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The Yugoslavian Civil War: An Analysis of the Applicability of the Laws of War Governing Non-International Armed Conflicts in the Modern World

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The Yugoslavian Civil War: An Analysis of the Applicability of the Laws of War Governing Non-International Armed Conflicts in the Modern World

I. Introduction

A civil war is defined as "a war between opposing groups of citizens of the same country."\(^1\) This type of warfare is rooted in the very origins of humanity and can be traced back to the dawn of organized states. A civil war is set in a different context than other wars. It is an internal conflict pitting "brother against brother." As such, it is often much more intense and costly than any form of warfare. Such internal armed conflicts, unlike those that cross political as well as geographic boundaries, frequently have been overlooked in the laws of war. It is only recently that the laws of war have been considered in the context of civil war.

Such a civil war has ripped apart what was once a unified six republic nation of Yugoslavia into five separate entities.\(^2\) These are the independent countries that have succeeded from Yugoslavia: Croatia, Slovenia, and Bosnia and Herzegovina; the remains of the Yugoslav state, consisting of the republics of Serbia and Montenegro, as well as the secessionist republic of Macedonia which has also succeeded, but has not been recognized by outside nations.\(^3\) The consequence of this turmoil has been a stream of blood flowing along the various ethnic divisions within each republic. The civil war has resulted in at least 10,000 deaths with ever shifting areas of conflict and violence.\(^4\) This Comment will analyze the existing laws of war and their applicability to a civil war situation with a focus on Croatia, Slovenia, and Serbia.

In an attempt to understand the roots of today's problems, Part II of this Comment discusses the history of Slovenia, Croatia, and Serbia and the origins of conflict within these provinces. Next, Part

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2. N.Y. Times, April 8, 1992, at 10, col. 4
3. Id. This Comment will focus solely on the crisis between Croatia, Slovenia, and Serbia. At the time of publication the Yugoslavian civil war was entering into a second phase of warfare between the republics of Bosnia and Herzegovina and Serbia. This Comment does not address this rapidly developing aspect of the crisis.
III examines the immediate sources of the crisis and the resulting Yugoslavian civil war. Parts IV and V then describe the two generally recognized situations in which the laws of war apply to an internal conflict and their relation to the current Yugoslavian civil war, focusing on the republics of Croatia, Slovenia, and Serbia. Finally, Part VI offers concluding remarks on the current situation.

II. History and Background

A. Origins of the Ethnic Divisions within Yugoslavia

An analysis of the present Yugoslavian crisis must begin with an understanding of the heterogeneity of the nation's population. Yugoslavia has a population of approximately 23 million inhabitants, consisting of several distinct ethnic groups. The two largest groups are the Serbs (9.3 million) and the Croats (4.6 million). Other significant groups include 4.1 million Bosnians and Hercegovinans, 1.9 million Macedonians, 1.8 million Slovenes, and 590,000 Montenegrins. No single ethnic group has an absolute majority in Yugoslavia. As a result, Yugoslavia is neither a homogeneous nation-state nor a multinational country, but rather the political union of several South Slav or Yugoslav ethnic groups. Such ethnic diversity has often resulted in tensions that have recently exploded into war. The aspect of the Yugoslavian civil war examined in this Comment primarily involves the Croats, Serbs, and Slovenes.

1. Serbia.—The Serbians arrived in the Balkan area in the seventh century A.D. For five centuries after their arrival, the Serbs struggled both with internal clans and foreign influences, which led to a lack of cohesion. Under the Nemanjid dynasty, however, a strong Serbian state was established that reached its zenith in

6. Id.
8. B. McFarlane, supra note 5, at 2. There are also ten national minorities which include the following: Siptars (1.7 million), Hungarians (470,000), Turks (120,000), Slovaks (83,000), Romanians (58,000) and gypsies (70,485). Id.
9. Together the Serbs and Croats comprised 64% of the population in 1921, 56% in 1981, and 61.6% in 1988. B. McFarlane, supra note 5, at 2; S. Pavlowitch, supra note 4, at 64.
10. S. Pavlowitch, supra note 7, at 64.
12. H. Darby, supra note 11, at 87. At times these clans headed by a zupan would unite under a grand zupan but such unions would collapse followed by a period of disruption. The entire era was characterized by confusion and turmoil. Id. at 89.
the fourteenth century under Stephen Dusan. Following Dusan's death, the Serbian state collapsed under the Turkish invasions, and Serbia remained under the Turkish influence until the mid-nineteenth century. A combination of factors, including Serbians' rallying to form a united front against the Turks and the growth of Western influence in the region, culminated in the eventual expulsion of the Turks and the recognition of Serbia as a state at the Berlin Congress in 1878.

As a result of this historical turmoil and development, Serbia has acquired strong national sentiment and political self-consciousness. In addition, the Serbians retained the use of the Cyrillic alphabet and chose to follow the Eastern Orthodox religion.

2. Croatia.—The Croats arrived in their present homeland in the seventh century and their early history is relatively obscure. A Croatian kingdom flourished during the tenth and eleventh centuries, but it eventually came under the control of Hungary and later under Austria-Hungary control—a relationship that was to last for the next eight hundred years until 1918. Despite the connection with Hungary, the Croats viewed themselves as a separate state, merely maintaining a common ruler. Naturally, the Croatian status often fluctuated during this time, while Croatia varied from sovereign state to vassal state. Similar to the Serbs, the Croats also experienced a national revival in the eighteenth century that affected the later unification movement of the Slavs. However, unlike the Serbs, the Croats used the Latin alphabet and adhered to the Roman Catholic religion.

3. Slovenia.—The Slovenes first appeared in their modern re-

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13. Id. at 96-99. Dusan is known as the Law-giver because of his introduction of the legal code from 1349 to 1354 which essentially was a combination of Byzantine law and Serbian customs. F. Singelton, supra note 11, at 25.
15. F. Singelton, supra note 11, at 72-79.
16. H. Darby, supra note 11, at 118-19. Many of these strong national feelings developed during the struggle against Turkish rule and became stronger as the nineteenth century progressed. Id.
17. Id.
18. Id. at 23.
19. F. Singelton, supra note 11, at 28-29; B. McFarlane, supra note 2, at 3.
20. F. Singelton supra note 11, at 29.
21. Id. The Croatian borders also fluctuated at times. Sections in the north and sections of Bosnia were detached, while at other times, various areas came under brief Turkish control. Id.
22. H. Darby, supra note 11, at 32-35. Much of this national awakening can be contributed to Napoleon's creation of the Illyrian Provinces which found the Serbs, Croats, and Slovenes in the same political unit. Although it lasted only four years, it contributed greatly to the development of a Yugoslav consciousness later in the nineteenth century. Id. at 33.
23. Id. at 11.
The Slovenes came under the Holy Roman Empire’s general influence and later developed under a particularly Austrian influence. The Slovenes experienced a national awakening because Slovenia enjoyed favorable economic conditions and the Slovene group was small and scattered. Nevertheless, this awakening never reached the level achieved by the other Slav people. The Slovenes did, however, play a part in the growing movement towards a unified state.

B. The First World War and the Emergence of Yugoslavia

Prior to the First World War, it was evident that a slowly evolving movement was commencing with the ultimate goal of unification of the Southern Slavs. The development of the Serbian state and its success in the Second Balkan War, fueled the hopes of those Slavs still under foreign, particularly Austria-Hungarian, domination. However, the vast differences in each ethnic group’s historical background presented many obstacles to a unified Southern Slav nation. A cataclysmic change appeared to be necessary to affect the expulsion of the Austria-Hungarian influence and to provide a foundation upon which to establish a unified Southern Slav state. Thus, the First World War would become the needed catalyst that created the first modern Yugoslav state.

Prior to the war, Austria-Hungary was becoming increasingly concerned over the rise of Serbia in the Balkan area and the increasing rapprochement of the Serb, Croat, and Slovene ethnic groups. In an effort to resolve the Eastern Question, Austria-Hungary had repeatedly attempted and failed to provoke a war with Serbia. Finally, with the assassination of Archduke Franz Ferdinand, an appropriate spark was found to start the fire; Austria-Hungary declared war on Serbia, thus, touching off the First World War.

24. Id. at 13.
25. Id. at 13-19.
26. Id. at 21-22.
27. Id. at 154.
28. F. Singelton, supra note 11, at 114. Serbia had acquired Macedonia, Kosovo, Metohija, and a part of the sandzak of Navi Pazar which resulted in a near doubling of Serbian territory and an increase in population from 2.9 million to 4.4 million. Id. However, in the process, Serbia’s resources had been stretched to the limit, and any hope of liberation from the Austrian-Hungarian yoke of the remaining Southern Slavs had become unrealistic. Id.
29. H. Darby, supra note 11, at 154-55.
30. Id. at 157.
31. Id. at 159.
32. F. Singelton, supra note 11, at 114. Austria-Hungary had attempted to provoke a war with Serbia over the annexation of Bosnia-Hercegovina in 1908; however, Serbia had made diplomatic concessions which removed any reason for military action. Id.
33. Id. at 114-18. It is often suggested that the Austrian militarists contributed to the circumstances that led to the assassination of the heir to the Habsburg throne by failing to provide adequate security arrangements. Id. at 115. Ferdinand was assassinated by Gavrilo Princip, a conspirator from an organization known as the Black Hand. Id. at 117. The Black
Despite a valiant struggle, the Serbians were eventually overwhelmed by a combination of Austrian, German, and Bulgarian forces, therefore, they retreated across Albania to the Adriatic coast.\(^{34}\)

By 1916 all the lands that were to comprise the Southern Slav state remained under foreign occupation.\(^{35}\) With the Declaration of Corfu on July 20, 1917, however, the two main groups of Southern Slavs in exile—the Serbian exiles and the Yugoslav committee—agreed to a union of all Serbs, Croats, and Slovenes as a single nation upon the termination of foreign occupation.\(^{36}\) Thus, the seeds of the first modern Yugoslav state were established. Accompanying these seeds was a divergence of goals that resurfaced throughout the history of Yugoslavia, and it is currently a dominant factor in the present crisis. While the Yugoslav committee saw an equal partnership between Serbs and Croats in a Southern Slav state, the Serbian exiles viewed the new state as an enlarged Serbia.\(^{37}\) Following the defeat of the Central powers in the First World War, the Kingdom of Serbs, Croats, and Slovenes was officially announced on December 1, 1918.\(^{38}\)

The Kingdom of Serbs, Croats, and Slovenes, which was renamed Yugoslavia in 1929, initially established a parliamentary democracy.\(^{39}\) However, this governmental form failed and was followed by a royal dictatorship.\(^{40}\) This in turn was succeeded by a mock parliamentary system that was swept aside by the Axis invasion in April 1941.\(^{41}\)

C. Yugoslavia and the Second World War

The leaders of the early Yugoslav state attempted to establish a common political and economic order among a heterogeneous mixture of various ethnic groups.\(^{42}\) The differences among the Southern Slav people which had evolved throughout the centuries under distinct historical backgrounds, were generally ignored. The founding fathers assumed that "a Yugoslav nation already existed, with a
common language and a common sense of community.” This assumption was certainly erroneous, and presented another problem that would manifest itself in the future in a significant fashion.

The Second World War not only compounded these existing problems, but also contributed to the ethnic rift that existed between the various groups, particularly the Serbs and Croats. On the morning of April 6, 1941, the Second World War began for Yugoslavia when Hitler’s armies commenced an invasion. Just eleven days later, Yugoslavia capitulated and a rapid partition was undertaken.

The Independent State of Croatia was created, and it immediately undertook a campaign of purification aimed at removing the Serbs from the new state. The result was a series of appalling atrocities committed by a group known as Ustasa, in the areas of Croatia where the Serbs were concentrated.

In response to the German invasion and the subsequent atrocities, two separate partisan groups arose. One of these was the Chetniks under the leadership of Mihailovic. The Chetniks favored the Yugoslav monarchy and a Greater Serbia. In addition, until the war turned against the Axis, the Chetniks sought to avoid armed resistance since it consistently resulted in severe German reprisals.

The second group was a Communist-partisan organization under the command of Tito. With the ultimate goal of a unified socialist Yugoslavia, the communist partisans carried out a program based on sabotage and isolated attacks. The two groups could not agree upon a common program; this eventually culminated in open

43. Id.

44. H. Darby, supra note 11, at 208. The attack coincided with the signing of a Treaty of Friendship and Non-Aggression between the Soviet Union and Yugoslavia. F. Singleton, supra note 10, at 173. Yugoslavia had hoped the treaty would serve as a warning to the Axis that Yugoslavia would not be alone if Italy moved into the Balkans. Id.

45. H. Darby, supra note 11, at 209. The Yugoslav collapse was aided by a strategic plan which attempted to defend the entire country rather than concentrating in the mountainous core. Id. at 208. Furthermore, the Yugoslav General Staff had expected the attack from the north but the major German thrust in reality came from western Bulgaria. Id.

46. F. Singleton, supra note 11, at 175-77. The Independent State of Croatia (Nezavisna Drzava Hrvatska or NDH) was neither independent nor entirely Croatian. Id. at 177. The NDH was not recognized internationally; its government could act only with the consent of the occupying powers, and its economy was subordinated to the German war machine. Id.

47. Id. at 177. While the exact number of Serbs killed in the NDH is unknown, Serbia estimates 750,000, but Germany claims 350,000. Id. This extermination process was later judged as genocide at the Nuremburg trials. Id.

48. Id. at 189.

49. Id. at 189. The cetnik which literally means an armed band, came to have a special meaning as a band that fought against the Turks during the Ottoman occupation. Id. The group developed in the nineteenth century as a Serbian volunteer force that specialized in irregular warfare behind enemy lines. Id.

50. Id. at 189.

51. H. Darby, supra note 11, at 212.

52. F. Singleton, supra note 11, at 193-95.
hostilities between the two parties. Thus, throughout the Second World War, several wars raged within Yugoslavia: a war against the Germans, a war against Croat Ustasa, and a war between the Chetniks and Communist partisans. The cost of these wars was staggering. In addition to the tremendous economic damage that paralyzed Yugoslavia for years to come, 1,700,000 people were killed.

D. Yugoslavia During and After Tito

Out of the ashes of the Second World War, there emerged the Federative People's Republic of Yugoslavia under the leadership of Tito. Initially, Tito was aligned with the Soviet Union. However, in 1948 Yugoslavia was expelled from the Cominform. The expulsion was caused by ideological as well as policy disagreements between the Soviet Union and Yugoslavia, which had increasingly been developing independent of the other Member States. Under Tito, Yugoslavia made great social, economical, cultural, and political strides. Tito himself provided a great force towards unity. Under his guidance, this Yugoslav state had survived longer than any previous unified Southern Slav state.

In 1980 President Tito died and was replaced by a collective leadership. Immediately, questions concerning the durability of Yugoslavia's statehood began to emerge. Unfortunately, today the answer seems to have surfaced in the form of civil war, as the dream of unity appears to have succumbed to the ghosts of the past.

53. Id. at 195.
54. Id. at 193-201.
55. Id. at 206. The extent of Yugoslav wartime losses can be seen through the following numbers:
   - Dead 1,700,000 (11% of pre-war population)
   - Average Age 22 years
   - Homeless 3,500,000
   - Buildings 822,000 destroyed
   - Farm Equipment 80% destroyed
   - Railway Lines 50% destroyed
   - Locomotives 77% destroyed
   - Good Wagons 84% destroyed

56. F. Singleton, supra note 11, at 209.
57. Id. at 219-20.
58. Id. The Cominform was an association of countries which exchanged information and established a machinery of consultation among the member states. Id.
59. Id.
61. F. Singleton, supra note 11, at 271.
III. The Yugoslavian Crisis: Succession and Civil War

A. Immediate Origin of the Crisis

The origins of the present crisis in Yugoslavia developed during the spring and summer of 1990 when Slovenia and Croatia voted in free elections to install Western-style governments.62 By contrast, Serbia chose to retain its Communist government under President Slobodan Milosevic.63 This was followed by an independence referendum in Slovenia that resulted in more than 80% of Slovenia's 2.1 million people favoring a secession from Yugoslavia.64 This landslide was a clear indication of foreboding trouble. A main source of this trouble was economic disparity; Croatia and Slovenia are both relatively prosperous and have grown tired of subsidizing the poorer southern republics such as Serbia.65

The growing problems came to a head in May 1991, when the leadership of the country's rotating presidency was due to change.66 Stipe Mesic, a Croat, was to assume the leadership of the country's presidency.67 However, Serbia and several of its allies refused to approve Mesic.68 This prompted a major crisis. Serbia wanted to preserve its power over the federal institutions and felt that Mesic would undermine this objective by contributing to the growing secession movements.69 This conflict constituted a major rift between the parties because Milosevic and Serbia desire a strengthening of the Yugoslav republic, while Croatia and Slovenia desire a more loosely bound federation.70

B. Succession and Civil War

On June 25, 1991, Croatia and Slovenia declared independence, despite the fact that initially the Western European governments refused to recognize them as states.71 Shortly thereafter, fierce fighting broke out between the Yugoslav Army and the Slovenian national...
guard. However, on July 8, 1991, a European Community mediation negotiated an agreement to prevent further fighting within Slovenia. Essentially, the agreement affected a cease-fire, withdrawal of the Yugoslav army, and suspension of claims for independence by Slovenia for several months. The agreement appears to have been successful as hostilities have ceased. In addition, evidence from Serbia, combined with several other additional factors, indicate it may only be a matter of time until Slovenia gains its independence. First, Slovenia is ethnically homogeneous. Second, Slovenia does not border Serbia, rather it only shares a common border with Croatia. Finally, Slovenia is most likely capable of economic success and self-sufficiency. Thus, it appears Serbia has acceded the loss of Slovenia.

Unfortunately, the situation in Croatia has progressed differently and much more violently. This is principally due to two interwoven factors that have resulted in a civil war instead of a peaceful settlement. First, Croatia does not enjoy a homogeneous population. Serbs constitute approximately 12% or 600,000 of Croatia's 4.7 million population. This Serb minority has created problems throughout history, and the current crisis is no exception. Second, the Yugoslav Army is dominated by Serb officers schooled in hard-line Communism. Although the Yugoslav Army is supposed to be under the command of collective president Stipe Mesic, it appears to have ceased taking orders and to have openly sided with the Serbs.

The army's new found leadership is vested in General Blogoje Adniz, Chief of Staff of the Yugoslav Army and an ethnic Serb. The conscript ranks, however, are drawn in equal proportions from the six republics. The result is a highly volatile and unpredictable army whose next move is uncertain, and if faced with combat, may fracture according to ethnic lines. These factors have combined to result in open conflict between the ethnic Serb minority within Croatia, the Yugoslav Army, and the Croatian security forces.

Following Croatia's succession, hostilities which began with ethnic skirmishes gradually increased; the situation escalated into a civil
The civil war is composed of several aspects. First, Croatian forces have blockaded approximately forty garrisons of the Yugoslav army in the Croatian republic. Second, with the goal of liberating these garrisons and possibly ending Croatian independence, the Yugoslav Army has launched repeated offenses on air, land, and sea. Third, Serb rebels, with the support of the Yugoslav army, have essentially carved out ethnic boundaries by gaining control of over one-third of Croatia.

An end to the fighting, however, may finally be near. On January 2, 1992, a fifteenth cease-fire was agreed to by Croatia and Serbia. Under the plan the Yugoslav army troops in Croatia would be replaced by a 14,000 member United Nations peacekeeping force to monitor the cease-fire. However, this plan has met with stiff opposition because the Serb minority within Croatia, fears that it will be at the mercy of the Croatian majority following removal of the Yugoslav army troops and later the United Nations peacekeeping force. The United Nations plan was further complicated when the republic of Bosnia and Herzegovnia voted in favor of independence in late February. The Serbs account for 31% of Bosnia and Herzegovnia's 4.3 million population, but claim to control 60% of its territory. As a consequence of the independence referendum, the Serbs commenced attack designed to capture territory and dissuade the European Community and the United States for recognizing Bosnia and Herzegovnia. However, on April 6, 1992, the twelve-nation European Community recognized the independence of Bosnia and Herzegovnia. On April 7, 1992, the United States recognized the independence of Bosnia and Herzegovnia, Croatia, and Slovenia. Following recognition, the Serbian and Yugoslav Army forces have increased the attacks and appear to be on the offensive.

Thus, the United Nations plan, designed for peacekeeping not peacemaking, has been jeopardized as the previous peaceful republic of Bosnia and Herzegovnia has moved closer toward civil war with casualties beginning to mount. Nevertheless, as of mid-April 1992,
several thousand soldiers of the United Nations peacekeeping force have been sent to the front lines of Croatia. Thus, although a cease-fire is presently in effect, there is no guarantee that it will finally end the crisis considering the rapidly developing violence in Bosnia and Herzegovnia and the failure of fourteen previous cease-fire agreements. The crisis will only end when Croatia and Serbia are ready to put an end to the bloodshed which has already resulted in over 10,000 deaths.

With respect to Yugoslavia, it is necessary to first examine the two situations in which the laws of war apply to non-international armed conflicts. Second, the applicability of these laws of war must be considered in light of the current internal conflict in Yugoslavia.

IV. The Laws of War Governing Non-International Armed Conflicts

A. Definition of the Non-International Conflict

"The internal armed conflict is a means of expression, a deadly dialogue when none other is any longer possible." Such a definition appears to adeptly describe the situation in Yugoslavia. In 1962, this definition was expanded by a Committee of experts who met in Geneva to discuss internal conflicts. The Committee explained that an armed conflict exists "if hostile action against a lawful Government assumes a collective character and a minimum of organization." A series of factors were enunciated to access a conflict: duration of the conflict; number and leadership of rebel groups; installations or actions in parts of the territory; degree of insecurity; existence of victims; and means adopted by the lawful government re-establish order. These factors for assessing a conflict should be rather broadly considered.

Applying the above factors to the Yugoslavian situation reveals a non-international conflict. The Yugoslavian crisis has continued for a prolonged duration entangling nearly the entire country in terms of population and territory. In the course of this warfare, there have

98. N.Y. Times, April 13, 1992, at 6, col. 5.
100. N.Y. Times, Jan. 16, 1992, at 1, col. 2. According to European Community officials, about 6,000 soldiers and civilians have been killed on the Croatian side. Id. Serbian officials report approximately 4,000 military casualties. Id. The Central Office of Statistics in Croatia estimates that up to 40% of its factories have been destroyed or damages, with 18.7 billion dollars to rebuild. Id.
102. Id.
103. Id.
104. Id. at 100.
105. Id. at 100.
been thousands of casualties resulting from the government's attempts to re-establish order. With a strong degree of organization, the hostile action of succession by Croatia and Slovenia has clearly reached a collective character. At the very minimum, it can be correctly called a non-international armed conflict; consequently, the laws of war governing a non-international conflict must be examined.

B. Common Article Three of the 1949 Geneva Convention

The laws of war are defined as a "a branch of public international law, and comprises the body of rules and principles observed by civilized nations for the regulation of matters inherent in, or incidental to, the conduct of public war."\(^{106}\) These laws regulate aspects of war such "as the relation of neutrals and belligerents, blockades, captures, prizes, truces and armistices, capitulations, prisoners, and declarations of war and peace."\(^{107}\) The laws of war rest upon the ability and willingness of each side in a armed conflict to accentuate between combatants and civilians and between military and nonmilitary targets.\(^{108}\) However, civil wars are fundamentally different from other types of conflicts. "Internal conflicts have become chambers of horror. Destruction, brutality, and death do not after all, recognize international boundaries; they stalk their prey wherever men fight one another."\(^{109}\) As a consequence, the humanitarian objectives of the laws of war are often disregarded in the pursuit of total victory. Thus, it has been only recently that attempts have been made to establish laws of war governing civil war.

For several hundred years, it has been suggested that the laws concerning warfare applied equally to parties involved in civil war.\(^{110}\) In 1912 at an International Conference of the Red Cross, a motion was made to deal with civil wars, but it was largely unheeded.\(^{111}\) It was not until 1949, following fundamental revisions in the Geneva Conventions that internal conflicts were finally and officially addressed.\(^{112}\) The result was Common Article 3 (Article) which was

107. Id. at 1419-1420.
109. J. Bond, The Rules of Riot, Internal Conflict and the Law of War 45 (1974). Examples abound: In Algeria French soldiers killed over 100,000 rebels and suffered the loss of 13,000 soldiers between 1954 and 1960; furthermore, in the Nigerian civil war, approximately 2,000,000 Biafrans died. Id.
111. Id. The motion would have permitted aid in the care and nursing of the sick and wounded and of noncombatants with "utmost impartiality as between the members of the opposing factors." Id. at 502-03. See also Schlogel, Civil War, 108 Int'l Rev. Red Cross 123, 124-25 (1970).
112. H. Taubenfeld, supra note 110, at 503. At the Geneva Diplomatic Conference in 1949 intense arguments occurred over the addition of any form of provision relating to internal
adopted by each of the four Geneva Conventions. Generally, Article 3 applies to an armed conflict not of international character and requires that each party shall abide by certain minimum fundamental humanitarian provisions. Moreover, Article 3 provides that there shall be no discrimination against members of armed forces who have laid down their arms or who have been hors de combat by sickness, wounds, detention, or any other cause. Finally, application of the provisions shall not affect the legal status of the parties to the conflict.

Although Common Article 3 of the Geneva Conventions represents an advancement in the laws governing an internal conflict, experience has quickly demonstrated its inadequacy. Initially, there

wars. Id.

113. Id. at 504. The Four Conventions are the following: "(I) wounded and sick in armed forces in the field; (II) wounded, sick and ship-wrecked in armed forces at sea; (III) prisoners of war; and (IV) civilians." DOCUMENTS ON THE LAWS OF WAR 169 (A. Roberts and R. Guelff eds., 2nd ed. 1989) [hereinafter Roberts]. The Four Conventions are linked by common articles which are the general provisions beginning each Convention; the provisions relating to execution of each Convention, and the provisions in the concluding procedural portion. Id. at 169-70.

114. Roberts, supra note 113, at 172. Article 3 states:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed in hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder all kinds, mutilation, cruel treatment torture;
(b) taking of hostages;
(c) outrages upon personal dignity, in particular humiliating and degrading treatment;
(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavour to bring into force by means of special agreements, all or part of the other provisions of the present Convention.

Id.


115. Id.

116. Id.

117. Id. at 448. The inadequacies became apparent when States refused or were reluctant to recognize an Article 3 situation. Lysaght, The Scope of Protocol II and its Relation to
was a problem determining when the Article was applicable.\textsuperscript{118} The Article does not define the necessary level of hostilities required to invoke its protections, other than a vague standard of "armed conflict not of an international character." This allows governments to exhibit broad discretion in determining whether or not the Article applies to the parties involved.\textsuperscript{119}

It has been suggested that the concept of an armed conflict encompasses "the idea of open, armed confrontation between relatively organized armed forces or armed groups. Internal disturbances characterized by sporadic acts of violence and internal tensions characterized by widespread arrests are not considered armed conflicts."\textsuperscript{120} Nevertheless, it is the government that has the final word. This suggests an additional problem with Common Article 3, lack of an enforcement mechanism. The nearest the Article comes to addressing the enforcement issue is the provision that allows an impartial humanitarian body, such as the International Committee of the Red Cross, to offer its services to the Parties of the conflict.\textsuperscript{121} Thus, an examination of Common Article 3 reveals a general and incomplete provision that cannot be considered a sufficient guide for parties involved in an internal conflict.\textsuperscript{122}

C. 1977 Geneva Protocol II

In 1964 the International Committee of the Red Cross recognized problems and began drafting possible improvements to Common Article 3.\textsuperscript{123} The result was a draft protocol that provided additional laws relating to non-international armed conflicts that eventually evolved into Geneva Protocol II.\textsuperscript{124} First, the Geneva Protocol II establishes itself as a supplement to "Article 3 common to
the Geneva Convention of 1949 without modifying its existing conditions of application.\textsuperscript{125} Second, the Geneva Protocol II defines the necessary armed conflict required to invoke its protections as

[any armed conflict] which take[s] place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.\textsuperscript{126}

These factors interact to define the scope of both Common Article 3 and the Geneva Protocol II in the following manner:

[I]n those situations in which the conditions for the application of Protocol II are fulfilled, both Protocol II and Common Article 3 apply simultaneously, because the scope of Protocol II is included in the wider scope of Common Article 3. On the other hand, in a low-intensity conflict, which does not fulfill the conditions for the application of Protocol II, only Common Article 3 applies.\textsuperscript{127}

Thus, in theory, the Geneva Protocol II clarifies and resolves many of the problems associated with determining the applicable laws of war in an internal conflict. A weakness, however, still exists in distinguishing between armed conflicts and internal disturbances at lower levels of violence. When determining the applicability of the Protocol, this weakness opens the door to discretionary government abuse.\textsuperscript{128}

In terms of protections afforded in a non-international armed conflict, the Geneva Protocol II represents a significant advancement.\textsuperscript{129} The Protocol broadens the scope of humane treatment, particularly in regard to children and persons whose liberty has been restricted.\textsuperscript{130} In addition, by requiring an independent and impartial judicial hearing, the Protocol addresses the prosecution and punishment of criminal offenses related to the armed conflict.\textsuperscript{131}

Perhaps its greatest advancement is in the protections afforded...
to the civilian population.\textsuperscript{132} Article 13 of the Geneva Protocol II specifically states that civilian populations shall not be the object of attack.\textsuperscript{133} Also, of particular relevance to the Yugoslav situation, is Article 17 of the Geneva Protocol II.\textsuperscript{134} This Article 17 prohibits forced movement of civilians by providing that civilian populations shall be neither displaced nor compelled to leave their own territory for reasons related to the conflict.\textsuperscript{135} This article may have an impact in Croatia in areas where a Serbian minority exists.

The major weakness of the Geneva Protocol II, similar to many other humanitarian laws, is the lack of an implementation and enforcement mechanism.\textsuperscript{136} Although the International Committee of the Red Cross addressed the subject in its draft protocol, the Geneva Protocol II has no provision for enforcement or even observance.\textsuperscript{137} After all, the Geneva Protocol II was designed only to supplement Common Article 3; therefore, the enforcement mechanism of the Article, an impartial humanitarian body that may offer its services to the Parties in conflict, would appear applicable to the Protocol.\textsuperscript{138} This lack of an effective enforcement mechanism is a weakness shared not only by the Geneva Protocol, but also by the Geneva Conventions in general.\textsuperscript{139}

\textbf{D. International Committee of the Red Cross}

The International Committee of the Red Cross (ICRC) was established in 1863 and became one of the first international bodies to address the problems associated with internal conflicts.\textsuperscript{140} At the Tenth International Red Cross Conference in 1921, a resolution was adopted recognizing the role of the Red Cross in civil wars:

1. The Red Cross, transcending all political, social, religious, racial, class, and national competition, affirms its right and duty to

\begin{itemize}
  \item \textsuperscript{132} Lysaght, supra note 118, at 24.
  \item \textsuperscript{133} Roberts, supra note 113, at 24.
  \item \textsuperscript{134} Id. at 456.
  \item \textsuperscript{135} Id.
  \item \textsuperscript{136} Lysaght, supra note 118, at 25.
  \item \textsuperscript{137} Id. The International Committee of the Red Cross suggested that the Protocol II contain an enforcement provision which allowed a body offering all guarantees of impartiality and efficacy to be called upon or to offer services to cooperate in the observance of the provision of the Protocol. Id. (citing INT'L COMM. OF THE RED CROSS, DRAFT PROTOCOL ADDITIONAL TO GENEVA CONVENTIONS OF AUGUST 12, 1949 RELATING TO NON-INTERNATIONAL ARMED CONFLICTS, art. 39 (1949)).
  \item \textsuperscript{138} Lysaght, supra note 118, at 25.
  \item \textsuperscript{139} Id. at 27.
  \item \textsuperscript{140} Veuthey, Implementation and Enforcement of Humanitarian Law and Human Rights in Non-International Armed Conflicts: The Role of the International Committee of the Red Cross, 33 AM. U.L. REV. 83 (1983). For example, the ICRC maintained a delegate in the Soviet Union during the Russian Revolution in 1918-1919. Id. at 84. See also A. Durand, HISTOIRE DU COMITE INTERNATIONAL DE LA CROIX-ROUGE: DE SARA-JEVO A HIROSHIMA 78-87 (1978); J. Moreillon, Le Comite International De La Croix-Rouge Et La Protection Des Detenus Politiques 44-47 (1973).
take actions to provide relief in civil war, social disturbances, and revolutions. The Red Cross recognizes that all nations of civil war or conflicts of the type mentioned are without exception entitled to assistance, pursuant to the General Articles of the Red Cross.

2. An important role of the National Red Cross Society in any country where civil war breaks out is to assist impartially the victims.141

Thus, in the event of civil war, the ICRC was mandated the role of intervening with relief.142

Only Article 3, however, is common to both the Geneva Conventions of 1949 and international humanitarian law.143 It allows the ICRC to "offer its services to the parties" of non-international conflicts.144 Based on this limited legal footing, the ICRC has a right in non-international conflicts to offer its services based upon its own statutes and the statutes of the International Red Cross.145 Governments are free to accept or reject these offers.146

In the event of an internal conflict, the ICRC begins by requesting that all parties abide by international humanitarian law principles.147 Based on paragraph 3 of Common Article 3, such requests may also be complemented by special agreements between the parties to the conflict.148 Pursuant to this provision, the parties are allowed "to bring into force, by means of special agreements, all or part of the other provisions" of the Geneva Conventions.149 Further,
since ICRC must remain impartial, its activities are limited to "preventing and alleviating human suffering, protecting life and health, and ensuring respect for human dignity, according to Red Cross principles on humanity."\(^{150}\) In addition, the Red Cross furnishes food and medical assistance to the parties involved in the internal conflict.\(^{151}\) Finally, the Red Cross not only visits prisoners, but also "[asks] for access to all places of detention, freedom to speak privately with detainees, a list of detainees, authorization to provide needy detainees and their relatives with material assistance," and furnishes a report to the detaining authorities.\(^{152}\) In summation, although the International Committee of the Red Cross acts only on a limited legal basis, it plays a major role in supervising and implementing humanitarian objectives in non-international armed conflicts.

E. Yugoslavia and Laws of Non-International Armed Conflict

Before considering the applicability and observance of the laws of war governing non-international conflicts in Yugoslavia, it is necessary to understand the dilemma that confronts conflicting parties. It is difficult to strike a balance between the necessities of combat and the observance of the laws of war.\(^{153}\) First, application of the rules appears to favor the government.\(^{154}\) If the rules, therefore, were respected from the outset of the resistance movement, the insurgents may be deprived of a means of action.\(^{155}\) Second, the civilian population plays an important role in an internal conflict.\(^{156}\) Attempted secessions, such as those by Croatia and Slovenia, have little chance of success unless they are backed by the will of the civilian population.\(^{157}\) In order to stop secession movements, it is often necessary to defeat the secession army as well as the civilian population.\(^{158}\) As a result, humanitarian law is often sacrificed at the expense of the civilian population. Third, it is important that the secession movement recognize the humanitarian principles, or it will become increasingly difficult to apply these principles to persons who disregard them.\(^{159}\) Thus, in the application of humanitarian rules, the very nature of a

\(^{150}\) Id.


\(^{152}\) Id.

\(^{153}\) Id. at 103.

\(^{154}\) Id.

\(^{155}\) Id.

\(^{156}\) Id.

\(^{157}\) Id.

\(^{158}\) Id.

\(^{159}\) Id.
non-international armed conflicts presents inherent problems.\(^{160}\)

With these problems in mind, it is necessary to examine the standards enunciated under Common Article 3 and the Geneva Protocol II, to determine the applicability of the rules of war to the internal conflict in Yugoslavia. Common Article 3 applies to any armed conflict not of an international character.\(^{161}\) In regard to an internal crisis, this is the only guidance Common Article 3 provides. Despite this limited instruction, it is evident that the Article should be applied to the current Yugoslav crisis.

The concept of an armed conflict encom- passes "the idea of open, armed confrontation between relatively organized armed forces or armed groups."\(^{162}\) In Yugoslavia, two organized armed groups, the Serbs and the Croats, waged a war that resulted in approximately 10,000 deaths.\(^{163}\) The fighting has been strictly limited within the confines of Yugoslavia, chiefly Croatia.\(^{164}\) Thus, the Croatian, Serbian, and Slovenian aspect of the Yugoslavian crisis is an armed conflict of a non-international nature. As such, Common Article 3 pertains to both the Serbs and the Croats when invoking its basic humanitarian protections.

The Geneva Protocol II, in addition to providing further humanitarian protections to conflicting parties, provides a more explicit standard for determining whether its protections should be extended to a given crisis.\(^{165}\) This standard requires an armed conflict

which take[s] place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.\(^{166}\)

This standard must be broken down, examined, and applied to the Yugoslavian crisis.

First, Protocol II applies when government armed forces confront dissident forces.\(^{167}\) It is "when the regular armed forces fight against insurgents who have formed organized armed groups."\(^{168}\)

\(^{160}\) Id.


\(^{162}\) Junod, supra note 105, at 30.

\(^{163}\) N.Y. Times, Nov. 18, 1991, at 3, col. 2.

\(^{164}\) Id.

\(^{165}\) Documents on the Laws of War, supra note 114, at 447-58.

\(^{166}\) Documents on the Laws of War, supra note 114, at 449-550. Yugoslavia signed the Geneva Protocol II on December 12, 1977 and ratified the document on June 11, 1979, thus, Yugoslavia became a High Contracting Party. Id. at 461.

\(^{167}\) Id. at 449.

\(^{168}\) Junod, supra note 119, at 36. However, Protocol II should not apply in situations in
This aspect is satisfied because the Yugoslav army is fighting against an organized Croatian army.

Second, the dissident armed forces must be under responsible command. Responsible command implies that dissident armed forces must be organized to some degree. A de facto authority, which is able "to plan and carry out concerted military operations and to impose the discipline required," must exist. This element is satisfied because Croatia is under the command of President Franjo Tudjman. Under this leadership, Croatia withstood six months of warfare with Serbia, evincing an organized armed force capable of sustained military operations. Stemming from the repeated failures of the various cease fires, there may be some doubt as to the discipline aspect of this element. The mere negotiation of such cease fires suggests, however, that Croatia does possess the necessary discipline required.

Third, there must be control over territory. This element is easily met because Croatia continues to be in control of approximately two-thirds of the original territory that declared its independence from Yugoslavia.

The fourth element examines the extent of this control and whether it is sufficient to enable the dissent party to carry out sustained and concentrated military operations. As previously discussed, it appears that Croatia is capable of sustaining the degree of military action that this element requires. For example, Croatia blockaded approximately forty Federal garrisons containing 25,000 National Army troops for six months. In addition, although the Croatians were defeated and lost the city of Vukovar to the Serbian-led Yugoslav army, the defeat came after a three month battle and siege. These examples display the ability to carry out a sustained military action.

Finally, the dissident must be capable of implementing the Protocol. This suggests that "as soon as the material criteria [is] fulfilled, it may be reasonably expected that the parties will apply the rules of protection contained in the Protocol, because the parties
would then have an adequate infrastructure for such application." The above analysis indicates that the Yugoslavian crisis almost certainly meets the material criteria.

Thus, it seems reasonably appropriate to expect the parties to abide by the Protocol. Both Croatia and Serbia possess the adequate infrastructure necessary to implement the Protocol. An examination of Common Article 3 and the Geneva Protocol II reveals that the Serbia, Croatia, and Slovenia aspect of the Yugoslavian crisis appears to meet the requirements necessary for invoking the humanitarian protections afforded by each document.

V. The International Law Approaches Toward Internal War

A. Traditional International Law Approach

Generally, international law is a body of rules governing the relationships between States. An internal conflict, such as a civil war, is frequently considered outside the scope of international law. As a result, governments usually will not apply the customary laws of war and justify such a refusal on the grounds that it is their sovereign right as a nation to deal with domestic enemies. Since international law will recognize the outcome of an internal conflict, however, certain levels of conflict are accorded the rights and duties of nations upon their achievement.

Traditional international law recognizes three categories “based on the military and political success of the movement and the degree to which it resembled a sovereign State.” The three classifications: rebellion, insurgency, and belligerency are designed “to distinguish among conflicts along a continuum of ascending intensity.”

A rebellion is a minor internal conflict, such as a riot, an iso-
lates or sporadic act of violence, or an uprising that is rapidly suppressed, such as a riot.\textsuperscript{187} Under international law, a rebellion within the borders of a sovereign state falls within the exclusive domain of that state.\textsuperscript{188} Further, international law neither grants rights nor imposes duties on a rebel party.\textsuperscript{189} An internal conflict that is classified as a rebellion, prohibits foreign states from assisting the rebels.\textsuperscript{190} However, aid to the incumbent government is permitted.\textsuperscript{191} In this way, international law favors the incumbent government in a rebellion and accords the rebel party no benefits or protections.\textsuperscript{192}

International acknowledgement of insurgency is the recognition that an internal war exists.\textsuperscript{193} Each individual state controls the consequences of its acknowledgements.\textsuperscript{194} Insurgency is not precisely characterized, but it is generally held to constitute a greater level of ascending intensity than a rebellion.\textsuperscript{195} To be recognized as insurgents, the rebels must have: “sufficient control over territory and sufficient military might for the interests of foreign States to be affected, giving rise to the necessity of some kind of relations with the insurgents.”\textsuperscript{196} Essentially, an insurgency moves beyond a rebellion, entails a degree of limited relations with foreign states, but does not reach belligerency.

The rights and duties extended to insurgents are limited and do not extend beyond the territory of the state involved in the internal war.\textsuperscript{197} Nevertheless, an insurgent is often given extensive rights by third party states and is expected to conform to the applicable rules of international law.\textsuperscript{198} There is an increasing tendency to apply the laws of war to insurgents and to allow them to make arrangements for humanitarian protection through the International Committee of the Red Cross.\textsuperscript{199}

\begin{itemize}
\item \textsuperscript{187} Id. at 118-19.
\item \textsuperscript{188} H. Wilson supra note 181, at 23.
\item \textsuperscript{189} Id. at 23-24. For example, rebels may be punished under municipal law, and thus, there is no obligation to treat them as prisoners of war. Id. at 23.
\item \textsuperscript{190} R. Falk, supra note 186, at 118.
\item \textsuperscript{191} Id.
\item \textsuperscript{192} H. Wilson, supra note 181, at 23.
\item \textsuperscript{193} R. Falk, supra note 186, at 119.
\item \textsuperscript{194} Id.
\item \textsuperscript{195} Id. As Sir Hersh Lauterpacht stated:
\item [A]ny attempt to lay down conditions of recognition of insurgency leads itself to misunderstanding. Recognition of insurgency creates a factual relation in that legal rights and duties as between insurgents and outside states exist only insofar as they expressly conceded and agreed upon for reasons of convenience, of humanity or of economic interest.
\item H. Wilson, supra note 181, at 24. See also H. Lauterpacht, Recognition in International Law 267-77 (1947).
\item \textsuperscript{196} H. Wilson, supra note 181, at 24.
\item \textsuperscript{197} Id. at 25. (citing I G. Schwarzenberger, International Law 693 (1968)).
\item \textsuperscript{198} R. Falk, supra note 186, at 120. Third party states cannot treat an internal conflict as a rebellion once it has been identified as an insurgency by the parent government. Id.
\item \textsuperscript{199} H. Wilson, supra note 181, at 25, (citing E. Castren, Civil War 117 (1966)).
\end{itemize}
Finally, there is a split of authority over the recognition granted the combatants. Some contend that insurgency entitles the combatants to the status of "contestants-at-law," rather than mere lawbreakers. Others argue that such a status is conferred only when the conflict reaches the level of belligerency. In conclusion, "the status of insurgency is a flexible instrument for the formulation of claims and tolerances by third states." The requirements for belligerency are much more precisely defined:

[F]irst, there must exist within the State an armed conflict of a general (as distinguished from a purely local) character; second, the insurgents must occupy and administer a substantial portion of national territory; third, they must conduct the hostilities in accordance with the rules of war and through organized armed forces acting under a responsible authority; fourth, there must exist circumstances which make it necessary for outside States to define their attitude by means of recognition of belligerency.

Despite the apparent clarity of this test, it is often uncertain when recognition is necessary. As a result, the recognition of belligerency has become largely discretionary.

The recognition of belligerency essentially accords the insurgents status as a de facto state. This entitles them to the rights and duties of a state under international law which include the humanitarian laws of war. The recognition of belligerency differs, however, from the recognition of a state because the former recognizes only those rights that are immediately concerned with war. For example, the belligerent entity not only cannot negotiate treaties, but it also must keep all discussion with third party states at an


202. R. Falk, supra note 186, at 121. The status of insurgency presents trouble when third party states use it to influence the outcome of an internal war. Id.

203. Id. at 124, (citing H. Lauterpacht, Recognition in International Law 176 (1947)).

204. H. Wilson, supra note 181, at 26. When an objective determination based on the belligerency test is difficult, attention may be paid to the conduct of the incumbent that discloses a desire to negotiate with the insurgent elite on a level of equality. R. Falk, supra note 172, at 124. This may be viewed as evidence for third nations to treat a given internal war as an instance of belligerency. Id.

205. J. Bond, supra note 109, at 51.

206. Id.

207. H. Wilson, supra note 181, at 27.
informal and unofficial level. Thus, while conferring a substantial degree of rights and duties, belligerency is nonetheless restricted by its discretionary nature and focus on the internal war.

These insurgency, belligerence, and rebellion standards must be applied to the crisis involving Croatia, Slovenia, and Serbia. First, the crisis has definitely ascended beyond the rebellion level. The conflict is neither a riot nor an isolated act of violence. The crisis has continued for a prolonged duration and has resulted in approximately 10,000 deaths. An insurgency standard requires sufficient control over territory and sufficient military strength to affect the interests of foreign states. It appears that the situation has satisfied this requirement as well. Croatia still controls two-thirds of the original land that seceded from Yugoslavia.

In addition, Croatia has sufficient strength to affect the interests of foreign states as third parties. This is evidenced by the European Community's numerous attempts to negotiate a cease fire with Serbia. These attempts are indicative of the conflict's influence on foreign states. Thus, it appears that the intensity of the Croatia, Slovenia, and Serbia aspect of the Yugoslavian crisis has, at a minimum, ascended to the level of an insurgency, and as such, is entitled to the various rights attainment of this status affords.

The issue of whether the Croatia, Slovenia, and Serbian aspect of Yugoslavian crisis has reached the status of belligerence presents a much more difficult question. First, belligerency requires that a general armed conflict exists within the State. This element appears to be satisfied because the situation is not simply a local action, but rather a civil war erupting due to Croatia's declaration of independence. Second, the insurgents must occupy and administer a substantial portion of national territory. This element is also met because Croatia occupies and controls two-thirds of the original ter-

208. Id. See also LAWRENCE, THE PRINCIPLES OF INTERNATIONAL LAW 64 (7th ed. 1923). As Mr. Anthony Eden, a British Foreign Secretary stated:

Recognition of belligerency is, of course, quite distinct for recognizing any one to whom you give that right as being the legitimate Government of the Country. It has nothing to do with it. It is a conception simply concerned with granting rights of belligerency which are of convenience to the donor as much as they are to the recipients.

H. WILSON, supra note 181, at 27. (citing STARKE, AN INTRODUCTION TO INTERNATIONAL LAW 147 (5th ed. 1963)).

209. R. FALK, supra note 186, at 119.
214. R. FALK, supra note 186, at 124.
215. Walsh, supra note 84, at 38.
216. R. FALK, supra note 186, at 124.
ritory that sought independence from Serbia.\textsuperscript{217} Third, the insurgents must conduct the hostilities in accordance with the laws of war and have organized armed forces that act under a responsible authority.\textsuperscript{218} In light of potential violations of the laws of war, this element presents a difficult hurdle for Croatia to overcome. Despite the January 3, 1992 cease fire, it is extremely difficult to make an accurate determination of compliance with the laws of war. For example, both sides are guilty of violating previous cease fires.\textsuperscript{219} It generally appears, however, that the rules have been followed.

Finally, there must exist circumstances that require outside States to define their position or attitude by means of recognizing belligerence.\textsuperscript{220} Immediately following Croatia's declaration of independence, the Western nations, including the United States, made it clear that Croatia was not recognized as an independent state.\textsuperscript{221} Despite this, on January 16, 1992, the twelve nations of the European Community officially recognized Croatia and Slovenia.\textsuperscript{222} In addition, the United States recognized the independence of two republics as well as Bosnia and Herzegovina on April 7, 1992.\textsuperscript{223} Thus, according to the requirements of belligerence, it appears that the Croatia, Slovenia, and Serbia aspect of the Yugoslav crisis may have reached the necessary level of intensity. Nevertheless, if a conflict such as this has not reached the required level, it is difficult to imagine a real-world conflict that would actually qualify for belligerency status.

B. New International Law Approach Towards Civil War

The classification of internal war as rebellious, insurgent, and belligerent has created several problems that have largely rendered it virtually useless in the modern world. First, nations have avoided express declarations of status to the parties involved in an internal war.\textsuperscript{224} Recognition of belligerence has not occurred since before World War II.\textsuperscript{225} Thus, this categorization scheme is more the creation of academic and theoretical commentators than a workable sys-

\begin{flushleft}
\textsuperscript{217} N.Y. Times, Nov. 18, 1991, at 3, col. 2.  \\
\textsuperscript{218} R. Falk, supra note 186, at 124.  \\
\textsuperscript{219} N.Y. Times, Nov. 9, 1991, at 1, col. 6.  \\
\textsuperscript{220} R. Falk, supra note 186, at 124.  \\
\textsuperscript{221} N.Y. Times, July 7, 1991, at 6, cols. 1-4.  \\
\textsuperscript{222} N.Y. Times, Jan. 16, 1992, at 1, col. 1. Several other countries also recognized Croatia and Slovenia including Austria, Bulgaria, Canada, Estonia, Hungary, Latvia, Lithuania, Iceland, Malta, Norway, Poland, San Marino, Sweden, Switzerland, Ukraine, and the Vatican. N.Y. Times, Jan. 16, 1992, at 10, col. 6.  \\
\textsuperscript{223} N.Y. Times, April 8, at 10, col. 3.  \\
\textsuperscript{224} R. Falk, supra note 186, at 124.  \\
\textsuperscript{225} H. Wilson, supra note 181, at 27. See also Luard, Civil Conflicts in Modern International Relations 20 (1972). In the Spanish Civil War the insurgents were not even recognized as belligerents. H. Wilson, supra note 181, at 27.
\end{flushleft}
tem suitable for actual state behavior.\textsuperscript{226} Second, despite the classification of internal war, it is difficult to standardize what is permitted and what is forbidden in terms of identifying an actual violation.\textsuperscript{227} Third, it has become increasingly difficult for foreign states to maintain impartiality.\textsuperscript{228} The decline of mutuality has only increased the difficulty of non-intervention in any type of internal conflict.\textsuperscript{229}

Thus, there has been an increasing tendency to develop a new international law for civil war. This trend calls for a reformulation of the international law "in a manner that is more responsive to the specific contexts within which critical choices are now being made by governments."\textsuperscript{230} International law should seek to influence these choices by promoting mutually beneficial world-order policies.\textsuperscript{231} Generally, this new outlook seeks to classify the civil war situation; to classify claims made by governments and others in relation to civil war situations; and to recommend policy prescriptions that allow limited intervention for limited ends under specific circumstances.\textsuperscript{232} This new viewpoint attempts to promote intervention based on "compromise, moderation and mutual acceptance of limits," as opposed to total restrain and prohibition.\textsuperscript{233} This concept recognizes that the success of a regulatory enterprise in modern international law rests on its ability to satisfy the interests of the principal governments as viewed by their heads-of-state.\textsuperscript{234} Such an approach seeks to encourage an interaction of claims and counterclaims amongst conflicting parties.\textsuperscript{235} This results in a legislative process for the field of international law in relation to civil war.\textsuperscript{236}

Such a flexible approach would first seek to classify the situation in Yugoslavia. Under the classification scheme, a war of separation currently exists in Yugoslavia.\textsuperscript{237} A war of separation occurs when "Government A is opposed by Countergovernment B, which seeks to establish a new State, Y, in addition to State X."\textsuperscript{238} This type of war is common in states that attempt to impose "homogeneous standards upon a heterogeneous social, ethnic, and political tra-

\textsuperscript{226} R. Falk, supra note 186, at 124.  
\textsuperscript{227} Id. at 25.  
\textsuperscript{228} Id.  
\textsuperscript{229} Id.  
\textsuperscript{230} International supra note 108, at 17 (1971).  
\textsuperscript{231} Id.  
\textsuperscript{233} International, supra note 108, at 17.  
\textsuperscript{234} Id.  
\textsuperscript{235} Id. at 18.  
\textsuperscript{236} Id. at 19.  
\textsuperscript{237} Id.  
\textsuperscript{238} Id.
This describes the Croatia, Slovenia, and Serbia aspect of the Yugoslavia crisis.

With this classification established, it becomes necessary to classify various governmental claims and recommend policy prescriptions for possible limited intervention. It is at this stage that problems have developed because the only agreed-upon objective is peace. Evidenced by repeated cease fire violations, it is uncertain whether either Croatia or Serbia are even interested in peace. Furthermore, differing opinions in regard to enforcing a cease fire have contributed to the difficulty in formulating a cohesive policy among the various parties. Initially, the cease fire was to be policed through self-enforcement by both Croatia and Serbia. This was followed by an external enforcement by European Community observers. Finally, it appears that a United Nations peacekeeping force composed of 14,000 members which began deployment on April 5, 1992, will attempt to monitor the latest cease fire.

The failure of the fourteen previous cease fires indicates the difficulty in enforcing and maintaining such a resolution. Such a failure to establish a mutually acceptable policy has contributed to the current pattern of cease fires followed by repeated outbreaks of hostilities. This pattern, however, may finally come to an end once the United Nations peacekeeping force is completely deployed. Thus, it appears that this new international law approach may have some merit for application to the Yugoslavian crisis.

Nevertheless, all the parties involved have ignored the fundamental underpinnings of this new approach—establishment of a type of legislative interaction that will result in an intermediate position between rules of prohibition and rules of discretion. As a consequence, a successful compromise has not been found nor will it be found until the elements of the approach are advocated and followed. The Yugoslavian crisis presents an ideal situation for the new international approach because the civil war is easily classified by it. Additionally, distinct categories of legal problems raised by the crisis must be isolated and dealt with both in regard to third party intervention as well as to the conduct prescribed by the laws of war.
VI. Conclusion

A major crisis exists in Yugoslavia. The source of the conflict can be traced back hundreds of years to the first arrivals of the Southern Slavs in the Balkan region. Historical development separated the Serbs and Croats, and each matured under different cultures and traditions. Following the First World War, the Southern Slavs united under a wave of nationalism to form the first modern Yugoslavian state. However, the differences between the Serbs and Croats could not be swept aside, as they had evolved over the course of hundreds of years. A united Yugoslavia on paper was far different from the reality of the situation. Paper alone cannot erase the deep-rooted differences of the Croats and Serbs.

These differences erupted on June 25, 1991, with the succession of Croatia and Slovenia. With Serbia attempting to quash the independence movement, hostilities immediately erupted. The fighting has ceased in Slovenia and a fragile cease fire has been in effect in Croatia since January 3, 1992. However, fighting is capable of flaring up at any time, as previous cease fires have broken down.

It has been only recently that laws of war have been developed to govern a situation such as the one that exists in Yugoslavia. Under these rules, two situations are deemed sufficient to invoke the protections offered by the rules of law governing warfare. First, it appears that the Croatia, Slovenia, and Serbia aspect of Yugoslavian crisis meets the necessary prerequisites to invoke the humanitarian protections offered by Common Article 3 and Geneva Protocol II. Second, the conflict has at least reached the state of insurgence and possibly belligerency. As such, the crisis is entitled to all the benefits attainment of each status affords.

These classification schemes have created numerous problems and are rapidly becoming obsolete in the reality of the modern world. As a result, a new international law approach towards civil war has developed. This new approach seeks to classify the civil war and address the conflict within this specific context. Based on this foundation, the approach promotes the establishment of legislative interaction between the opposing states with the goal of reaching a successful intermediate position between the factions. This new approach is ideally suited for the crisis that has reduced the unified six-republic nation of Yugoslavia into five separate entities. The parties, however, have failed to classify the civil war and address the issues within the proper context of this classification. Further, neither side has been willing to interact in a legislative fashion with the goal of reaching a solution. But hope exists as the United Nations peacekeeping force may provide the necessary stability for this legislative interaction to occur and be successful. The crisis, however, will
not end until both Croatia and Serbia are ready to make concessions to reach the elusive goal of peace.

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