of human rights and of international humanitarian law; and the use of chemical weapons. The involvement of foreign fighters in the Conflict is one of its distinguishing characteristics. Hundreds of fighters across the world have engaged in this war. This Article explores the involvement of Hezbollah, a group of fighters based in Lebanon engaging in the Conflict. It studies Hezbollah's legal status as it fights alongside the Syrian government, in the context of international humanitarian law.

Hezbollah's involvement in the Conflict also leads to debate about subjects such as its legality (*jus ad bellum*) and its sectarian consequences in Syria and Lebanon. This Article does not engage in such debates. Its main goal is to study this participation in the context of international humanitarian law, which is a body of rules aiming to restrict the methods and means of war used and to provide protection to those who do not or no longer participate in hostilities.

This Article argues that Hezbollah's participation does not change the nature of the Conflict because it is an intervention by an armed group supporting government forces. Two classifications of Hezbollah can be adopted based on the level of control exercised by Syria on it. It is either a *de facto* armed group of the Syrian forces, or an armed group fighting in a non-international armed conflict. This Article finds that the Syrian government may be held responsible for any potential violation committed by Hezbollah fighters during their participation in the Conflict. In addition, such violations may lead to these fighters being found criminally responsible.

In order to address these issues the research must shed light on the Syrian conflict and how it has developed into the current situation. In addition, to understand how Hezbollah participation in the Conflict is important in the context of international humanitarian law, the research studies Hezbollah's level of organization and operation.

A. The Syrian Conflict

The Syria uprising started in February 2011 with a peaceful protest influenced by the "Arab Spring," which is the force that overthrew governments in Tunisia, Libya, Egypt, and Yemen.¹ The demands of the protestors concerned issues such as rural poverty, corruption, freedom of expression, democratic rights, and the release of political prisoners.² In mid-March the same year governmental

¹ See MIDDLE EAST AUTHORITARIANISMS: GOVERNANCE, CONTESTATION, AND REGIME RESILIENCE IN SYRIA AND IRAN (Steven Heydemann & Reinoud Leenders eds., 2013).

² U.N. Human Rights Council, Rep. of the Independent International Commission of Inquiry on the Syrian Arab Republic, 27, U.N. Doc. A/HRC/S-17/2/Add.1 (Nov. 23,

forces detained and tortured a group of children in Dar'a after accusing them of painting anti-government graffiti on public buildings.³ According to the United Nations High Commissioner for Human Rights:

[T]he army and security forces launched a large-scale military operation, putting Dar'a under siege. Tanks were stationed around the city entrances as the armed forces erected checkpoints and banned movement into and out of the city. A curfew was imposed, electricity and water supplies were cut off, and all means of communication shut down.⁴

After the government's suppression of protests in Dar'a, many cities such as Al Ladhqiyyah, Baniyas, Damascus, Dayr az Zawr, Homs, Hama, and Idlib also protested against the government.⁵ The protestors' demands developed from normal demands such as improving the standard of life and combating corruption to regime change.⁶ Government forces met these demonstrations with violence. As a result, protest groups gradually developed into armed opposition. After numerous defections from military and other security forces, the Free Syrian Army was established.⁷

In response to the escalation of the situation in Syria, the United Nations (U.N.) Human Rights Council asked the U.N. High Commissioner for Human Rights to appoint a fact-finding mission to "investigate all alleged violations of international human rights law and to establish the facts and circumstances of such violations and of the crimes perpetrated, with a view to avoiding impunity and ensuring full accountability."⁸ The fact-finding mission reported serious violations of human rights in Syria since March 2011, and the Human Rights Council decided to dispatch an international commission of inquiry to investigate all alleged human rights violations.⁹

2011) [hereinafter 2011 Independent International Commission of Inquiry on the Syrian Arab Republic].

³ *Id.*

⁴ U.N. High Commissioner for Human Rights, *Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in the Syrian Arab Republic*, ¶ 36, U.N. Doc. A/HRC/18/53 (Sept. 15, 2011).

⁵ 2011 Independent International Commission of Inquiry on the Syrian Arab Republic, *supra* note 2, ¶ 27; *see also Syria Rocked by Massive Unrest*, CBC NEWS, Mar. 25, 2011, <http://www.cbc.ca/news/world/syria-rocked-by-massive-unrest-1.1101496>.

⁶ *See* Heydemann & Leenders, *supra* note 1.

⁷ 2011 Independent International Commission of Inquiry on the Syrian Arab Republic, *supra* note 2, ¶ 29.

⁸ Human Rights Council Res. S-16/1, U.N. Doc. A/HRC/RES/S-16/1 (May 4, 2011).

⁹ Rep. of the Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, ¶ 13, U.N. Doc. A/HRC/S-17/2 (Aug. 22, 2011).

In August 2011, the Security Council condemned “the widespread violations of human rights and the use of force against civilians by the Syrian authorities,” and called on both parties to observe restraint.¹⁰ In October 2011, China and the Russian Federation voted against a draft resolution calling on the U.N. to take enforcement measures against Syria according to Chapter VII of the U.N. Charter.¹¹ The escalation of the situation led to the imposition of sanctions on Syria by the E.U. and a number of non-E.U. states. The sanctions included boycotting Syrian oil and goods, the freezing of government assets, import bans on arms and related material, and travel bans for senior officials.¹²

In November 2011, Syria and the Arab League signed an agreement, which included a Plan of Action to end the violence in the country. The Arab League found that Syria failed to abide by the Plan of Action, and therefore the League imposed economic and political sanctions and suspended its activities within the organization.¹³ In December 2011, international observers entered Syria to supervise the implementation of the Plan of Action, but increasing levels of violence forced them to leave the country in January 2012.

The General Assembly condemned the “continued widespread and systematic gross violations of human rights and fundamental freedoms by the Syrian authorities and pro-government militias.”¹⁴ It endorsed the Arab League’s Plan of Action and established a joint special envoy to deal with a U.N.-Arab League initiative seeking a peaceful solution to the Syrian crisis.¹⁵ Kofi Annan, the former Secretary-General of the U.N., was appointed Joint Special Envoy and proposed six points to deal with the situation including: “cease troop movements towards, and end the use of heavy weapons in, population centres, and begin pullback of military concentrations in and around population centers.”¹⁶ After the Syrian government consented to the Envoy’s six-point proposal, the Security Council deployed the U.N. Supervision Mission in the Syrian Arab Republic (UNSMIS) to monitor the implementation of the plan.¹⁷

These efforts did not help to reduce the level of violence in the country. It was reported that some areas witnessed a significant increase in armed clashes and the violence intensified.¹⁸ Cities where opposition groups were active—such

¹⁰ S.C. Pres. Statement 2011/16 (Aug. 3, 2011).

¹¹ U.N. SCOR, 66th Sess., 6627th mtg., U.N. Doc. S/PV.6627 (Oct. 4, 2011).

¹² See Council Regulation 442/2011 of 9 May 2011, Concerning Restrictive Measures in View of the Situation in Syria, 2011 O.J. (L 121) (EU).

¹³ Arab League Council, Res. 7438 (Nov. 12, 2011).

¹⁴ G.A. Res. 66/253 (Aug. 7, 2012).

¹⁵ *Id.*

¹⁶ S.C. Pres. Statement 2012/6 (Mar. 21, 2012).

¹⁷ S.C. Res. 2043 (Apr. 21, 2012).

¹⁸ U.N. Human Rights Council, Rep. of the Independent International Commission of Inquiry on the Syrian Arab Republic, ¶ 21, U.N. Doc. A/HRC/21/50 (Aug. 16, 2012) [hereinafter 2012 Independent International Commission of Inquiry on the Syrian Arab Republic].

as Damascus, Aleppo, Homs, and Hama—were subject to military operations. This very high level of violence forced UNSMIS to suspend its activities in June 2012.¹⁹

The Syrian war has had considerable human rights consequences. In August 2014, the U.N. High Commissioner for Human Rights (OHCHR) estimated that 191,369 lives had been lost since the violence began in 2011.²⁰ More than 6.8 million Syrians, the majority internally displaced, need humanitarian assistance according to the U.N. High Commissioner for Refugees (UNHCR).²¹

B. Syrian Opposition

Although the Syrian opposition is not of interest in this paper it is important to shed light on those fighting against Hezbollah in the country. The situation in Syria encourages many local and foreign fighters to become involved in the war. In December 2013, it was estimated that around 1,000 armed groups and 100,000 fighters were involved in the conflict.²² Despite the large number of those fighting in opposition they have several internal problems, such as a lack of coherence and military discipline, poor command and control, fragmentation, and lack of strategically knowledgeable political leadership.²³ It is not possible to discuss all the anti-government military groups in this paper; however, I briefly mention some of them here:

- (1) *The Free Syrian Army (FSA)* formed in August 2011, mainly of members of the Syrian Armed Forces who had deserted to Turkey. The FSA has enjoyed the support of Western and Gulf countries encouragement of centralized rebel leadership. Turkey has more control of the leaders of the FSA, whose camps were located deeper in Turkey.²⁴

¹⁹ *Id.*

²⁰ Megan Price et al., *Updated Statistical Analysis of Documentation of Killings in the Syrian Arab Republic*, commissioned by the Office of the U.N. High Commissioner for Human Rights (Aug. 2014), http://www.ohchr.org/Documents/Countries/SY/HRDAG_UpdatedReportAug2014.pdf.

²¹ *The Refugee Crisis in Syria*, WORLD AFFAIRS COUNCIL OF PHILADELPHIA, http://www.tesd.net/cms/lib/PA01001259/Centricity/Domain/546/The_Refugee_Crisis_in_Syria_Briefing_Paper.pdf (last visited Mar. 9, 2016).

²² *Syria Crisis: Guide to Armed and Political Opposition*, BBC NEWS (Dec. 13, 2013), <http://www.bbc.co.uk/news/world-middle-east-24403003> [hereinafter *Syrian Crisis Guide*].

²³ Artur Malantowicz, *Civil War in Syria and the 'New Wars' Debate* 5:3 *Amsterdam Law Forum* 52, 58 (2013).

²⁴ ELIZABETH O'BAGY, THE INSTITUTE FOR THE STUDY OF WAR, MIDDLE EAST SECURITY REPORT 9: THE FREE SYRIAN ARMY (2013), <http://www.understandingwar.org/>

- (2) *The Supreme Military Council of the Free Syrian Army (SMC)* was created in an attempt to unify the rebels in Syria in December 2012, during a three-day conference in Antalya, Turkey, where around 260 rebel commanders selected 30 members of the council. The emergence of SMC was supported by the United States, the UK, France, the Gulf States, and Jordan.²⁵ Some military brigades such as the Ahrar Souriya Brigade (Free Men of Syria) operate under its wing.
- (3) *The Martyrs of Syria Brigade* formed in the Idlib province in 2011 with an estimated membership of around 7,000. The focus of its operations is northwest Syria.²⁶
- (4) *The Northern Storm Brigade (NSB)* is an Islamist FSA unit formed in 2011 to control the Syrian-Turkish boundary; it operates in the north of Syria.
- (5) *The Islamic Front* is an alliance formed from seven Islamist groups—HarakatAhrar al-Sham al-Islamiyya, Jaysh al-Islam, Suqour al-Sham, Liwa al-Tawhid, Liwa al-Haqq, Ansar al-Sham, and the Kurdish Islamic Front—in November 2013. The main purpose of the Islamic Front, consisting of around 45,000 fighters, is to create an Islamic state.²⁷ However, the Front objected to the announcement of an Islamic caliphate or state by an al-Qaeda offshoot in June 2014, stating that “[a]ny announcement of a Caliphate or Emirate or government that is not chosen by the people of the Levant and not accepted by ‘Ahl Al-Hal waAlaqq’ (people of power and decision) it is a rejected announcement and belongs only to the people who made it.”²⁸
- (6) *Harakat Ahrar al-Sham al-Islamiyya* is a group that formed in late 2011 in the province of Idlib, with a following of between 10,000 and 20,000 fighters.²⁹
- (7) *The Syrian Islamic Liberation Front (SILF)* is an alliance

sites/default/files/The-Free-Syrian-Army-24MAR.pdf.

²⁵ *Id.* at 9.

²⁶ *Syrian Crisis Guide*, *supra* note 22.

²⁷ *Id.*

²⁸ Islamic Front: The Political Bureau, JUSTPASTE.IT (July 23, 2014), <http://justpaste.it/gcf8> (last visited Aug. 21, 2014); *see also* Thomas Joscelyn, *Islamic Front Rejects Rival's Caliphate, as well as Proposed Emirate in Syria*, THE LONG WAR JOURNAL (July 23, 2014), http://www.longwarjournal.org/archives/2014/07/islamic_front_reject.php.

²⁹ *Guide to the Syrian Rebels*, BBC (Dec. 13, 2013), <http://www.bbc.com/news/world-middle-east-24403003>.

formed by around 20 rebel groups in September 2012. The most important of these groups are Liwa al-Tawhid and Suqour al-Sham, which declared that they had left SILF and joined the Islamic Front in November 2013.³⁰

- (8) *The Ahfad al-Rasoul Brigade* is one of the few rebel brigades that fight the Syrian government outside the umbrellas of the FSA, the Syrian Liberation Front, or the Syrian Islamic Front. It is described as the largest brigade fighting Syrian armed forces, with about 15,000 fighters.³¹
- (9) *The Al-Nusra Front, or Jabhat al-Nusra* is a branch of al-Qaeda in Syria. It is believed that it formed in mid-2011; however, it declared its existence in January 2012. The Islamic State of Iraq helped to create this militant group. The number of its fighters is estimated at 5,000 to 7,000, operating in 11 of Syria's 14 provinces.³² The Al-Nusra Front is considered one of the most extreme military groups in Syria.³³ Although its main aim is to establish a Sharia Islamic state, its leader Abu Mohammed al-Julani rejected an opportunity to merge the group with the al-Qaeda Islamic State of Iraq (ISI) and declared his allegiance to al-Qaeda's overall leader, Ayman al-Zawahiri.³⁴ The U.N. Security Council lists the Front as a terrorist organization.³⁵
- (10) *The Islamic State of Iraq and Syria (ISIS) or Islamic State of Iraq and Levant (ISIL)* was formed in April 2013 as an Iraqi franchise of al-Qaeda.³⁶ Its leader, Abu Bakr al-Baghdadi, decided to expand the operation of ISIS to Syria in August 2013. ISIS succeeded in controlling Raqqa, Syria in March 2014, and Iraq's second biggest city,

³⁰ *Syrian Crisis Guide*, *supra* note 22.

³¹ *Id.*; Bill Roggio, *Qatar-funded Syrian Rebel Brigade Backs al-Qaeda Groups in Syria*, THE LONG WAR JOURNAL (July 26, 2013), http://www.longwarjournal.org/threat-matrix/archives/2013/07/qatar-funded_syrian_rebel_brig.php.

³² *Syrian Crisis Guide*, *supra* note 22.

³³ Ruth Sherlock, *Inside Jabhat al Nusra: The Most Extreme Wing of Syria's Struggle*, THE TELEGRAPH (Dec. 2, 2012), <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/9716545/Inside-Jabhat-al-Nusra-the-most-extreme-wing-of-Syrias-struggle.html>.

³⁴ *Syrian Crisis Guide*, *supra* note 22.

³⁵ Press Release, Security Council, Al-Qaida Sanctions Committee Amends Three Entries on Its Sanctions List, U.N. Press Release SC/11397 (May 14, 2014).

³⁶ Joel Gunter, *Iraq Crisis: What is the Islamic State?*, THE TELEGRAPH (Aug. 20, 2014), <http://www.telegraph.co.uk/news/worldnews/middleeast/iraq/10891387/Iraq-crisis-what-is-the-Islamic-State.html>.

Mosul, in June of the same year.³⁷ It is reported that large parts of Iraq and Syria are under the control of ISIS.³⁸ There is no clear number of ISIS fighters. According to the Soufan Group, between 27,000 and 31,000 people from around 86 disparate global States, especially western countries, have joined the war in Syria.³⁹ The huge progress of ISIS, especially in Iraq and Syria, has pushed the United States to create an international coalition of around 62 countries opposing ISIS and has started to launch airstrikes against ISIS in Iraq and Syria.⁴⁰

II. HEZBOLLAH

This part of the Article investigates various aspects of Hezbollah to shed light on its emergence, its political and social activities, and its military capacity.

A. The Emergence of Hezbollah

Hezbollah is a powerful Lebanese political, religious, and military organization. The English translation of *Hezbollah* is “the party of God.” Shia Muslim clerics formed Hezbollah in 1982 during Lebanon’s 15-year civil war (1975-1990) as a response to Israel’s occupation of southern Lebanon.⁴¹ Mohammed Baqr al-Sadr, a founder of the Al-Dawa party in Iraq, and Ruhollah Khomeini, a leader of the 1979 Islamic revolution in Iran, provided important

³⁷ *Id.*

³⁸ *Populations at Risk: Syria*, GLOB. CTR. FOR THE RESPONSIBILITY TO PROTECT (Feb. 15, 2016), <http://www.globalr2p.org/regions/syria>. It is believed that ISIS “has lost approximately 40% of the populated territory it once held in Iraq and 10-20% of the populated territory it had seized in Syria.” *Islamic State Group: Crisis in Seven Charts*, BBC NEWS (Mar. 30, 2016), <http://www.bbc.com/news/world-middle-east-27838034>.

³⁹ SOUFAN GROUP, FOREIGN FIGHTERS AN UPDATED ASSESSMENT OF THE FLOW OF FOREIGN FIGHTERS INTO SYRIA AND IRAQ, 4 (Dec. 2015), http://soufangroup.com/wp-content/uploads/2015/12/TSG_ForeignFightersUpdate3.pdf; Richard Barrett, *Foreign Fighters in Syria*, THE SOUFAN GROUP (June 2014), <http://soufangroup.com/foreign-fighters-in-syria/>.

⁴⁰ Julian E. Barnes & Jeffrey Sparshott, *Barack Obama Approves Airstrikes on Iraq, Airdrops Aid*, THE WALL STREET J. (Aug. 18, 2014, 7:30 PM), <http://online.wsj.com/articles/iraqi-militants-seize-christian-villages-1407404503>; Michael Pearson, *Anti-ISIS Coalition Grows, but that Doesn’t Mean Victory is Near*, CNN (Sept. 27, 2014, 20:53 GMT), <http://edition.cnn.com/2014/09/26/world/meast/isis-syria-iraq/>.

⁴¹ HALA JABER, HEZBOLLAH: BORN WITH A VENGEANCE 47 (1997); Jonathan Masters & Zachary Laub, *Hezbollah*, COUNCIL ON FOREIGN RELATIONS (Jan. 3, 2014), <http://www.cfr.org/lebanon/hezbollah-k-hizbollah-hizbullah/p9155>.

inspiration to Hezbollah founders.⁴² Iran's training and financial support has had a significant role in its emergence.⁴³ According to Hezbollah's manifesto, issued in 1985, its main ideology is to expel Israel and Western forces from Lebanon and to destroy Israel:

Our primary assumption in our fight against Israel states that the Zionist entity is aggressive from its inception, and built on lands wrested from their owners, at the expense of the rights of the Muslim people. Therefore our struggle will end only when this entity is obliterated. We recognize no treaty with it, no cease-fire, and no peace agreements, whether separate or consolidated.⁴⁴

Various tactics have been used to fulfill these aims, which have "ranged from conventional attacks against the Israeli army to asymmetric warfare, including car bombings, suicide attacks, and kidnappings of Israelis and other foreigners."⁴⁵ French and American peacekeeping forces were subject to party attacks between 1983 and 1984, which led to their departure from Lebanon⁴⁶ and led the United States and other countries such as Canada, Australia, and the Netherlands to classify Hezbollah as a terrorist group.⁴⁷ In July 2013, the European Union agreed to blacklist Hezbollah's armed wing after accusing it of committing terrorist attacks against Israeli citizens in Bulgaria and Cyprus.⁴⁸

A seven-member council called the *majlis al-shura* (Shura council) runs the Party.⁴⁹ When Hezbollah decided to participate in Lebanese politics, the organization made two important additions: an executive council and a politburo.⁵⁰ The Shura council oversees five sub-councils: the political assembly,

⁴² JABER, *supra* note 41 at 47, 68.

⁴³ Masters & Laub, *supra* note 41.

⁴⁴ *Id.* (quoting the Hezbollah Manifesto).

⁴⁵ BENEDETTA BERTI, ARMED POLITICAL ORGANIZATIONS: FROM CONFLICT TO INTEGRATION 34 (2013).

⁴⁶ *Id.*

⁴⁷ The United States accused Hezbollah of committing terrorist activities such as attacking the U.S. Embassy in Beirut (1983); attacking U.S. peacekeeping forces, kidnapping journalists, abducting the President of the American University of Beirut, and killing the CIA Bureau Chief of Beirut (1982-1991); hijacking TWA Flight 847 between Athens and Rome (1985); assassinating a member of the U.N. Interim Force in Lebanon (UNIFIL), who was a U.S. officer (1988); and attacking Jewish citizens in Argentina (1992, 1994). For more information see DOMINIQUE AVON, ANAIS-TRISSAKHATCHADOURIAN & JANE M. TODD, HEZBOLLAH: A HISTORY OF THE PARTY OF GOD 3 (2012).

⁴⁸ *EU Ministers Agree to Blacklist Hezbollah's Armed Wing*, BBC (July 22, 2013), <http://www.bbc.co.uk/news/world-middle-east-2339700>.

⁴⁹ Lara Deeb, *Hizballah: A Primer*, MIDDLE E. RES. AND INFO. PROJECT (July 31, 2006), <http://www.merip.org/mero/mero073106?>

⁵⁰ *Id.*

the jihad assembly, the parliamentary assembly, the executive assembly, and the judicial assembly.⁵¹ One of the most important tasks of the Shura council is to select the general secretary to command the Party. Since Israel's 1992 assassination of co-founder Abbas al-Musawi, Hassan Nasrallah has been the general secretary.⁵² After the withdrawal of Syrian troops from Lebanon, Hezbollah was seen as the most powerful military force in the country, and it saw itself as a resistance force for the entire region and not only Lebanon.⁵³ The variety of activities conducted by Hezbollah has led to it being described as a "state within a state."⁵⁴ Hezbollah is not only a military group, but is also a political and social organization.

B. Hezbollah as a Political Party

The 1926 Constitution, as amended, provides for the participation of the various religious communities in Lebanese politics.⁵⁵ The 1943 National Pact divided power between the main religious communities: the prime minister must be Sunni, the president a Maronite Christian, and the parliamentary speaker a Shi'ite.⁵⁶ This system was confirmed in the 1989 Taef Agreement, which brought an end to the civil war.⁵⁷

Hezbollah participated in Lebanon's national election for the first time in 1992 and won eight of the 128 parliamentary seats.⁵⁸ This participation represented a shift in the ideology of the Party from resisting Israel to being an important player in Lebanon's internal affairs.⁵⁹ It was also a clear indication of Hezbollah's desire to become a formidable political party and not just a regional militia group.⁶⁰

⁵¹ Masters & Laub, *supra* note 41.

⁵² *Id.*

⁵³ Catherine Bloom, *The Classification of Hezbollah in both International and Non-International Armed Conflicts*, 14 ANN. SURV. OF INT'L & COMP. L. 61, 65 (2010).

⁵⁴ Masters & Laub, *supra* note 41.

⁵⁵ THE LEBANESE CONSTITUTION, as amended, promulgated May 23, 1926, art. 22.

⁵⁶ The National Pact or *mithaq-al-watani* was agreed orally between Bechara al-Khuri, the Maronite Christian President, and Riad al-Solh, the Sunni Muslim Prime Minister to end the French mandate. It is believed that the National Pact did not refer explicitly to a provision concerning the division of power on a religious basis. Customary practices expanded the National Pact to include such provision. For more information, see Issam Saliba, *Lebanon: Constitutional Law and the Political Rights of Religious Communities*, LIBR. OF CONGRESS (Dec. 2010), <http://www.loc.gov/law/help/lebanon-constitutional-law.php#national>.

⁵⁷ *Id.*

⁵⁸ Masters & Laub, *supra* note 41.

⁵⁹ Deeb, *supra* note 49.

⁶⁰ Bloom, *supra* note 53, at 65.

After eight months of political crisis, the Doha agreement in 2008 was seen as an indication of the growth of Hezbollah's political strength.⁶¹ According to this agreement the consent of all major religious communities is a condition of any governmental decision.⁶² This gives Hezbollah the power to veto any decision taken by the government, regardless of its representation in parliament. In the 2009 national election, Hezbollah won ten parliamentary seats.⁶³ Currently, it has twelve seats in parliament and two ministers in the Cabinet.⁶⁴ Hezbollah does not want to be merely a military group fighting in the frontlines; it also wants to be a political party with a role in governing the country. Such a position may make Hezbollah an exceptional armed group, different from the traditional guerrilla groups of the Second World War.

C. Hezbollah as a Welfare Organization

Hezbollah has succeeded in shifting its reputation as a military group launching guerrilla activities to one as a charitable organization providing social and other public services in areas under its control and influence.⁶⁵ Its services are "offered in a professional atmosphere that would not be possible without careful planning and special attention to social and public service delivery systems."⁶⁶ Unlike the other Lebanese groups, Hezbollah does not rely on the government to fund its social activities. Iranian institutions called *bunyard* are the main financiers of Hezbollah.⁶⁷ To pay for its services the Party invests in construction, supermarkets, petrol stations, industry projects, etc., both within and outside Lebanon.⁶⁸ It operates especially in areas such as Dahiyeh, where it built hospitals to provide large-scale health services, runs many primary and secondary schools that teach the national curriculum,⁶⁹ and provides the major source of drinking water. "Five electrical power stations and networks were also installed which included four stabilizers of 100-160 kW and 25 generators of 250-500 kW capacity, along with 4,100 metres of high-voltage wires."⁷⁰ Al-Manar is Hezbollah's official television station.⁷¹ Hezbollah provides services that should

⁶¹ Masters & Laub, *supra* note 41.

⁶² Saliba, *supra* note 56.

⁶³ Masters & Laub, *supra* note 41.

⁶⁴ Samia Nakhoul, *Special Report: Hezbollah Gambles all in Syria*, REUTERS (Sept. 26, 2013, 7:00 AM), <http://www.reuters.com/article/2013/09/26/us-syria-hezbollah-special-report-idUSBRE98P0AI20130926>.

⁶⁵ JUDITH P. HARIK, *HEZBOLLAH: THE CHANGING FACE OF TERRORISM* 81 (2005).

⁶⁶ *Id.* at 81-82.

⁶⁷ *Id.* at 82.

⁶⁸ Nakhoul, *supra* note 64.

⁶⁹ HARIK, *supra* note 65, at 84.

⁷⁰ *Id.* at 85.

⁷¹ AL-MANAR, <http://www.almanar.com.lb/english/main.php> (last visited Mar. 12, 2014).

ordinarily be provided by the government, ranging from garbage collection to running hospitals and repairing schools.⁷² Thus, Hezbollah is seen as a “political movement and a social service provider as much as it is a militia that delivers the goods for its followers.”⁷³

D. Hezbollah’s Military Capability

It is clear that Hezbollah’s military capability has grown considerably in strength since it was founded in the 1980s. Its strike forces are estimated at around 7,000, with approximately 20,000 reservists.⁷⁴ It is believed to be equipped with various types of weapons ranging from Katyushas—truck-mounted multi-barrel rocket launchers—to longer-range missiles.⁷⁵ Most of these missiles are believed to be Iranian-manufactured systems, such as the Fajr-3 with a 45 kilometer range; the Fajr-5 with a 75 kilometer range; and the “Zelzal-2 which has a claimed range of 200-400km and can be fitted with a 600kg high-explosive warhead. Its solid fuel system means that it can be more easily transported and prepared for firing.”⁷⁶

U.S. officials have accused Hezbollah of smuggling a Syrian advanced guided-missile system into Lebanon.⁷⁷ Israel is concerned that Hezbollah has “acquired GPS-guided Syrian-manufactured missiles fitted with 1,100-pound warheads with ranges of at least 150 miles.”⁷⁸ It is also believed that the party has drones that can carry dozens of pounds of explosives.⁷⁹

III. THE INFLUENCE OF HEZBOLLAH’S INVOLVEMENT ON THE NATURE OF THE SYRIAN CONFLICT

Hezbollah’s participation in the Syrian conflict is seen as a foreign, armed group involved in an armed conflict occurring in another state. This participation raises the question of its influence on the nature of the Conflict. In

⁷² Henry Schuster, *Hezbollah’s Secret Weapon*, CNN (July, 26 2006, 12:57 AM), <http://edition.cnn.com/2006/WORLD/meast/07/24/schuster.hezbollah/index.html>.

⁷³ *Id.*

⁷⁴ Nakhoul, *supra* note 64.

⁷⁵ *Hezbollah’s Rocket Force*, BBC (July 18, 2006, 9:34 AM), http://news.bbc.co.uk/2/hi/middle_east/5187974.stm.

⁷⁶ *Id.*

⁷⁷ Adam Entous et al., *Hezbollah Upgrades Missile Threat to Israel*, THE WALL STREET JOURNAL (Jan. 2, 2014 7:03 PM), <http://online.wsj.com/news/articles/SB10001424052702304361604579290613920542386>.

⁷⁸ Nicholas Blanford, *Israel: Hezbollah is Now Stronger Than Any Arab Army*, THE CHRISTIAN SCIENCE MONITOR (June 9, 2014), <http://www.csmonitor.com/World/Middle-East/2014/0609/Israel-Hezbollah-is-now-stronger-than-any-Arab-army>.

⁷⁹ *Id.*

other words, if the Syrian conflict is a non-international armed conflict, does Hezbollah's military involvement shift it to an international armed conflict, or vice versa? To elaborate this legal issue it is necessary first to define the types of armed conflicts according to international humanitarian law, and then to determine the classification of the Syrian armed conflict.

A. Types of Armed Conflict

The branch of international law applicable to armed conflict is called international humanitarian law, otherwise known as the law of armed conflicts or the law of war. This law is defined as legal rules regulating the conduct of hostilities and protecting those who are not, or are no longer, participating in the hostilities (Geneva law), and restricts the means and methods of warfare (the Hague law).⁸⁰ International humanitarian law distinguishes between two types of armed conflict: international armed conflict and non-international armed conflict. Some also add internationalized armed conflict.

International armed conflict is recognized by hostilities conducted between two or more states. Common Article 2 of the Geneva Conventions 1949 defines international armed conflict as "all cases of declared war or any other armed conflict which may arise between two or more of the High Contracting Parties." The First Additional Protocol 1977 to the Geneva Conventions 1949 (AP I) added other situations to be described as international armed conflict despite their occurrence in the territory of a state party. These situations include "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination."⁸¹ A wide range of rules applies to international armed conflict, in particular the Geneva Conventions 1949 and AP I.

Non-international armed conflict is defined by Common Article 3 of the 1949 Geneva Conventions and their 1977 Second Additional Protocol (AP II) as

⁸⁰ International armed conflict is recognized by hostilities conducted between two or more states. Common Article 2 of the Geneva Conventions 1949 defines international armed conflict as "all cases of declared war or any other armed conflict which may arise between two or more of the High Contracting Parties." The First Additional Protocol 1977 to the Geneva Conventions 1949 (AP I) adds other situations to be described as international armed conflict despite their occurrence in the territory of a state party. These situations include "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination." A wide range of rules applies to international armed conflict, in particular the Geneva Conventions 1949 and AP I. *See generally* LESLIE C. GREEN, *THE CONTEMPORARY LAW OF ARMED CONFLICT* 327-32 (Melland Schill Stud. Int'l L. 2nd ed. 2000); A.P. V. ROGERS, *LAW ON THE BATTLEFIELD* (2nd ed. 2004).

⁸¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 1(4), June 8, 1977, 1125 U.N.T.S. 3 [hereinafter Additional Protocol I].

conflict that is not international armed conflict and “take[s] place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups.”⁸² The hostilities in the context of internal armed conflict occur either between state armed forces and armed groups, or between the armed groups themselves.⁸³ Some provisions are required to classify a conflict as non-international armed conflict; these can be categorized into two groups, concerning either the conflict or the armed groups participating in the hostilities. The first requires the armed conflict to occur in the territory of one of the 195 states that are party to the Geneva Conventions, a geographical provision that is not difficult to meet.⁸⁴ The other requirement of the first category relates to the intensity of the armed conflict. The situation should reach a level of violence that distinguishes it from other situations that are not governed by international humanitarian law, such as “internal disturbances and tensions, in the form of riots, isolated and sporadic acts of violence and other acts of a similar nature.”⁸⁵ Various standards can be taken into account to determine the intensity of violence, such as the use of military rather than police force to deal with violence, the duration of the conflict, and its victims, including the dead, the wounded, refugees, and displaced persons.⁸⁶

The second category deals with the armed groups. These groups should have a high level of organization to the extent that they can meet the rights and obligations of international humanitarian law applicable in internal armed

⁸² See Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), art. 3, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 [hereinafter Common Article 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) art. 1(1), Dec. 12, 1977, 1125 U.N.T.S. 609 [hereinafter Additional Protocol II].

⁸³ LINDSAY MOIR, *THE LAW OF INTERNAL ARMED CONFLICT* 30 (2002); ROGERS, *supra* note 80, at 215.

⁸⁴ *Annual Report*, 1 INT’L COMM. RED CROSS 610 (2013), <http://www.icrc.org/eng/assets/files/annual-report/current/icrc-annual-report-map-conven-a3.pdf>.

⁸⁵ Additional Protocol II, *supra* note 82, at art. 1(2); Sylvain Vite, *Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations*, 91 INT’L REV. RED CROSS 69, 81 (2009) (“The Rome Statute of the ICC distinguishes between two categories of crimes that occur during ‘armed conflicts not of an international character’: (a) serious violations of common Article 3, and (b) other serious violations of the laws and customs of war that are applicable in those situations. In both cases, the Statute indicates the lowest level of applicability of the relevant provisions by stipulating that they do 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.’”).

⁸⁶ Vite, *supra* note 85, at 76; Int’l Rev. Red Cross, Meeting Memorandum on Comm. Experts Stud. Question Aid Victims Internal Conflicts 3 (Oct. 25-30, 1962), reprinted in G. Abi-Saab, *Non-International Armed Conflicts*, in MARTINUS NIJHOFF, GENEVA, PARIS & DORDRECHT, INTERNATIONAL DIMENSIONS OF HUMANITARIAN LAW 217 (UNESCO/Henry Dunant Institute eds., 1988).

conflicts.⁸⁷ Such organizations can be measured as armed groups “under responsible command, exercis[ing] such control over a part of its territory as to enable them to carry out sustained and concerted military operations and . . . [implementing] this protocol.”⁸⁸ The International Criminal Tribunal for Former Yugoslavia (ICTY) adopted certain standards to establish the level of organization of the Kosovo Liberation Army (KLA) as an armed group: the structure of the KLA; its internal regulation; having a spokesperson; ability to issue orders; its political statements and communiques; ability to establish headquarters; conducting coordinated action; its military police and disciplinary rules; recruiting new members; military training; weapons distribution channels; having uniforms and military equipment; and participation in political negotiations.⁸⁹

Another type of armed conflict, internationalized armed conflict or mixed armed conflict, is defined as “a civil war characterized by the intervention of the armed forces of a foreign power.”⁹⁰ Internationalized armed conflict has the characteristics of both international and non-international armed conflicts.⁹¹ In the context of this type of armed conflict, fighting can be between armed forces of the territorial state and intervening state(s), between intervening state(s) and parties to an internal armed conflict, or between armed forces of both intervening and territorial states against armed groups.⁹² According to the ICTY Appeals Chamber:

It is indisputable that an armed conflict is international if it takes place between two or more States. In addition, in case of an internal armed conflict breaking out on the territory of a State, it may become international (or, depending upon the circumstances, be international in character alongside an internal armed conflict) if (i) another State intervenes in that conflict through its troops, or alternatively if (ii) some of the participants in the internal armed conflict act on behalf of that other State.⁹³

⁸⁷ MOIR, *supra* note 83.

⁸⁸ Additional Protocol II, *supra* note 82, art. 1(1).

⁸⁹ Prosecutor v. Limaj, Case No.IT-03-66-T, Judgement, ¶¶ 94-129 (Nov. 30, 2005), <http://www.icty.org/x/cases/limaj/tjug/en/lim-tj051130-e.pdf>; Louise Arimatsu & Mohbuba Choudhury, *The Legal Classification of the Armed Conflicts in Syria, Yemen and Libya* 4 (Chatam House: Royal Inst. Int’l Aff. 2014), http://www.chathamhouse.org/sites/files/chathamhouse/home/chatham/public_html/sites/default/files/20140300ClassificationConflictsArimatsuChoudhury1.pdf.

⁹⁰ Peter G. Gasser, *Internationalized Non-International Armed Conflicts: Case Studies of Afghanistan, Kampuchea, and Lebanon*, 33 AM. UNIV. L. REV. 145 (1983).

⁹¹ Vite, *supra* note 85, at 85.

⁹² *Id.*

⁹³ Prosecutor v. Tadić, Case No.IT-94-1-A, Judgement, ¶ 84 (July 15, 1999), <http://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf>; *See also* Prosecutor v. Dyilo, Case No.ICC-01/04-01/06, Decision on the Confirmation of Charges, ¶ 209 (Jan. 29, 2007),

Examples of internationalized armed conflicts are the intervention of NATO in the armed conflict between the Federal Republic of Yugoslavia (FRY) and the KLA in 1999, and the intervention of some African countries, such as Rwanda, Angola, Zimbabwe, and Uganda, in Congo's civil war in August 1998.⁹⁴

The rules of international armed conflict apply to armed conflict between the armed forces of states when the fighting occurs between intervening and territorial states, while the rules of non-international armed conflict apply to hostilities between the armed forces of states (intervening or territorial) and armed groups.⁹⁵

B. Classification of the Syrian Conflict

It is clear that one of the provisions established by Common Article 3 of the 1949 Geneva Conventions is applicable to the Syrian conflict. This provision states that to recognize an armed conflict as internal, it should occur in the territory of a state that is party to the Geneva Conventions.⁹⁶ The Syrian Arab Republic has been a party to the 1949 Geneva Conventions and their 1977 Additional Protocol I since November 1953 and November 1983, respectively.⁹⁷ However, two other elements established by Additional Protocol II should be tested to determine the classification of the Syrian conflict: the intensity of the conflict and the level of the parties' organization. The Independent International Commission of Inquiry on the Syrian Arab Republic (Commission of Inquiry) could not assert that these two provisions were fulfilled from the time of the escalation of the violence in Syria in March 2011 until the issue of its first report in November 2011. It states:

The commission was unable to verify the level of the intensity of combat between Syrian armed forces and other armed groups. Similarly, it has been unable to confirm the level of

<https://www.icc-cpi.int/iccdocs/doc/doc266175.PDF>.

⁹⁴ James G. Stewart, *Towards a Single Definition of Armed Conflict in International Humanitarian Law: A Critique of Internationalized Armed Conflict*, 85 INT'L REV. RED CROSS 313, 315 (2003).

⁹⁵ Kenneth Anderson, *Is the Israel-Hezbollah Conflict an International Armed Conflict?*, KENNETH ANDERSON'S LAW OF WAR AND JUST WAR THEORY (July 14, 2006, 9:52 PM), <http://kennethandersonlawofwar.blogspot.co.uk/2006/07/is-israel-hezbollah-conflict.html>.

⁹⁶ See Common Article 3, *supra* note 82.

⁹⁷ *Treaties, States Parties and Commentaries: Syrian Arab Republic*, INTERNATIONAL COMMITTEE OF THE RED CROSS, https://www.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelect=SY (last visited Mar. 12, 2016) [hereinafter ICRC].

organization of such armed groups as the Free Syrian Army. For the purposes of the present report, therefore, the commission will not apply international humanitarian law to the events in the Syrian Arab Republic since March 2011.⁹⁸

The uncertainty about the level of organization of the anti-government armed groups, especially the FSA, is the main reason why the Commission of Inquiry has not classified the situation in Syria as a non-international armed conflict. In its second report covering the period ending February 15, 2012, it decided that:

While the commission is gravely concerned that the violence in certain areas may have reached the requisite level of intensity, it was unable to verify that the Free Syrian Army (FSA), local groups identifying themselves as such or other anti-government armed groups had reached the necessary level of organization.⁹⁹

The FSA is the main organized military group, with other groups claiming affiliation to it. However, during the first months of the conflict it was difficult to identify its size, structure, and operational capability.¹⁰⁰ In March 2012, the FSA took some measures to avoid issues affecting the overall command and control structure. One such measure was establishing Local Military Councils in specific governorates such as Homs, Hama, Idlib, Dar'a, and Damascus, and also the joint command of the Syrian Revolution to organize and unify all armed groups, and coordinate military activities with political partners.¹⁰¹ Anti-government armed groups expanded their operations throughout the country and clashed with government forces at multiple fronts. They succeeded in controlling some areas such as Homs, Dar'a, Idlib and Hama. Their weapons varied from ammunition and small arms to mortars and anti-tank missiles.¹⁰² It was reported that such weapons were either looted during successful attacks on Syrian army positions, or supplied to them by western countries and others such as Qatar,

⁹⁸ 2011 Independent International Commission of Inquiry on the Syrian Arab Republic, *supra* note 2, ¶ 99.

⁹⁹ U.N. Human Rights Council, Rep. of the Independent International Commission of Inquiry on the Syrian Arab Republic, ¶ 13, U.N. Doc. A/HRC/19/69 (Feb. 22, 2012).

¹⁰⁰ 2011 Independent International Commission of Inquiry on the Syrian Arab Republic, *supra* note 2, ¶ 29.

¹⁰¹ 2012 Independent International Commission of Inquiry on the Syrian Arab Republic, *supra* note 18, Annex III, ¶ 9; *see* O'Bagy, *supra* note 24; Arimatsu & Choudhury, *supra* note 89, at 11.

¹⁰² 2012 Independent International Commission of Inquiry on the Syrian Arab Republic, *supra* note 18, Annex III, ¶¶ 13-14.

Saudi Arabi, Jordan, and Turkey. However, these allegations have been refuted.¹⁰³

By the beginning of 2012, many international organizations arrived at the conclusion that the Conflict is a non-international armed conflict. The Commission of Inquiry determined, in its third report for the period ending July 20, 2012, that the intensity and duration of the conflict combined with the increased organizational capabilities of anti-government armed groups now met the legal threshold of non-international armed conflict:¹⁰⁴

The commission took note that a non-international armed conflict developed in the Syrian Arab Republic during February 2012, which triggered the applicability of Common Article 3 of the Geneva Conventions as well as customary law relevant to non-international armed conflict.¹⁰⁵

The International Committee of the Red Cross (ICRC) concluded that “there is currently a non-international (internal) armed conflict occurring in Syria. That there are opposing government forces and a number of organized armed opposition groups operating in several parts of the country (including, but not limited to, Homs, Idlib and Hama).”¹⁰⁶ Human Rights Watch took the same position, although it decided that the non-international armed conflict had started in April 2012.¹⁰⁷

Consequently Hezbollah’s intervention in the Syrian conflict is a non-international armed conflict. The first issue in response to such an intervention is whether its influence on the type of the conflict leads to a change from internal to internationalized or mixed armed conflict. The internationalization of internal armed conflict is the only possible influence that the intervention of foreign powers can have on the Syrian conflict. To arrive at such a conclusion it is important to understand how international humanitarian law classifies Hezbollah: is it considered a state or a non-state actor? The 2006 conflict between Hezbollah and Israel is an important example that can help to determine the influence of Hezbollah’s intervention on the nature of the Syrian conflict.

¹⁰³ *Id.*; Roula Khalaf & Abigail F. Smith, *Qatar Bankrolls Syrian Revolt with Cash and Arms*, FINANCIAL TIMES (May 16, 2013), <http://www.ft.com/cms/s/0/86e3f28e-be3a-11e2-bb35-00144feab7de.html#axzz3CBT2YYdy>; Arimatsu & Choudhury, *supra* note 89.

¹⁰⁴ 2012 Independent International Commission of Inquiry on the Syrian Arab Republic, *supra* note 18, ¶ 12.

¹⁰⁵ *Id.* at 6.

¹⁰⁶ *Syria: ICRC and Syrian Arab Red Crescent Maintain Aid Effort Amid Increased Fighting*, ICRC (July 17, 2012), <http://www.icrc.org/eng/resources/documents/update/2012/syria-update-2012-07-17.htm>.

¹⁰⁷ *Syria: War Crimes in Idlib During Peace Negotiations*, HUMAN RIGHTS WATCH (May 2, 2012), <https://www.hrw.org/news/2012/05/02/syria-war-crimes-idlib-during-peace-negotiations>.

C. The 2006 Conflict Between Israel and Hezbollah

On July 12, 2006, Hezbollah captured two Israeli soldiers for use as bargaining chips in indirect negotiations for the release of the three Lebanese detainees.¹⁰⁸ In response to this incident, Israel launched aerial assaults on Lebanon's cities and infrastructure, the severity of which had not been seen since the 1982 invasion.¹⁰⁹ Over 5,000 Israeli air strikes covered various parts of Lebanon from land to sea, including Beirut Airport and major highways.¹¹⁰ The air strikes were accompanied by a naval blockade and a ground invasion, which were opposed by Hezbollah and fighters of other parties.¹¹¹ Hezbollah responded by sending around 4,000 rockets into northern Israel.¹¹² This heavy armed conflict between Israel and Hezbollah continued until August 14, 2006. Around 1,200 Lebanese and 157 Israelis were killed, and around 1,000,000 Lebanese and 100,000 Israelis were displaced.¹¹³ The 2006 conflict led to increased support for Hezbollah in Lebanon. A pro-Hezbollah protest march consisting of 800,000 supporters in Beirut, a city of roughly one million people, showed that the party is not only a military power, "but also a political force to be reckoned with."¹¹⁴

There is no doubt that the month-long hostilities between Israel and Hezbollah is an armed conflict in the context of international humanitarian law. However, the important issues here are the classification of Hezbollah in this conflict and the classification of this type of conflict.¹¹⁵

Determining the status of Hezbollah is a core element in specifying the type of conflict it engaged in with Israel. If Hezbollah is regarded as an agent of Lebanon the conflict should be classed as international. It would be regarded as non-international armed conflict if Hezbollah were considered an independent

¹⁰⁸ Deeb, *supra* note 49; Carsten Hoppe, *Who was Calling Whose Shots?: Hezbollah and Lebanon in the 2006 Armed Conflict with Israel*, 16 ITALIAN Y.B. OF INT'L L. 21 (2006).

¹⁰⁹ Deeb, *supra* note 49.

¹¹⁰ Bloom, *supra* note 53, at 63.

¹¹¹ Deeb, *supra* note 49.

¹¹² *Israel/Lebanon Under Fire: Hizbullah's Attacks On Northern Israel*, AMNESTY INTERNATIONAL, 4 (Sept. 13, 2006), <https://www.amnesty.org/en/documents/mde02/025/2006/en/>.

¹¹³ Bloom, *supra* note 53, at 63.

¹¹⁴ *Id.* at 67.

¹¹⁵ Hoppe, *supra* note 108, at 33; Andrew Yuile, *At the Fault-Lines of Armed Conflict: The 2006 Israel-Hezbollah Conflict and the Framework of International Humanitarian Law*, 16 AUSTRALIAN INT'L L.J. 189, (2009). The duration of hostilities would not be regarded as a crucial fact in such a situation. The Inter-American Commission on Human Rights in *Abella v. Argentina* found that there was an armed conflict despite the fighting lasting only thirty hours. See *Abella v. Argentina*, Case 11.137, Report N° 55/97, Inter-Am. C.H.R. OEA/Ser.L/V/II.95 Doc. 7 rev. at 271 (1997). For more information see Mary E O'Connell and Judith Gardam, Final Rep. on the Meaning of Armed Conflict in International Law, INT'L L. ASS'N (2010).

armed group.¹¹⁶ Three issues were addressed to classify the conflict between Israel and Hezbollah.¹¹⁷ The first regards Hezbollah as an agent of Lebanon. This view relies on the involvement of Hezbollah in Lebanese politics. This was the opinion of the U.N. Human Rights Council's Commission of Inquiry on Lebanon, which considered the conflict an international armed conflict to which "conventional and customary international humanitarian law and human rights law are applicable."¹¹⁸ It relies on, first, the fact that Hezbollah is a political party integrated with and participating in the constitutional organs of the state; second, its resistance to Israel's occupation of Lebanese territory, which infers a link to the government of Lebanon; and, third, Israel's direct hostilities against Lebanon, which reflect acts of war between two states.¹¹⁹ Thus, the conflict would be between a state and an agent of the state and should be described as an international armed conflict.

The second issue is that the relationship between Hezbollah and Lebanon is not like the relationship between a state and its agent. This opinion is based on the lack of Lebanese control over Hezbollah, since Hezbollah neither receives any financial or military support from Lebanon nor is under the command of its army. This would mean that the conflict is between a state and a cross-border armed group. Such a conflict should be classified as a non-international armed conflict, which is eligible for the application of Common Article 3 of the Geneva Conventions and customary international law.

The third issue distinguishes between the Israel-Hezbollah conflict and the Israel-Lebanon conflict by considering the latter as an international armed conflict and the former as a non-international armed conflict.¹²⁰ This reasoning seems more acceptable for two reasons. First, it does not regard Hezbollah as a "high contracting party" in the context of the 1949 Geneva Conventions.¹²¹ At the same time, it is not easy to classify Hezbollah as an agent of the state, since Lebanon does not have any control over it.¹²² Being an active participant in Lebanese politics does not mean that its fighters are part of the Lebanon's armed forces, or are under its command or control.¹²³ Thus, the conflict between Israel and Hezbollah was an internal armed conflict. Such classification is based on what is called "cross-border" non-international armed conflict, when an armed

¹¹⁶ Bloom, *supra* note 53, at 76.

¹¹⁷ Jelena Pejic, *The Protective Scope of Common Article 3: More than Meets the Eye*, 93 IRRC 1, 7 (2011).

¹¹⁸ U.N. Human Rights Council, Rep. on the Work of Its Third Session, U.N. Doc.A/3/2, at 3, (Nov. 23, 2006).

¹¹⁹ *Id.* at 56-58.

¹²⁰ Jonathan Somer, *Acts of Non-State Armed Groups and the Law Governing Armed Conflict*, INSIGHTS (Aug. 24, 2006), <http://www.asil.org/insights/volume/10/issue/21/acts-non-state-armed-groups-and-law-governing-armed-conflict>; Hoppe, *supra* note 108.

¹²¹ Hoppe, *supra* note 108.

¹²² See *supra* Part IV for meaning of "control."

¹²³ Anderson, *supra* note 95.

group, without the control or support of its home state, engages in hostilities with the armed forces of a neighboring state.¹²⁴ Hezbollah is regarded as a territorial group that can be described as party to an internal armed conflict, unlike al-Qaeda, which is a transnational group.¹²⁵ Although the original application of Common Article 3 of the Geneva Conventions specifies armed conflict between a state and armed groups or between such groups in the territory of the state, taken at face value Common Article 3 clearly allows its application to conflicts between a state and a non-state actor outside its territory.¹²⁶

Second, the foregoing reasoning adopts a right classification to Israel-Lebanon conflict as an international armed conflict. Israel's military operations focused not only on territory under the control of Hezbollah, but also on the whole country. On several occasions, Israeli officials asserted that its war was against not only Hezbollah, but also Lebanon as a state.¹²⁷ With this understanding Israel attacked several military targets in Lebanon.¹²⁸ Both Israel and Lebanon are parties to the 1949 Geneva Conventions.¹²⁹ Common Article 2 of the Geneva Convention classifies conflict between two or more of the high-contracting parties as international armed conflict.

In summation, despite the fact that Hezbollah's military capability exceeds that of the Lebanese army, the classification of Hezbollah in its war against Israel is as an armed group fighting in non-international armed conflict.

D. The Syrian Conflict after Hezbollah's Intervention

In mid-2013, Hezbollah's secretary general explicitly acknowledged the intervention of Hezbollah's troops in the Syrian conflict to help the Syrian government forces against the rebels.¹³⁰ He said: "[T]his battle is ours . . . and I promise you victory."¹³¹ In his speech on April 30, 2014, Hassan Nasrallah made it clear that the "Axis of Resistance" (Iran and Hezbollah) would do everything to save Syria. He said, "Syria has true friends in the region and the world who will

¹²⁴ Pejic, *supra* note 117, at 7.

¹²⁵ Anderson, *supra* note 95.

¹²⁶ Hoppe, *supra* note 108, at 34. The 1977 Additional Protocol II to the 1949 Geneva Conventions relating to the protection of victims of non-international armed conflicts is not applicable to the conflict between Israel and Hezbollah because neither Israel nor Lebanon are parties to this protocol. However, customary rules are applicable.

¹²⁷ *Questions and Answers on Hostilities Between Israel and Hezbollah*, HUMAN RIGHTS WATCH (Aug. 1, 2006), <http://www.hrw.org/news/2006/08/01/questions-and-answers-hostilities-between-israel-and-hezbollah#2>.

¹²⁸ *Id.*

¹²⁹ ICRC, *supra* note 97. Lebanon is a party to 1977 AP I, while Israel is not. However, Israel is still bound by many AP I rules that are customary international law.

¹³⁰ *Hezbollah Leader Nasrallah Vows Victory in Syria*, BBC (May 25, 2013), <http://www.bbc.co.uk/news/world-middle-east-22669230>.

¹³¹ *Id.*

not allow it to fall into the hands of the United States, Israel, or the *takfiri* [Islamic extremist] groups.”¹³²

Hezbollah fighters engaged in fighting against Syrian rebels in different areas of the country, especially in Qusayr, where “heavy bombardment, including two ground-to-ground missiles and an air strike as well as artillery and rocket fire,” was reported.¹³³ It is difficult to confirm the number of Hezbollah fighters participating in the Syrian conflict, but it is estimated at 1,200 to 1,700.¹³⁴ It is reported that the Iranian Revolutionary Guards Corps and Quds force and the Syrian military high command coordinate Hezbollah operations in Syria.¹³⁵ However, Hezbollah has responsibility for some areas and security installations.¹³⁶ The role of Hezbollah in the battle of al-Qusayr was very important, to the extent that it was given a high degree of command and control that allowed it to give orders to Syrian officers.¹³⁷ Besides al-Qusayr, Hezbollah had an important role in areas such as Aleppo, Homs, Damascus, and Qalamoun, where it engaged directly in fighting against the rebels.¹³⁸ The number of Hezbollah fighters participating in fighting against the rebels in Aleppo province ranged from 2,000 to 4,000.¹³⁹

Hezbollah’s military involvement in the Syrian conflict undoubtedly represents the intervention of a foreign power in a non-international armed conflict. Such an intervention is one of the main characteristics of internationalized armed conflict. Does this mean that the armed conflict between Hezbollah and the Syrian rebels is an international armed conflict, while the conflict between Syrian government forces and rebels is a non-international armed conflict?

There are important reasons for doubting that Hezbollah’s intervention in the Syrian conflict changes the conflict from a non-international to an international armed conflict. Hezbollah is described as an armed group in the context of international humanitarian law and has engaged in intense armed

¹³² Jim Muir, *Hezbollah Plunges Deeper into Syrian Conflict*, BBC (May 22, 2013), <http://www.bbc.co.uk/news/world-middle-east-22630005>.

¹³³ *Hezbollah Leader Nasrallah Vows Victory in Syria*, *supra* note 130.

¹³⁴ Marisa Sullivan, *Hezbollah in Syria*, ISW 15 (2014), http://www.understandingwar.org/sites/default/files/Hezbollah_Sullivan_FINAL.pdf.

¹³⁵ Nakhoul, *supra* note 64.

¹³⁶ *Id.*

¹³⁷ Isabel Nassief, *The Campaign for Homs and Aleppo*, INSTITUTE FOR THE STUDY OF WAR 17 (Jan. 2014), <http://www.understandingwar.org/sites/default/files/Nassief-BattleforHomsAleppo-web.pdf>.

¹³⁸ *Id.* at 18; *see also* Sullivan, *supra* note 134, at 16.

¹³⁹ Loveday Morris, *In Syria, Hezbollah Forces Mass around Aleppo to Aid Assad*, THE WASHINGTON POST (June 1, 2013), http://www.washingtonpost.com/world/middle_east/hezbollah-boosting-assads-forces-in-northern-syria/2013/06/02/3bb59c7e-cb9e-11e2-8f6b-67f40e176f03_story.html.

conflict with Syrian military opposition on Syrian territory.¹⁴⁰ This means that the conflict is between two armed groups on the territory of the high-contracting party according to Common Article 3 of the Geneva Conventions.

Many Hezbollah fighters were reported killed in the intense conflict with Syrian rebels. The level of organization of the Syrian rebels fighting against Hezbollah cannot be confirmed. The Commission of Inquiry concluded that the FSA had organized itself to the extent that it can be described as a military group fighting in internal armed conflict against Syrian government forces.¹⁴¹ Hezbollah and the FSA have fought each other on several occasions. Without doubt such conflict can be classified as non-international armed conflict, as it is armed conflict between two armed groups on the territory of a party to the 1949 Geneva Conventions.

Hezbollah's involvement in the Syrian conflict led not only to fighting against the FSA but also to other military oppositions. It has engaged in heavy fighting against Jabhat al-Nusra in Qalamoun and Qusir.¹⁴² Various weapons such as automatic machine guns, rocket-propelled grenades and Grad rockets were used in these clashes.¹⁴³

Despite the effective formation of Jabhat al-Nusra,¹⁴⁴ its classification as a terrorist group by the Security Council makes it difficult to determine the type of its conflict with Hezbollah.¹⁴⁵ There is much debate concerning whether the war on terror is international or non-international armed conflict, and whether a terrorist group can be a party to armed conflict.¹⁴⁶

¹⁴⁰ Nicholas Blanford, *Hezbollah Marks Major Triumph as Qusayr Tips Back into Assad Camp*, THE CHRISTIAN SCIENCE MONITOR (June 5, 2013), <http://www.csmonitor.com/World/Middle-East/2013/0605/Hezbollah-marks-major-triumph-as-Qusayr-tips-back-into-Assad-camp>.

¹⁴¹ 2012 Independent International Commission of Inquiry on the Syrian Arab Republic, *supra* note 18.

¹⁴² See, e.g., Khalil Ashawi, *Hezbollah and al Qaeda Clash on Syria-Lebanon Frontier*, REUTERS (July 17, 2014), <http://www.reuters.com/article/2014/07/17/us-syria-crisis-hezbollah-idUSKBN0FM10Q20140717>.

¹⁴³ *Hezbollah, Syria Army Push to Oust Rebels on Border*, THE DAILY STAR (July 18, 2014), <http://www.dailystar.com.lb/News/Lebanon-News/2014/Jul-18/264303-hezbollah-syria-army-push-to-oust-rebels-on-border.ashx>; Ashawi, *supra* note 142.

¹⁴⁴ Jamie Dettmer, *Hezbollah, Jabhat al-Nusra Set for Showdown in Syria*, THE DAILY BEAST (Mar. 14, 2013), <http://www.thedailybeast.com/articles/2013/03/14/hezbollah-jabhat-al-nusra-set-for-showdown-in-syria.html>.

¹⁴⁵ Security Council Al-Qaida Sanctions Committee Amends Three Entries on Its Sanctions List, *supra* note 35.

¹⁴⁶ See generally Gabor Rona, *Interesting Times for International Humanitarian Law: Challenges from the "War on Terror,"* 27.2 THE FLETCHER F. OF WORLD AFF. 55, 60-61, (2003); Marko Milanovic, *Lessons for Human Rights and Humanitarian Law in the War on Terror: Comparing Hamdan and the Israeli Targeted Killings Case*, 89 INT'L REV. RED CROSS 373 (2007); Graham Cronogue, *A New AUMF: Defining Combatants in the War on Terror*, 22 DUKE J. COMP. & INT'L L. 377 (2012).

The U.S. position is that the 1949 Geneva Conventions do not apply to the war on terror, and that members of al-Qaeda are unlawful combatants who do not qualify for prisoner-of-war status.¹⁴⁷ Although the U.S. Supreme Court acknowledged in the *Hamadan* case that al-Qaeda fighters are unlawful combatants, it decided that the United States war against al-Qaeda is a non-international armed conflict and thus Common Article 3 should be applied.¹⁴⁸ The Court discussed the Common Article 3, stating:

Common Article 3, by contrast, affords some minimal protection, falling short of full protection under the Conventions, to individuals associated with neither a signatory nor even a no signatory 'Power' who are involved in a conflict 'in the territory of' a signatory. The latter kind of conflict is distinguishable from the conflict described in Common Article 2 chiefly because it does not involve a clash between nations (whether signatories or not). In context, then, the phrase 'not of an international character' bears its literal meaning. Although the official commentaries accompanying Common Article 3 indicate that an important purpose of the provision was to furnish minimal protection to rebels involved in one kind of 'conflict not of an international character,' i.e., a civil war [...] the commentaries also make clear 'that the scope of the Article must be as wide as possible'. In fact, limiting language that would have rendered Common Article 3 applicable 'especially [to] cases of civil war, colonial conflicts, or wars of religion,' was omitted from the final version of the Article, which coupled broader scope of application with a narrower range of rights than did earlier proposed iterations.¹⁴⁹

The wide scope of the application of Common Article 3 would cover the conflict between Hezbollah and Jabhat al-Nusra, as an armed conflict between two armed groups occurring on the territory of a party to the 1949 Geneva Conventions. Moreover, if the conflict between Hezbollah and Jabhat al-Nusra cannot be classified as international armed conflict, it must be regarded as non-international armed conflict.¹⁵⁰ Such cases cannot be classified as the "internal

¹⁴⁷ THE WHITE HOUSE, Memorandum on Humane Treatment of Taliban and al Qaeda Detainees (Feb. 7, 2002), http://www.pegc.us/archive/White_House/bush_memo_20020207_ed.pdf.

¹⁴⁸ *Hamdan v. Rumsefeld*, 548 U.S. 557, 630 (2006); Milanovic, *supra* note 146, at 378.

¹⁴⁹ *Hamdan*, 548 U.S. at 562.

¹⁵⁰ MARCO SASSÒLI, TRANSNATIONAL ARMED GROUPS AND INTERNATIONAL HUMANITARIAN LAW 6 (2006).

disturbances and tensions, such as riots, isolated and sporadic acts of violence that are excluded from application of the 1977 AP II.”¹⁵¹

Furthermore, the relationship between Hezbollah and the Syrian armed forces is a crucial element in clarifying the type of conflict between Hezbollah and the Syrian opposition.¹⁵² If Hezbollah is regarded as an armed group forming part of or belonging to the Syrian armed forces, the conflict is a non-international armed conflict between a state and armed groups because Hezbollah would be regarded as an agent of the Syrian armed forces.

A further reason for not reclassifying the Syrian conflict following Hezbollah’s intervention, even if it is assumed that Hezbollah in itself is a state or associated with another state,¹⁵³ is that it is intervening alongside the Syrian government and not the opposition. An intervention by a foreign state in an internal armed conflict would lead to the internationalization of the conflict if such intervention supports the rebels.¹⁵⁴ Such an intervention would mean that the clash would be between two or more states, which accordingly can be considered an international armed conflict. In contrast, if such an intervention supports the government the conflict would be between a state and armed groups, and therefore it can be classified as non-international armed conflict. Therefore, on the assumption that Hezbollah is a state or the agent of a state its intervention to support the Syrian government would not change the nature of the Syrian conflict from non-international to international armed conflict.

IV. THE CLASSIFICATION OF HEZBOLLAH FIGHTERS

The participation of Hezbollah in the conflict, supporting the governmental forces against the rebels, raises an important question about the legal status of its fighters. It is necessary to investigate how international humanitarian law classifies the relationship between Hezbollah and Syria, and that between Hezbollah and Lebanon. This would help in discovering whether Hezbollah fighters are classified as an armed group fighting on behalf of a party to armed conflict, members of their national armed forces, or an independent armed group.

In this context, three classifications of armed groups involved in hostilities adopted by international humanitarian law are explored below.

¹⁵¹ Additional Protocol II to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977, art. 1(1), S. TREATY DOC. NO. 109-10, 1125 UNTS 3 17513.

¹⁵² The relationship between Hezbollah and the Syrian armed forces will be explored in detail in Part IV, *infra*.

¹⁵³ Bloom, *supra* note 53, at 62.

¹⁵⁴ See Gasser, *supra* note 90, for a case study on the internationalization of internal armed conflicts. See also Vite, *supra* note 85, at 70, for a proposal for classifying armed conflicts from the perspective of international humanitarian law.

A. Armed Groups Forming Part of the Armed Forces

This type of group is mentioned in Article 4 A (1) of the third Geneva Convention, which lists those who are combatants and qualify for prisoner of war status. These groups are identified as “militias or volunteer corps forming part” of the armed forces of a party to international armed conflict.¹⁵⁵ Although members of these groups are part of the armed forces of a party to an armed conflict, they are “quite distinct from the army as such.”¹⁵⁶ It is clear that a *de jure* relationship between a state and armed groups is required to consider such a group as belonging to the armed forces of the state concerned. Thus if Hezbollah is to be regarded as an armed group belonging to the Syrian armed forces, the Syrian government would have to have issued legislation for this purpose. There is no such Syrian enactment that can be referred to in this context, and therefore Hezbollah cannot be classified as this type of armed group with regard to its involvement in the Syrian conflict.

Neither can it be regarded as a militia forming part of the Lebanese armed forces, although it is a Lebanese organization, because there is no domestic legislation incorporating it into the Lebanese armed forces. It is well known that Hezbollah is independent of state forces.

B. Armed Groups Belonging to a Party to the Armed Conflict

These groups are also categorized by Article 4 A of the Third Geneva Convention. Under this classification the armed group belongs to a party to an armed conflict, operates within or outside its own territory, and meets the following provisions regarding its level of organization:

- (1) it is commanded by a person responsible for his subordinates;
- (2) it has a fixed distinctive sign;
- (3) it carries arms openly;
- (4) it respects the laws and customs of war.¹⁵⁷

The terms “militias,” “volunteer corps,” and “organised resistance movement” mentioned in Article 4(A)(2) are intended to cover members of armed groups who are not enlisted in regular armed forces and are fighting for a party to the armed conflict. Such armed groups are not identified as states or the organs of states.

The term “belonging to a Party” used in Article 4(A)(2) is interpreted to mean that there is a relationship between the armed group and the party to the

¹⁵⁵ Geneva Convention III relative to the Treatment of Prisoners of War, art. 4A(1), Aug. 12, 1949, T.I.A.S No. 3364, 75 UNTS 135 [hereinafter Geneva Convention III].

¹⁵⁶ JEAN S. PICTET, INT’L COMM. OF THE RED CROSS, COMMENTARY ON THE GENEVA CONVENTIONS OF 12 AUGUST 1949, 52 (1960).

¹⁵⁷ Geneva Convention III, *supra* note 155.

armed conflict.¹⁵⁸ This relationship is a crucial condition in deciding whether such armed groups are acting on behalf of a state.¹⁵⁹ The ICRC defines this relationship as a *de facto* relationship between an armed group and a state party to an international armed conflict.¹⁶⁰ Such a relationship can be proven when a state that is party to an armed conflict consents, either expressly or implicitly, that the armed group is fighting on its behalf. In the past, written consent was required to authorize an armed group to fight on behalf of a party to an international armed conflict. Such action is no longer required and a state can implicitly allow an armed group to act on its behalf. The movement of equipment and supplies between a state party to armed conflict and an armed group are sufficient indication of the former's consent to the involvement of the latter group in the hostilities and the existence of *de facto* relationship between them.¹⁶¹

A relationship between an armed group and a party to international armed conflict is also required by Article 43 of the First Additional Protocol to the Geneva Conventions, which describes it as an armed group “under a command responsible to that party.”¹⁶² This expression is described as an alternative to the term “belong to a Party to the conflict” set forth in Article 4(A)(2) of the Third Geneva Convention.¹⁶³ Both have the same meaning and require a link between the armed group and the party to international armed conflict.

The historical emergence of this type of armed group reveals that it was meant to cover “partisans”—organized resistance movements fighting against occupying powers or invading forces. It is rare to see such armed groups in these days of armed groups of civilians fighting against the government of their own state in the context of non-international armed conflict.¹⁶⁴ This leads to the question of whether Article 4(A)(2) covers armed groups fighting in the context of non-international armed conflict. The ICRC accepts the concept that an armed group belonging to a party to armed conflict is involved in not only international armed conflict but also internal armed conflict. Its Commentary on the 1949 Geneva Conventions states:

Resistance movements must be fighting on behalf of a “Party to the conflict” in the sense of Article 2 [of the Third Geneva Convention], otherwise the provisions of Article 3 relating to non-international conflicts are applicable, since such militias and volunteer corps are not entitled to style themselves a

¹⁵⁸ *Id.* art. 4(A)(2).

¹⁵⁹ Keiichiro Okimoto, *The Relationship Between a State and an Organised Armed Group and its Impact on the Classification of Armed Conflict*, 5:3 AMSTERDAM L. F. 34, 38 (2013).

¹⁶⁰ PICTET, *supra* note 156, at 57.

¹⁶¹ *Id.* at 57, n.1; Okimoto, *supra* note 159, at 40.

¹⁶² Additional Protocol I, *supra* note 81, art. 43.

¹⁶³ Okimoto, *supra* note 159, at 43.

¹⁶⁴ *Id.* at 39.

“Party to the conflict.”¹⁶⁵

This means that an armed group can be a *de facto* group belonging to a party to internal armed conflict. Thus, in order to regard Hezbollah as a *de facto* armed group fighting on behalf of the Syrian armed forces, it should belong to these forces in addition to fulfilling the conditions stipulated in Article 4(A)(2) of the Third Geneva Convention.

There is no doubt that Hezbollah’s level of organization is high enough to fulfill the conditions established by Articles 4(A)(2) of the Third Geneva Convention, and 43 of the First Additional Protocol. In addition to its hierarchy of command in Beirut, represented by the *majlis al-shura* (Shura council) and its general secretary, it has military commanders who supervise military operations on the ground. On several occasions Hezbollah field commanders have been reported killed during hostilities in Syria; for instance, Ali Hussein Nassif, a senior military leader, was reported killed in Syria even before the explicit confirmation of Hezbollah’s participation in the conflict.¹⁶⁶ The way that Hezbollah fights against rebels refers to a very high level of coordination that undoubtedly confirm the fulfillment of the conditions established by Articles 4(A)(2) and 43. For example, Hezbollah divides al-Qusayr into 16 military zones and used code names for specific objectives and locations in communications between its fighters to conceal their operational plans.¹⁶⁷ Carrying weapons openly and wearing uniform are conditions that are easily met by Hezbollah fighters, who wear military uniform during their operations and carry the Hezbollah flag, distinguishing themselves from others.¹⁶⁸ Reports of the death of Hezbollah fighters in battle demonstrate important indication that they are distinguishable from Syrian soldiers because the reports are different.¹⁶⁹

Hezbollah’s compliance with the law of armed conflict may not be easily proven. However, its level of organization may indicate the party’s ability to fulfill this provision. The Commission of Inquiry on Lebanon found Hezbollah to be “an armed group, a militia, whose conduct and operations enter into the field of application of article 4, paragraph 2(b), of the Third Geneva Convention of 12 August 1949,” in the 2006 Israel-Hezbollah conflict.¹⁷⁰

¹⁶⁵ PICTET, *supra* note 156, at 57.

¹⁶⁶ *Hezbollah Military Commander ‘Killed in Syria,’* BBC (Oct. 2, 2012), <http://www.bbc.co.uk/news/world-middle-east-19801884>.

¹⁶⁷ Sullivan, *supra* note 134, at 15.

¹⁶⁸ The Hezbollah flag proclaims “The Islamic Resistance in Lebanon” in Arabic text along the bottom. At the top is a verse of *Quran*: “Then surely the party of Allah are they that shall be triumphant.” In the middle is the name of the party.

¹⁶⁹ *Senior Hezbollah Commander Killed in Syria,* THE DAILY STAR (May 28, 2014, 12:32 AM), <http://www.dailystar.com.lb/News/Lebanon-News/2014/May-28/257916-senior-hezbollah-commander-killed-in-syria.ashx>.

¹⁷⁰ U.N. Human Rights Council, Rep. on the Work of Its Third Session, *supra* note 118, ¶ 57.

The relationship between Hezbollah as an armed group and Syria as a party to non-international armed conflict is a vital element in classifying Hezbollah as a *de facto* armed group belonging to a party to an armed conflict. ICTY used the “overall control” test to identify such a relationship and establish a state’s responsibility for the conduct of an armed group.¹⁷¹ This test is explored later to determine whether Syria or Lebanon is responsible for Hezbollah’s conduct.

The link between Syria and Hezbollah should be tested according to other factors, such as Syria’s consent on the Hezbollah intervention in the conflict and the cooperation of both parties. Undoubtedly, joint military operations between Hezbollah and the Syrian armed forces are the best evidence that the Syrian government has allowed Hezbollah to fight on its behalf. The level of cooperation between them has grown to the extent that Hezbollah was given control of many areas in which to carry out military activities against rebels. This is a clear indication of the link between Hezbollah and the Syrian government, as required by international humanitarian law. In some cases, Hezbollah fighters have been incorporated into Syria’s armed forces. In the al-Qusayr battle, Hezbollah fighters used Syrian army weapons such as “T-55 and T-54 tanks, as well as all significant artillery systems, anti-tank missiles” to fight the rebels.¹⁷² The International Commission of Inquiry defines Syrian government forces as comprising “the Syrian Armed Forces, intelligence forces and associated foreign and local militias, including Hezbollah, the *shabbiha* and the popular Committees/National Defence Forces.”¹⁷³

All of this points to the fact that Hezbollah may fall, at least in battles under the command and directions of Syrian forces, under the classification of “armed group belonging to party to armed conflict” as established by Article 4(A)(2) of the Third Geneva Convention.

C. Armed Groups in the Context of Internal Armed Conflicts

Hezbollah may also be classified as an independent armed group fighting in a non-international armed conflict. In this case it should be categorized as neither a *de jure* organ of Lebanon nor a *de facto* organ of Syria. Its participation in the Syrian conflict can be seen as the engagement of an armed group fighting other armed groups in the territory of a state that is party to the 1949 Geneva Conventions. The 1977 Second Additional Protocol to the Geneva Conventions establishes conditions for defining an armed group as a party to non-international armed conflict. It should be “under responsible command, exercise such control

¹⁷¹ See Prosecutor v. Tadić, Case No. IT-94-1-A, Judgment, ¶¶ 120-62 (July 15, 1999).

¹⁷² Nakhoul, *supra* note 64.

¹⁷³ U.N. Human Rights Council, Rep. on the Work of Its Twenty-Seventh Session, ¶ 10, U.N. Doc. A/HRC/27/60 (Aug. 13, 2014).

over a part of [the State party's] territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol."¹⁷⁴ It has already been shown that Hezbollah has a level of command that meets the requirements of international humanitarian law.¹⁷⁵

Hezbollah's control over part of Syria's territory is an important condition of its classification as an armed group participating in non-international armed conflict. This control should be sufficient to enable it first to carry out sustained and concerted military operations and second, to implement the Second Additional Protocol. The ICRC Commentary on the Additional Protocols clarifies the first requirement as the ability of an armed group to carry out conceived and planned military operations.¹⁷⁶

The second condition is the armed group's ability to implement Additional Protocol II. This refers to the organization of the armed group.¹⁷⁷ The ICTY defines the required level of organization as:

[T]he existence of a command structure and disciplinary rules and mechanisms within the group; the existence of a headquarters; the fact that the group controls a certain territory; the ability of the group to gain access to weapons other military equipment, recruits, and military training; its ability to plan, coordinate and carry out military operations, including troop movements and logistics; its ability to define a unified military strategy and use military tactics; and its ability to speak with one voice and negotiate and conclude agreements such as cease-fire or peace accords.¹⁷⁸

There is no doubt that Hezbollah meets the majority of these standards. Its headquarters in Beirut have the power to declare war, negotiate with other parties, and arrange a ceasefire.¹⁷⁹ After the al-Qusayr battle Hezbollah and rebels agreed to exchange the bodies of two Hezbollah fighters for the safe passage of 34 rebels to the Lebanese Red Crescent.¹⁸⁰ Taking into account the growth of

¹⁷⁴ Additional Protocol II, *supra* note 82, art 1(1).

¹⁷⁵ See *infra* Part III(D).

¹⁷⁶ Claude Pilloud et al., *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, INT'L COMM. OF THE RED CROSS 1353, (1987), http://www.loc.gov/frd/Military_Law/pdf/Commentary_GC_Protocols.pdf.

¹⁷⁷ *Id.*

¹⁷⁸ Prosecutor v. Haradinaj, Case No. ICTY IT-04-84-T, Judgment, ¶ 60 (April 3, 2008); Prosecutor v. Limaj, *supra* note 89, ¶¶ 94-143.

¹⁷⁹ See MATTHEW LEVITT, HEZBOLLAH: THE GLOBAL FOOTPRINT OF LEBANON'S PARTY OF GOD (C. Hurst & Co. Ltd. 2013); see also HARIK, *supra* note 65; see also JABER, *supra* note 41.

¹⁸⁰ U.N. Human Rights Council, Rep. of the Independent International Commission of Inquiry on the Syrian Arab Republic, Annex III, ¶ 26, U.N. Doc. A/HRC/24/46 (Aug.

Hezbollah's popularity, the recruitment of new fighters is easily achieved.¹⁸¹ Its military tactics in fighting the Syrian opposition leave no doubt that it has the ability to plan, coordinate, and carry out military operations. In addition to its historical tactic of hit-and-run attacks, as used against Israel, Hezbollah has developed various military methods for avoiding casualties among its fighters. During the battles of al-Qusayr and Yabrud a small group of fighters observed the field before the hostilities began using a secure, hard-wired telecommunication network to link Syrian territories with their Lebanon bases.¹⁸²

Due to Hezbollah's heavy attacks in areas controlled by the rebels, especially near the Lebanon border, the Syrian opposition had to surrender its control to Hezbollah, which secured these areas and then handed them over to the Syrian army.¹⁸³ This demonstrates Hezbollah's control over the areas in which it operates. Therefore it can be concluded that it is most likely that Hezbollah is an armed group fighting other armed groups in a non-international armed group.

V. RESPONSIBILITY FOR VIOLATIONS COMMITTED BY HEZBOLLAH FIGHTERS

There are uncorroborated reports that Hezbollah has assisted Syrian forces in committing violations against women and children.¹⁸⁴ The International Commission of Inquiry considered Hezbollah and government forces acts as breaches to their obligations under international humanitarian law. Examples of such acts include sieges and blockades imposed by both Hezbollah and Syrian forces on the al-Qusayr region.¹⁸⁵ If substantiated, such allegations would raise a question about responsibility for violations committed by Hezbollah fighters. Would Lebanon as a home state, or Syria as a state on whose behalf Hezbollah fights, or Hezbollah itself as an independent armed group be responsible for the alleged violations committed by Hezbollah fighters in Syria?

16, 2013). [hereinafter 2013 Independent International Commission of Inquiry on the Syrian Arab Republic].

¹⁸¹ Hoppe, *supra* note 108, at 23

¹⁸² Bassem Mroue, *Hezbollah Develops New Tactics in Syrian Civil War*, THE BIG STORY (Apr. 12, 2014), <http://bigstory.ap.org/article/hezbollah-develops-new-tactics-syrian-civil-war>.

¹⁸³ *Id.*

¹⁸⁴ U.N. Human Rights Council, Rep. of the Independent International Commission of Inquiry on the Syrian Arab Republic, ¶ 40, U.N. Doc. A/HRC/23/58 (June 4, 2013).

¹⁸⁵ 2013 Independent International Commission of Inquiry on the Syrian Arab Republic, *supra* note 180, ¶ 40.

A. Lebanon and Syria

The responsibility of states for violations committed by armed groups is a controversial issue in international law. There has been debate about which standard should be adopted to attribute the wrongful acts of armed groups to a state.¹⁸⁶ The approaches of the International Law Commission (ILC), the International Court of Justice (ICJ), and the ICTY are relevant here.

Article 8 of the International Law Commission Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001) stipulates that “[t]he conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.” This Article states that the conduct of individuals or entities is attributable to a state when there is a factual relationship between them. The most applicable example of such case is where a state organ uses private persons or groups to act as auxiliaries without incorporating them into the official structure of the state such as its police or the armed forces. Their conduct can be attributed to the state if it instructs, directs, or controls them in action that ultimately violates international law.¹⁸⁷

In Nicaragua, the ICJ adopted the “effective control” test to attribute the violations committed by an armed group (*contras*) to a state (the United States). The Court asserted that it had to determine “. . . whether or not the relationship of the *contras* to the United States government was so much one of dependence on the one side and control on the other that it would be right to equate the *contras*, for legal purposes, with an organ of the United States Government, or as acting on behalf of that Government.”¹⁸⁸ It concludes that although the *contras* were financed, organized, trained, supplied, and equipped by the United States, the latter was not responsible for violations of human rights and humanitarian law committed by the *contras* because these acts did not mean that the United States had directed or enforced the perpetration of the violations. The Court stated that the United States should have had ‘effective control’ over the armed group in order to be held responsible for violations perpetrated by members of the group. Effective control would be proved if the United States had directed the commission of such illegal acts. In addition, the ICJ reasons that there was the possibility of members of *contras* committing such acts without the control of the United States. It establishes that “to give rise to legal responsibility of the United States, it would in principle have to be proved that the State had effective control

¹⁸⁶ See Antonio Cassese, *The Nicaragua and Tadić Tests Revisited in Light of the ICJ Judgment on Genocide in Bosnia*, 18 EUR. J. INT’L L. 649 (2007); see Stewart, *supra* note 94.

¹⁸⁷ Int’l Law Comm’n, Rep. on the Work of Its Fifty-Sixth Session, U.N. Doc.A/56/10, ¶ 47 (2001).

¹⁸⁸ *Nicar. v. U.S., Military and Paramilitary Activities in and Against Nicaragua*, Merits, 1986 I.C.J. Rep. 195, ¶ 109 (June 27).

of the military or paramilitary operations in the course of which the alleged violations were committed.”¹⁸⁹ This would mean that the armed group had a degree of independence from the United States.¹⁹⁰

The “effective control” test was rejected by the Appeal Chamber of ICTY in the *Tadic* case; instead, it adopted the “overall control” test. According to this notion, if an armed group violates human rights or international humanitarian law, and “is under the overall control of a State, it must perforce engage the responsibility of that State for its activities, whether or not each of them was specifically imposed, requested or directed by the State.”¹⁹¹

The Court distinguishes between three types of test to identify a state’s level of control over individuals or armed groups for their acts to be attributed to the state. First, individuals or armed groups must have been organized into the state’s military structures. Subordinate armed forces or militias or paramilitary units represent this category. The Court finds that the acts of such an armed group can be attributed to a state if the latter has overall control over it. This test requires that the state “has a role in organising, coordinating or planning the military actions of a military group, in addition to financing, training and equipping or providing operational support to that group.”¹⁹² However, this test does not mean that a state must have instructed either the head or the members of the group to commit specific acts contrary to international law in order to bear international responsibility.¹⁹³

Second, individuals and armed groups are not incorporated into the armed forces and classified as *de facto* organs of a state. The ICTY requires that in addition to a state’s overall control of a *de facto* armed group that state must issue “specific instructions or directives aimed at the commission of specific acts, or have required public approval of those acts following their commission.”¹⁹⁴ In other words, if an armed group is not incorporated into the state’s military structure according to the national law, its illegal activities are not attributable to the state if the latter did not issue instructions to carry out such activities or did not publicly endorse or approve the unlawful acts *ex post facto*.¹⁹⁵ Instructing or approving illegal acts of *de facto* armed groups are the only conditions necessary in order to attribute these acts to a state.

In the Nicaraguan case of 1986, the ICJ adopted the same approach for illegal acts of the UCLAs (persons of the nationality of unidentified Latin American countries) with regard to the responsibility of the United States. The Court held that in order to hold the United States responsible, UCLAs should

¹⁸⁹ *Id.* ¶115.

¹⁹⁰ Cassese, *supra* note 186, at 652.

¹⁹¹ Prosecutor v. Du[kotadi], Case. No. ICTY-IT-94-1-A, Judgement, ¶ 122 (July 15, 1999).

¹⁹² *Id.* at 13, ¶ 7.

¹⁹³ *Id.* ¶ 131.

¹⁹⁴ *Id.* ¶ 132.

¹⁹⁵ *Id.* ¶ 137.

receive specific instructions from the United States to commit these acts. They must also be under its supervision and logistic support.¹⁹⁶

The third test is the “assimilation of individuals to State organs on account of their actual behavior within the structure of a State (and regardless of any possible requirement of State instructions).”¹⁹⁷ According to this test, individuals can be regarded as a *de facto* state organs if they act within the framework of, or in connection with armed forces, or in collusion with state authorities. In such scenario, the wrongful acts committed by these individuals should be attributed to the state concerned.¹⁹⁸

The relationships between Hezbollah and Syria and between Hezbollah and Lebanon are the keys to determining the responsibility of these states for violations committed by Hezbollah’s members during the Syrian conflict. From the foregoing, it may be easy to conclude that Lebanon is not responsible for Hezbollah’s alleged violations of international law in Syria because it is not a *de jure* or *de facto* organ of Lebanon. It is not easy to prove that Lebanon has “effective control” or “overall control” over Hezbollah. Although Hezbollah is represented in the Lebanese government, its military wing is not incorporated into the Lebanese army and Lebanon does not finance, provide military equipment, or training to Hezbollah.¹⁹⁹ Hezbollah is an independent organization financed by its own investments and support from Iran or Syria.²⁰⁰ Moreover, Lebanon officially objects to Hezbollah’s intervention in Syria. The Lebanese president Michel Suleiman found Hezbollah intervention in the Syrian civil war a reason for instability in Lebanon.²⁰¹

The due diligence principle can be invoked to establish Lebanon’s responsibility for preventing its citizens from violating international law.²⁰² The majority of human rights treaties oblige state parties to prevent the violation of

¹⁹⁶ Military and Paramilitary Activities in and Against Nicaragua, *supra* note 188, ¶¶ 75, 80.

¹⁹⁷ Prosecutor v. Du[kotadi], *supra* note 191, ¶ 141.

¹⁹⁸ *Id.* ¶ 144.

¹⁹⁹ Bloom, *supra* note 53, at 78.

²⁰⁰ See HARIK, *supra* note 65; see also EITAN AZANI, HEZBOLLAH: THE STORY OF THE PARTY OF GOD: FROM REVOLUTION TO INSTITUTIONALIZATION (2009).

²⁰¹ Dominic Evans, *Lebanese President Urges Hezbollah to Pull out of Syria*, REUTERS (June 20, 2013), <http://www.reuters.com/article/2013/06/20/us-syria-crisis-lebanon-idUSBRE95J0CD20130620>.

²⁰² Article 2 of the Draft Articles on State Responsibility sets forth that “[t]here is an internationally wrongful acts of a State when conduct consisting an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State.” *Responsibility of States for Internationally Wrongful Acts*, UNITED NATIONS (2001), http://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf.

human rights by third parties in any territory under their jurisdiction.²⁰³ However, this obligation is only applicable in the territory of a state where it has sovereign power to prevent the violation of international law. Lebanon does not have the jurisdiction to stop such violation in Syria, and nor does it have the ability to prevent Hezbollah, which is described as stronger than the Lebanese army, from participating in the Syrian civil war. Thus it is unlikely that Lebanon's international responsibility for the alleged violations committed by Hezbollah can be established.

The case is different with regard to Syria. Because Hezbollah is not a military group organized within Syria's military structure, there must be evidence, in addition to Syria's overall control over Hezbollah, that Syria has either issued specific instructions or directives to Hezbollah to commit specific unlawful acts or has publicly approved these acts following their commission.²⁰⁴

The level of support provided to the Party demonstrates Syria's overall control over Hezbollah. Syria represents the second most important source of Hezbollah's financial and military support. During hostilities in Syria, Hezbollah was given access to Syrian weapons for use against the rebels.²⁰⁵ In addition it is reported that members of Hezbollah smuggled Syrian advanced guided-missile systems into Lebanon to use against Israel in any future war.²⁰⁶

Despite Hezbollah's independent role in many battles against the Syrian opposition, the functioning of its military operations side-by-side with the Syrian armed forces shows the high level of integration between the two groups. Such integration is supported by the fact that Hezbollah, as an armed group, fights on the territory of a state party to an armed conflict in support of such a party. The majority of international court cases seek to identify the level of foreign state control over an armed group involved in internal armed conflict against the territorial state. The case here is different, because the territorial state itself consented to the intervention of an armed group against the rebels. This helps to prove the strong link between Hezbollah and Syria to the extent that it can be described as a *de facto* organ of Syria.

However, such a link is not enough to establish Syria's responsibility for Hezbollah's violations of international humanitarian law. According to the ICTY there are two ways to attribute such responsibility to Syria: first, Syria should have issued directives or instructions to Hezbollah to commit specific acts that violate international law, and second, Syria should have approved these violations. As a result of the complexity of the situation in Syria, it is not easy to find out whether the Syrian government issued such instructions or directives. However, the Syria's consent for the Hezbollah's acts can be assumed, because many of these

²⁰³ See, e.g., Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 2(1), Dec. 10, 1984, 1465 U.N.T.S. 112; International Covenant on Civil and Political Rights, art. 2, Dec. 16, 1966, 999 U.N.T.S. 171.

²⁰⁴ Prosecutor v. Du[kotadi], *supra* note 191, ¶ 132.

²⁰⁵ See Sullivan, *supra* note 134.

²⁰⁶ *Id.*

violations were jointly perpetrated by Hezbollah and the Syrian armed forces. The International Commission of Inquiry found that imposing sieges and blockades by government forces and Hezbollah in the al-Qusayr region is a violation of international humanitarian law.²⁰⁷ In its annual report of August 13, 2013, the International Commission of Inquiry classifies Hezbollah under government forces and refers to various violations of human rights and international humanitarian law including, among others, massacres, torture, hostage-taking, unlawful attacks and use of illegal weapons by individuals.²⁰⁸ In addition there is no indication that Syria objects to or condemns Hezbollah's role in the conflict. Therefore Hezbollah's alleged violations of international law during its participation in the Syrian armed conflict can be attributed to Syria, as Hezbollah is its *de facto* armed group whose wrongful acts were approved by a party to non-international armed conflict.

B. Hezbollah

The attribution of Hezbollah's unlawful acts to Syria does not mean that the party itself is not responsible. Responsibility can be established on the part of Hezbollah as an armed group, or of its members when their acts reach the level of international crime.

The responsibility of armed groups is relevant to a question concerning international obligations of such groups.²⁰⁹ The rules of international humanitarian law that apply in non-international armed conflicts not only bind a state that is party to such conflict, but also armed groups. Common Article 3 of the 1949 Geneva Conventions clearly mentions that it is applicable to "each party to the conflict." This binds armed groups to the same rules as states. An armed group does not need to ratify or sign an international humanitarian law treaty to be bound by its rules.²¹⁰ It should be obliged by the rules of international humanitarian law that apply to internal armed conflict and are classified as customary rules.²¹¹ International courts (the ICJ in the Nicaragua case, ICTY,²¹²

²⁰⁷ 2013 Independent International Commission of Inquiry on the Syrian Arab Republic, *supra* note 180, ¶ 40.

²⁰⁸ U.N. Human Rights Council, Rep. on the Work of Its Twenty-Seventh Session, *supra* note 173.

²⁰⁹ See Marco Sassòli, *Taking Armed Groups Seriously: Ways to Improve Their Compliance with International Humanitarian Law*, 1 INT'L HUMANITARIAN LEGAL STUD. 5 (2010); Sandesh Sivakumaran, *Binding Armed Opposition Groups*, 55 INT'L & COMP. L.Q. 369 (2006).

²¹⁰ *Id.* at 372.

²¹¹ *Id.*

²¹² Prosecutor v. Tadic, Case No. ICTY IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, ¶ 98 (Oct. 2, 1995).

the International Criminal Tribunal for Rwanda (ICTR)²¹³ and the Special Court for Sierra Leone²¹⁴ all consider Common Article 3 of the 1949 Geneva Convention part of international customary law. In addition, there are international customary rules establishing the obligation of armed groups to comply with the international rules accepted by a state where such groups are operating.²¹⁵

Courts have decided that armed groups are bound by international law.²¹⁶ Reference can be made in this context to the ICJ, which has asserted that *contras* are bound by human rights and international humanitarian law.²¹⁷ The Special Court for Sierra Leone has clearly established that the Revolution United Front, an armed group, must comply with international humanitarian law.²¹⁸ It also holds that:

[i]t is well-settled that *all* parties to an armed conflict, whether states or non-state actors, are bound by international humanitarian law, even though only states may become parties to international treaties. Customary international law represents the common standard of behaviour within the international community, this even armed groups hostile to a particular government have to abide by these laws. It has also been pointed out that non-state entities are bound by necessity by the rules embodied in international humanitarian law instruments, that they are 'responsible for the conduct of their members' and may be 'held so responsible by opposing parties or by the outside world.'²¹⁹ International inquiry commissions submit the same approach. The International Commission of Inquiry on Darfur found that the Sudan Liberation Movement/Army and the Justice and Equality Movement are bound by rules of customary international law of internal armed conflict.²²⁰ Both the International Commission of Inquiry on Lebanon and the International

²¹³ Prosecutor v. Akayesu, Case No. ICTR-96-4, Judgement, ¶ 608 (Sept. 2, 1998).

²¹⁴ Prosecutor v. Kallon, Case No. SCSL-2004-15-AR72(E), Decision on Challenge to Jurisdiction, Lom 6 Accord Amnesty, ¶ 47 (Mar. 13, 2004).

²¹⁵ Sassòli, *supra* note 209, at 13.

²¹⁶ Sivakumaran, *supra* note 209, at 371.

²¹⁷ Military and Paramilitary Activities in and Against Nicaragua, *supra* note 188, ¶¶ 113-14.

²¹⁸ Prosecutor v. Kallon, *supra* note 214, ¶ 47.

²¹⁹ Prosecutor v. Norman, Case No. SCSL-2004-14-Ar72(E), Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment), ¶ 22 (May 31, 2004) (ICJ).

²²⁰ Rep. of the Int'l Comm. of Inquiry on Darfur to the U.N. S.C., Pursuant to Security Council Resolution 1564 of 18 September 2004, ¶ 172 (Jan. 25, 2005), http://www.un.org/news/dh/sudan/com_inq_darfur.pdf.

Commission of Inquiry on Syria have established that Hezbollah is bound by international humanitarian law and human rights.²²¹

The U.N. Security Council addresses armed group directly requiring them to respect human rights and international humanitarian law.²²² For example, Security Council Resolution 1216 (1998) concerning the situation in Guinea-Bissau calls “upon all concerned, including the government and the Self-Proclaimed Military Junta, to respect strictly relevant provisions of international law, including humanitarian and human rights law. . . .”²²³ In its resolution 2139 (2014) concerning the humanitarian situation in Syria the Security Council asks the government and opposition groups to respect and “put an end to all forms of violence, irrespective of where it comes from, cease and desist from all violations of international humanitarian law and violations and abuses of human rights, and reaffirm their obligations under international humanitarian law and international human rights law. . . .”²²⁴

The Security Council explicitly addresses Hezbollah in its resolution 1701 (2006), requesting it to call a ceasefire with Israel. The same resolution asks for the disarmament of Hezbollah.²²⁵ Therefore, it can be concluded that as an armed group, Hezbollah is bound by international humanitarian law and is legally responsible for any breach of this law. However, Hezbollah is not an international body to incur international responsibility: its responsibility should be applied in the context of domestic law.

International criminal responsibility is another way of invoking the responsibility of Hezbollah fighters. International crimes such as war crimes, crimes against humanity, and genocide, can also be committed by members of armed groups.²²⁶ Article 8(c) of the Rome Statute of International Criminal Court (ICC) defines war crimes in the context of non-international armed conflict.²²⁷

²²¹ U.N. Human Rights Council, Rep. on the Work of Its Third Session, *supra* note 118, ¶ 672013 Independent International Commission of Inquiry on the Syrian Arab Republic, *supra* note 180, ¶ 40.

²²² See Andrew Clapham, *Human Rights Obligations of Non-State Actors in Conflict Situations*, 88 IRRC 491 (1990).

²²³ S.C. Res. 1216 (Dec. 21, 1998).

²²⁴ S.C. Res. 2139 (Feb. 22, 2014).

²²⁵ S.C. Res. 1701 (Aug. 11, 2006). This resolution was rejected by Hezbollah because the Lebanese army does not have the ability to stop Israel. Jumana Al Tamimi, *Hezbollah 'to Aid Troop Movement'*, GULF NEWS (May 3, 2009), <http://m.gulfnews.com/news/region/lebanon/hezbollah-to-aid-troop-movement-1.440757>.

²²⁶ See William A. Schaba, *Punishment of Non-State Actors in Non-International Armed Conflict*, 26 FORDHAM INT'L L.J. 907 (2002); Sassòli, *supra* note 209, at 9.

²²⁷ Rome Statute of the International Criminal Court, art. 8, July 17, 1998, 2187 U.N.T.S. 90.

A Security Council draft resolution referring the situation in Syria to the ICC was vetoed by Russia and China, which means that the referral mechanism is not applicable.²²⁸ Since neither Syria nor Lebanon are parties to the Rome Statute of the ICC, there should be no way for the ICC to have jurisdiction over any international crime that Hezbollah may have committed on Syrian territory. Territorial, personnel, and universal jurisdiction may apply in the prosecution of these crimes.²²⁹ Syrian law should have the main jurisdiction to deal with such crimes, as they have been committed on its territory. The other option is Lebanese law, as the members of Hezbollah are Lebanese citizens. The laws of states that apply the universal jurisdiction offering to prosecute those who commit international crimes regardless of their nationality and the place where such crimes are perpetrated can also be invoked here.²³⁰ Consequently, if Hezbollah's fighters commit international crimes during their participation in the Syrian conflict they should be prosecuted before national courts.

VI. CONCLUSION

Hezbollah's involvement in the Syrian conflict is one of the many controversial issues in the Syrian crisis. International humanitarian law is the main focus of this paper. Since Hezbollah is an armed group intervening in non-international armed conflict, its intervention does not change the classification of the Syrian internal armed conflict to international or internationalized armed conflict, first because Hezbollah is an armed group and not a state, and second because its interventions have been carried out alongside government forces. This means that the hostilities are between armed groups, which is one of the classifications of internal armed conflict according to the Common Article 3 of the 1949 Geneva Conventions and their Second Additional Protocol.

The additional issue raised by Hezbollah fighting alongside the Syrian armed forces is their status according to international humanitarian law. The question is whether Hezbollah fighters are a *de jure* group of Lebanese armed forces, or *de facto* part of the Syrian army. Since Hezbollah is fighting alongside the Syrian armed forces it is most likely to be classified as a *de facto* armed group belonging to the Syrian armed forces. However, this does not mean that its members are not classified as fighters of an armed group in an internal armed

²²⁸ Press Release, Security Council, Referral of Syria to International Criminal Court Fails as Negative Votes Prevent Security Council from Adopting Draft Resolution, U.N. Press Release SC/11407 (May 22, 2014).

²²⁹ See Mohamad Janaby & Khaled Bashir, *The Right of Individuals to Take Judicial Action Against International Persons: The Case of NATO's Intervention in Libya*, 1 CAMBRIDGE J. OF INT'L & COMP. L. 162 (2012).

²³⁰ *Id.*; Xavier Philippe, *The Principles of Universal Jurisdiction and Complementarity: How Do the Two Principles Intermesh?*, 88 IRRC 375 (2006).

conflict, because Hezbollah has led some battles independently without direction or control from the Syrian government.

In addition, the alleged violations of international law committed by Hezbollah fighters in Syria raise the question of the state's responsibility for such violations besides the responsibility of Hezbollah itself. Since it is difficult for Lebanon to control Hezbollah it cannot be said that it is responsible for the latter's actions in Syria. This does not apply to Syria, however, which consents to Hezbollah's activities on its territory and to which these violations can be attributed according to the rules of international responsibility developed by the ILC and international courts. This would not mean that Hezbollah, as an armed group, does not incur legal responsibility for such violations or that its fighters are not criminally responsible for violating international law.

