

[Name of the Student]

[Name of the Institute]

[Date of Submission]

International Humanitarian Law

## ***Introduction***

When one or more states rely on force against another, international armed conflict (IAC) will occur, regardless of the conflict's cause or intensity. No official affirmation of war or an understanding of the state of affairs is obligatory. The presence of “IAC” and the likelihood of the application of “international humanitarian law (IHL)” to such situations depend on what is actually happening on the ground<sup>1</sup>. In addition to frequent armed conflicts between states, “Additional Protocol I” expanded the characterisation of IAC and allowed people to fight against colonization of foreigners or racial discrimination and to ease the process of exercising their right to national self-determination<sup>2</sup>. While on the other hand, non-international armed conflicts are between government forces and non-state armed groups. IHL also distinguishes between these armed conflicts in the light of “Article 3 of the Geneva Convention of 1949 (Article 1 of Additional Protocol II)<sup>3</sup>.”

## ***International Armed Conflict***

As per, “Common Article 2” of the “Geneva Conventions of 1949”, the IAC opposes “high-level political parties,” i.e. states. As mentioned above, the IAC occurs when one or more countries rely on the military against another, regardless of the cause or intensity of the conflict. Even if there is no open hostility, the relevant rules of IHL can still be applied<sup>4</sup>. Moreover, there is no need to formally declare war or understand the situation. The presence of the IAC and thus the probability of applying IHL to this situation is dependent on the fact that what actually happens on the ground.

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<sup>1</sup> Zifcak, ‘Responsibility to Protect’ in M D Evans (ed) International Law 5th ed (2018)

<sup>2</sup> D Turns, ‘The Law of Armed Conflict (International Humanitarian Law)’ in MD Evans (ed), International Law 5th ed (2018) Chapter 27

<sup>3</sup> Wilson, Page. "The myth of international humanitarian law." *International Affairs* 93, no. 3 (2017): 563-579.

<sup>4</sup> JN Kleffner, 'The applicability of international humanitarian law to organized armed groups' (2011) 93 International Review of the Red Cross 443 <http://www.icrc.org/eng/assets/files/review/2011/irrc-882-kleffner.pdf>

The 1949 Geneva Convention stated that any difference between the two countries that leads to military intervention is an armed conflict referred to in Article 2, even if one of the parties denies the existence of a state of war. However, the duration of the conflict and the number of casualties does not impact the conflict<sup>5</sup>. In addition to the frequent armed conflicts between countries, “Additional Protocol I” also expanded the definition of the IAC and in this resolution, people exercise their right to fight against the colonial rule or racial discrimination.

### ***Non-International Armed Conflict***

In order to examine the non-international armed conflict, there are two legal sources which are required to be examined under IHL. One is “common Article 3 to the Geneva Conventions of 1949” and “Article 1 of Additional Protocol II.”

### ***Non-International Armed Conflicts within the Meaning of Common Article 3***

Common Article 3 is only applied to non-international armed conflicts occurring in the territory of any state party. These comprise of armed conflicts in which one or more than one non-state armed groups are involved. Depending on the condition, hostilities could arise between government forces and non-state armed groups.

As per the study by Clapham et al, when the “Four Geneva Conventions” were sanctioned around the world, the requirement that armed skirmishes must take place on the terrain of “High Contracting Political Parties<sup>6</sup>.” Conflicts between government forces and armed groups will inevitably occur on the territory of one of the parties to the agreement. In order to distinguish the warring factions, please refer to Article 3. The situation must reach a serious conflict level. People

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<sup>5</sup> ICRC Opinion Paper, 'How is the term "Armed Conflict" defined in international humanitarian law?' available: <http://www.icrc.org/eng/resources/documents/article/other/armed-conflict-article-170308.htm> (Links to an external site.)

<sup>6</sup> Clapham, Andrew, Paola Gaeta, Marco Sassòli, and Iris van der Heijden, eds. *The 1949 Geneva conventions: a commentary*. Oxford University Press, USA, 2015.

often see that the extreme turmoil in "APII Article 1, Paragraph 2" eliminates interference and conflicts in the interpretation of non-international conflicts.

*"Non-International Armed Conflicts in the Meaning of Art. 1 of Additional Protocol II"*

For certain purposes of "Adding Protocol No. 2," a clear definition of military conflict was adopted. This document concerns the continuing conflict between the military and the armed forces in the territory of the parties to the treaty and in accordance with the relevant legislation in the region. This interpretation is more restrictive than the concept of non-international conflict referred to in Article 3 common to both parties. First, it was announced that NGOs would rule the area so that they could stand up to organize the army and carry out the process.

Second, the "Second Additional Protocol" only applies to hostilities between military forces and other organized forces. Except for this article, this policy does not apply because conflicts only occur between members of non-state armed forces. In this regard, it should be pointed out that the "Supplement 2" has prepared and added "Article 3 City" without modifying the existing procedures. This means that the definition of restriction refers to the introduction of Protocol II and has nothing to do with the general rules of non-international conflict.t.

***The distinction between the two conflicts***

As per Gray, international or non-international armed conflict is a subjective matter. There is no single definition of armed conflict in IHL as it depends on different situations<sup>7</sup>. According to the extensively recognised all-purpose description of the "Appeals Chamber of the International Criminal Tribunal", as long as the armed conflict takes place between countries or between governmental authorities and organised armed groups, it will be prolonged until and unless one

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<sup>7</sup> Gray, "The Use of Force and the International Legal Order" in M D Evans (ed) International Law 5th ed (2018)

state takes action to end it<sup>8</sup>. On the other hand, in order for a non-international armed conflict to sustain, two important criteria must be met. First, it emphasises that there must be “protracted armed violence” in the sense of reaching a certain level of armed violence in terms of strength, and second, at least one of the conflicts must be organised, an armed group<sup>9</sup>. Therefore, the distinction between IAC and non-international armed conflict has two factors:

- The framework and status of the parties involved in these conflicts vary. Sovereign states partake in global armed conflicts, and on the contrary, local armed conflicts comprise organized armed groups and other states.
- The violence threshold is different depending on the level of conflict. The extent of violence is compulsory to provoke the IAC is much less than the level of violence required to form a non-international armed conflict.

The perimeter of the criteria for violence and the gradation of organisation of fortified groups discriminate non-international armed conflicting state of affairs from circumstances of internal turbulences, insurrections, terrorism, or high levels of crime that are not a major concern to IHL<sup>10</sup>. “If the threshold or regulatory standards are not met, the situation is not a non-international armed conflict.” From a humanitarian point of view, there are no other types of armed conflict except these two<sup>11</sup>. Many modern armed conflicts syndicate rudiments of “non-international armed conflicts” within one state with international intervention, and they advance to varying degrees and in different ways, or they spread to the territories of other countries<sup>12</sup>. Neither category seems appropriate, and challenges such as these to categorize modern conflict include the dispersion of

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<sup>8</sup> Henderson, ‘Non-State Actors and the Use of Force’, in M. Noortmann, A. Reinisch and C. Ryngaert (eds), *Non-State Actors in International Law* (Oxford: Hart Publishing, 2015), 77

<sup>9</sup> Hill-Cawthorne, Lawrence. *Detention in non-international armed conflict*. Oxford University Press, 2016.

<sup>10</sup> C Grut, ‘The Challenge of Autonomous Lethal Robotics to International Humanitarian Law’ (2013) 18 *Journal of Conflict and Security Law* 5

<sup>11</sup> Henderson, *The Use of Force and International Law* (Cambridge: Cambridge University Press, 2018)

<sup>12</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, (1996) ICJ Reports 226

armed conflict, the importance of consent, targeting of foreign non-state insurgents, the usage of deputation forces, and the intervention of foreign forces (including the multinational forces).

One can try to differentiate between new categories of armed conflicts, but these groups are descriptive and have no legal significance<sup>13</sup>. For IHL, any situation must be recognised as an international or non-international armed conflict<sup>14</sup>. Likewise, some individuals question the legal divide between IHL and non-international international law<sup>15</sup>. Consequently, these two conflict categories comprise multiple situations extending from asymmetric situations. One state only intervenes with the deployment of advanced technologies and weapons in the air, to a situation characterized by the proliferation and division of many non-state armed groups<sup>16</sup>. The “Rules of Law in Armed Conflict (RULAC)” uses this method to distinguish between international and non-international armed conflicts rather than other types of conflicts<sup>17,18</sup>. However, there can be both international and non-international armed conflicts in the same country.

### **Distinction based on legal criteria**

Classifying armed conflicts can be difficult and it varies under different situations. Some governments deny involvement in armed conflicts, claiming that they are involved in counter-terrorism activities that do not comply with IHL. This is one way of denying involvement and stay connected to these conflicts under the shadow. It has been argued that IHL doesn't need to be only applied by those countries who are involved in armed conflicts, some countries are applying IHL

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<sup>13</sup> Ruys and L. Ferro, “Weathering the Storm: Legality and Legal Implications of the Saudi-led Military Intervention in Yemen” (2016) 65 *International and Comparative Law Quarterly* 61-98

<sup>14</sup> Gaggioli, Gloria. "International Humanitarian Law: The legal framework for humanitarian forensic action." *Forensic science international* 282 (2018): 184-194.

<sup>15</sup> Crawford, Emily, and Alison Pert. *International humanitarian law*. Cambridge University Press, 2020.

<sup>16</sup> K Lawand, 'Reviewing the legality of new weapons, means and methods of warfare' (2006) 88 *International Review of the Red Cross* 925

<sup>17</sup> Gennad'evich, Zverev Petr. "The Problems of Interaction of International Human Rights Law and International Humanitarian Law during Armed Conflicts." *International Law* 4 (2015): 1-22.

<sup>18</sup> Mapako, Kudakwashe Zvikomborero. "Jurisprudence, Refinement and Interpretation of International Humanitarian Law in Non-International Armed Conflict."

when they actually do not have any involvement in conflicts<sup>19</sup>. The primary reason for this is, for security reasons, the rules governing the use of force and personal detention are generally less restrictive in IHL than in international human rights law. The study by Arjona has also claimed that non-state armed groups can increase the violence level<sup>20</sup>.

However, according to the relevant legal criteria described by Heyns et al, the existence of an international or non-international armed conflict depends on the actual situation (factual circumstances)<sup>21</sup>. Similarly, this was also mentioned-above that classification of these conflicts is subjective, it varies and depends on the situation. Similarly, personal opinions of all parties may be indicators to consider, but they are not reliable or determinative. According to the relevant legal standards, this is a fact-based decision and does not depend on the “subjective will” of the conflicting parties. The factual circumstances determine if there is a situation of armed conflict in a state or country. For instance, different participants may have different views on the same facts and draw different conclusions.

With the participation of large numbers of state and non-state actors in various forms and degrees, modern armed conflicts have become more complex. From the perspective of IHL, the classification of this situation is also controversial, which will be explained in more detail in the section on modern issues. Therefore, classification exercises involve selecting specific methods.

This is also explained by the RULAC (Rule of Law in Armed Conflict) project<sup>22</sup>. Other

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<sup>19</sup> Solis, Gary D. *The law of armed conflict: international humanitarian law in war*. Cambridge University Press, 2016.

<sup>20</sup> Arjona, Ana. "Civilian cooperation and non-cooperation with non-state armed groups: The centrality of obedience and resistance." *Small Wars & Insurgencies* 28, no. 4-5 (2017): 755-778.

<sup>21</sup> Heyns, Christof, Dapo Akande, Lawrence Hill-Cawthorne, and Thompson Chengeta. "The international law framework regulating the use of armed drones." *International & Comparative Law Quarterly* 65, no. 4 (2016): 791-827.

<sup>22</sup> Crawford, Emily. *Identifying the enemy: civilian participation in armed conflict*. Oxford University Press, USA, 2015.

participants/actors who make different method or options may achieve different rankings/classifications.

### **Consequences of classification**

Although different definitions of armed conflict can be used for different purposes, the question of whether a situation of armed violence is compatible with the armed conflict stipulated in IHL holds important consequences of the international legal order<sup>23</sup>. One consequence is the reduction of IHL application. The presence of an armed conflict renders the applicability of IHL. However, in the absence of an armed conflict in terms of IHL, it becomes mandatory for those states to apply human rights law.

On the basis of law enforcement models, the criminal justice paradigm, the international human rights law is more constricting than IHL, particularly in the use of force against people and their detention for security reasons. In other words, the classification of these armed conflicts assists in determining the applicable legal system, which in turn helps in determining the objective rules in force<sup>24</sup>. For instance, the debate over the legality of drone strikes to kill individuals in a targeted manner usually begins with the determination of the applicable administrative agency, IHL, or international human rights law.

IHL also imposes tariffs on countries that do not have armed conflicts. This law specifically provides rules for facilitating humanitarian aid<sup>25</sup>. This includes a commitment to enable and facilitate the rapid and unimpeded delivery of humanitarian aid to civilians in need. With the exception of IHL, there is no obligation to comply with other regulations.

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<sup>23</sup> Pettersson, Therése, and Peter Wallensteen. "Armed conflicts, 1946–2014." *Journal of peace research* 52, no. 4 (2015): 536-550.

<sup>24</sup> Powell, Jonathan. *Talking to terrorists: How to end armed conflicts*. Random House, 2015.

<sup>25</sup> Belliveau, Joe. "Humanitarian access and technology: opportunities and applications." *Procedia engineering* 159 (2016): 300-306.

In addition to the fundamental differences, the possibility of IHL and international human rights law application also varies. IHL obligates all parties, as well as non-state armed groups, to an armed conflict<sup>26</sup>. On the contrary, there is still debate about the applicability of international human rights law to non-state armed groups and under what circumstances.

Moreover, from an accountability standpoint, serious violations of IHL are classified as war crimes<sup>27</sup>. War crimes can only be linked to armed conflict and conversely, few human rights treaties require the criminalisation of human rights violations. In addition to this, third, the presence of an IAC may lead to “Law of Neutrality”, affecting the implementation of international treaties, and linking to arms management treaties.

### ***Conclusion***

Based on the above analysis, the study has proposed the distinctions between these two conflicts. The definition presented in the study reflects strong public legal opinions. The study has presented that, whenever armed force becomes the only option between two or more states, and IAC will occur. On the other hand, a non-international armed conflict is a long-term conflict that occurs between government forces and one or more armed groups or between the territory of a state (Geneva Convention). It was also stated that the armed conflicts must reach a minimum intensity level and on the same hand, the parties to the conflict must demonstrate minimum corporation.

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<sup>26</sup> Alexander, Amanda. "A short history of international humanitarian law." *European Journal of International Law* 26, no. 1 (2015): 109-138.

<sup>27</sup> Henderson, Ian, and Kate Reece. "Proportionality under International Humanitarian Law: The Reasonable Military Commander Standard and Reverberating Effects." *Vand. J. Transnat'l L.* 51 (2018): 835.

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