

Syria, Code of Conduct of the Free Syrian Army

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N.B. As per the disclaimer ^[1], neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

Code of Conduct of the Free Syrian Army

[Source: Geneva Call, Code of Conduct of the FSA, 2012; available at <http://theirwords.org>] ^[2]

New Battalions Sign the Code of Conduct

As the ranks of the Free Syrian Army expand and its brave fighters fight a national, multi-front battle, there has become a need for rules to govern their work. These rules must combine the spirit of the national duty they carry out today in facing the aggressor, Bashar Al-Assad and his regime, and moving towards the regime's ouster and the interests of justice and military discipline.

The Local Coordination Committees presents this brief code of conduct to the fighters and to the public, so as to draw attention to and highlight the moral and political ethics of military action. These ethics are, in essence, the same as positions the Free Syrian Army has taken in recent days, as well as the principles they have announced. These ethics and principles represent the essence of our revolution and its moral and national foundation.

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The Syrian Revolution erupted in Mid-March 2011 against a corrupt and despotic regime that weakened a country and humiliated its people, raising a small group of elites above the Syrian general public. From the very beginning, the regime responded to popular protests with violence and hatred, and pitted the national army against the revolutionary citizens to protect the oppressive regime.

The Free Syrian Army was formed by honorable officers, junior officers, and soldiers who defected from the regime because they refused to kill their fellow citizens. They were joined by brave civilians whose families and homes were destroyed by Assad's aggression.

Today, the Free Syrian Army plays a genuine military role in the glorious Syrian revolution. Therefore, the values and goals of the revolution (freedom, dignity, and justice

for Syria and the Syrian people, and the protection and unity of the country), must serve as the military doctrine and governing principles for the Army's actions and the behavior of its members. The Free Syrian Army looks forward to the day when Syria will be free, so that it might be at the core of a new national army that protects the country's independence, sovereignty, constitution, and democratic institutions. The Free Syrian Army is sacrificing its blood in order for that day to come.

Article I

In the Free Syrian Army, as an independent, defected soldier, or civilian volunteer, my first responsibilities are to:

Defend Syrian revolutionaries in the face of tyranny and ensure the continuation of the revolution to oust the regime. I will direct my weapons exclusively against Assad aggressors. I will serve my nation, Syria, and the freedom of the Syrian people. I am a fighter in the battle to defend my people.

I will use my weapons to overthrow the criminal regime that has been imposed upon us.

Article II

I pledge to my people and my revolution that I will refrain from any behavior or practice that would undermine the principles of our revolution: the principles of freedom, citizenship, and dignity. I will respect human rights in accordance with our legal principles, our tolerant religious principles, and the international laws governing human rights – the very human rights for which we struggle today and which we intend to implement in the future Syria.

Article III

Any person who takes up arms in the name of the regime, regardless of their rank, should be arrested and remain in the custody of the Free Syrian Army. In the event that an individual is arrested, and it is determined that the individual was working for the regime, voluntarily or for payment, to supply information about revolutionary activists, that individual shall be considered a prisoner and treated in accordance with laws governing prisoners of war.

Article IV

I pledge not to practice any form of torture, rape, mutilation, or degradation. I will preserve prisoners' rights and will not exercise any of the above practices in order to obtain confessions.

Article V

I will not issue any executive orders, particularly with regard to death or corporal punishment. Only an appropriate legal authority, with relevant expertise, may conduct trials and find perpetrators guilty.

Article VI

I will not engage in any practice that leads to the physical torture or murder of prisoners or informants, and I will not participate in any public execution.

Article VII

I pledge not to engage in any form of theft or looting on the pretext that I am helping to finance the armed struggle. I pledge not to take any person hostage for ransom.

Article VIII

I pledge not to use my weapon against activists or civilians, whether or not I agree with them; and I pledge to not use my weapon against any other Syrian citizen. I pledge to limit my use of weapons to the defense of our people and myself in facing the criminal regime.

Article IX

I pledge not to exercise reprisals on the basis of ethnicity, sect, religion, or any other basis, and to refrain from any abusive practices, in word or in deed, against any component of the Syrian people.

Article X

I pledge to surrender my weapons to the Transitional Authority, which will manage the country's affairs during the transitional period after the fall of the regime.

Article XI

If found guilty of violating any of these articles, I agree to submit to a fair trial undertaken by specialized committees formed under the supervision of the Free Syrian Army's leadership and monitored by an independent judiciary body.

[...]

Discussion

I. Classification of the situation and binding force of the Code of Conduct

1.

- a. Which conditions have to be met for the situation in Syria to be classified as a non-international armed conflict? (GC I-IV, Art. 3 ^[3]; P II, Art. 1 ^[4])
 - b. Assuming a non-international armed conflict is occurring in Syria, is the Free Syrian Army bound by IHL? By the customary rules of IHL? By Protocol II?
- 2.
- a. Why does the FSA establish a Code of Conduct? What advantages might it draw from it? Do the obligations they assume in the Code of Conduct go beyond their obligations under IHL? Which rules go beyond? Which rules are missing?
 - b. Are the fighters of the FSA bound by the Code of Conduct? Is the FSA bound by the Code of Conduct? Does its signature create international obligations for the FSA? Towards Syria? Does the elaboration of this Code of Conduct change the legal status of the FSA?

II. Compatibility of the Code of Conduct with IHL

3. (Articles I and VIII) Is Article I of the Code of Conduct in line with IHL? Does IHL allow attacking “Assad aggressors”? Under which conditions? Is it always forbidden to kill civilians in an international armed conflict? in a non-international armed conflict? (GC I-IV, Art. 3 ^[3]; P I, Arts 48 ^[5], 51 ^[6], 57 ^[7]; CIHL, Arts 1 ^[8], 5 ^[9] and 6 ^[10])
4. (Article III)
- a. Does the status of prisoner of war exist in non-international armed conflicts?
 - b. Does IHL allow the FSA to intern members of the government forces without trial? Persons who take up arms in the name of the regime? Individuals who were working for the regime to supply information about revolutionary activists?
 - c. Does IHL allow the FSA to detain such persons, prosecute them and condemn them for their participation in the hostilities? For war crimes? Which judicial guarantees would have to be observed? (GC I-IV, Art. 3 ^[3]; CIHL, Rules 100 ^[11]-102 ^[12])
 - d. On which principle of IHL could you base an argument in favour of the right of non-state armed groups to intern and detain their opponents during a non-international armed conflict without trial? Which practical problems would be avoided by allowing armed groups to do so? (GC I-IV, Art. 3 ^[3])
5. (Articles IV-VI) Does IHL prohibit rape? Torture? Corporal punishment? Are these

prohibitions limited to certain types of conflicts or persons? (GC I-IV, Art. 3 [3]; GC I, Arts 12 [13] and 50 [14]; GC II, Arts 12 [15] and 51 [16]; GC III, Arts 14 [17], 17(4) [18], 87 [19], 89 [20] and 130 [21]; GC IV, Arts 27 [22], 32 [23] and 147 [24]; P I, Art. 75 [25]-77 [26]; P II, Art. 4(2) [27]; CIHL, Rules 87 [28]-93 [29])

6. (Articles V)

a. Which judicial guarantees does the Code of Conduct contain? Are they in line with IHL? (GC I-IV, Art. 3 [3]; CIHL, Rules 100 [11]-103 [30])

b. Does IHL allow the death penalty? Under which conditions?

7. (Article II) According to the FSA, is international human rights law applicable during the conflict in Syria? Do they bind the FSA?

8. (Article XI)

a. Does the Code of Conduct provide for any enforcement mechanism?

b. Under IHL, can members of armed groups be held responsible for violations of IHL? For war crimes? May the FSA prosecute them? Does it have an obligation to prosecute them? Are the judicial guarantees of IHL applicable to such trials? (GC I-IV, Art. 3 [3]; CIHL, Rules 100 [11]-102 [12], 144 [31], 151 [32]-158 [33])

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[8] https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule1

[9] https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule5

[10] https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule6

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