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How is the term "armed conflict" defined in international humanitarian law?

ICRC opinion paper

1. Introduction

1.1. The notion of armed conflict

International humanitarian law (IHL) applies to situations of armed conflict, a *de facto* state of hostilities dependent on neither a declaration nor recognition of the existence of "war" by its parties. In terms of its material scope, whether an armed conflict is an international armed conflict (IAC) or non-international armed conflict (NIAC) will largely determine which rules of IHL apply. Articles 2 and 3 common to the Geneva Conventions differentiate between the rules applicable to IACs and NIACs. However, the term "armed conflict" is defined in neither article. Far from being an oversight, the omission plays an important role in depoliticizing the application of the Conventions to the situations of violence for which they were conceived. Having learned from earlier reliance on notions such

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as "declarations of *war*", the drafters' choice of the notion of "armed conflict" ensured that the Conventions' catalyst would never become a vestige of its time, but rather a concept meant to endure and, indeed, adapt in response to the changing environments for which the Conventions are needed.[1] The application of IHL has since been predicated on a fact-based analysis rather than only the formal recognition by a belligerent that a state of war exists.[2]

There is no central authority under international law to classify a situation as an armed conflict; parties to a conflict need to determine the legal framework applicable to the conduct of their military operations. For its part, the International Committee of the Red Cross (ICRC) makes an independent determination of the facts and systematically classifies situations for the purposes of its work. There are several reasons why the ICRC classifies conflicts. First, the High Contracting Parties to the 1949 Geneva Conventions have entrusted the ICRC, through the Statutes of the International Red Cross and Red Crescent Movement, "to work for the understanding and dissemination of knowledge of international humanitarian law applicable in armed conflicts and to prepare any development thereof".[3] Second, a fundamental part of the ICRC's mandate is to support parties to comply with their legal obligations in situations of armed conflict.[4] Thus, interpreting the notion of "armed conflict" with a view to determining the applicable legal framework is also important from an operational lens. Third, the existence of an armed conflict – whether international or non-international – is itself an important basis for the ICRC's mandate. For example, in IACs, the ICRC has the right to visit prisoners of war (PoWs) and civilian internees. The Geneva Conventions also give the ICRC a broad right of initiative during NIACs. For these reasons, in the event of an armed conflict, the ICRC generally informs all parties to the conflict of its legal classification. The ICRC

1 See e.g. Jean Pictet (ed.), *Commentary on the Geneva Conventions of 12 August 1949*, Vol. 1: *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, ICRC, Geneva, 1952 (1952 Commentary on GC I), available at: https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949/article-2/commentary/1952?activeTab=1949GCs-APs-and-commentaries (all internet references were accessed in March 2024): "The substitution of this much more general expression for the word 'war' *was deliberate*. … One may argue almost endlessly about the legal definition of 'war'. A State can always pretend, when it commits a hostile act against another State, that it is not making war, but merely engaging in a police action, or acting in legitimate self-defence. The expression 'armed conflict' makes such arguments less easy" (emphasis added).

2 As the ICRC noted in its 2016 Commentary on Geneva Convention I (GC I), "Article 2(1) encompasses the concepts of 'declared war' and 'armed conflict'. Both trigger the application of the Geneva Conventions but cover different legal realities, the latter being more flexible and objective than the former", and it would be "premature to conclude the demise of the concept of declared war, even if its progressive decline cannot be ignored". See ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2nd ed., Geneva, 2016 (2016 Commentary on GC I), paras 201–209 (Art. 2), available at: https://ihl-databases.icrc.org/ihl/full/GCI-commentary.

3 Statutes and Rules of Procedure of the International Red Cross and Red Crescent Movement, adopted by the 25th International Conference of the Red Cross and Red Crescent, Geneva, October 1986 (amended 1995 and 2006), Art. 5(2)(g), available at: https://shop.icrc.org/statutes-and-rules-of-procedure-of-the-international-red-cross-and-red-crescent-movement-pdf-en.html.

4 A model *rappel du droit*, a document used as part of the ICRC's bilateral dialogue with parties to conflict, can be consulted in the annex to this paper.

generally also informs third parties of its classification and makes the classification known publicly. Depending on the situation, the ICRC may exceptionally choose not to inform the parties to the conflict, third parties or the general public of its position regarding the applicable law.

In a 2008 opinion paper,[5] the ICRC publicly presented the prevailing legal opinion on the definition of IAC and NIAC under IHL. The opinion paper shared insights into not just how the ICRC classifies conflicts, but also how the notion of armed conflict had been interpreted in both jurisprudence and doctrine over the nearly sixty years since the drafting of the Geneva Conventions. In the fifteen years since that publication, new challenges have arisen. The ICRC has noted several transformations in *how* armed groups participate in conflicts, either as parties or as supporters. Examples of such transformations include the support provided by coalitions of States to governments involved in NIACs, the non-consensual use of force by States in foreign territory, the emergence of coalitions of armed groups with fluctuating levels of organization, and the proliferation or agglomeration of such groups.

Since 2008, the ICRC has also published new Commentaries to the First, Second and Third Geneva Conventions, including Commentaries on common Articles 2 and 3,[6] as well as reports on IHL and the challenges of contemporary armed conflicts published in the context of the International Conferences of the Red Cross and Red Crescent, which present several issues related to classification and identify developments in the law.[7] This paper seeks to give an overview of the main features of the legal classification of contemporary armed conflicts, and it aims to make the ICRC's methodology for classification accessible and transparent for all interested in the subject.

1.2. Implication of conflict classification and declassification

Strictly speaking, IHL does not only apply *during* armed conflicts. Thus, the classification of an armed conflict does not signal, *strictu sensu*, the beginning of the application of IHL. The Geneva Conventions' very first article requires States to "respect and to ensure respect for the [Conventions] *in all circumstances*".[8]

5 ICRC, *How is the Term "Armed Conflict" Defined in International Humanitarian Law?*, opinion paper, Geneva, March 2008, available at: www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf.

6 2016 Commentary on GC I, above note 2; ICRC, *Commentary on the Second Geneva Convention: Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, 2nd ed., Geneva, 2017 (2017 Commentary on GC II), available at: https://ihl-databases.icrc.org/ihl/full/GCII-commentary; ICRC, *Commentary on the Third Geneva Convention: Convention (III) relative to the Treatment of Prisoners of War*, 2nd ed., Geneva, 2020 (2020 Commentary on GC III), available at: https://ihl-databases.icrc.org/ihl/full/GCIII-commentary.

7 ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, Geneva, 2003, 2007, 2011, 2015 and 2019, available at: www.icrc.org/en/document/icrc-report-ihl-and-challenges-contemporary-armed-conflicts.

8 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) (GC I), Art. 1 (cited here in GC I, but common to the four Geneva Conventions).

Furthermore, nearly the entire gamut of treaties limiting or prohibiting the use of certain weapons, also considered part of IHL, include obligations for States that are party to them that apply *at all times* regardless of the existence of a conflict, such as the prohibitions on stockpiling anti-personnel mines, cluster munitions, biological weapons and chemical weapons, as well as obligations related to the sale and transfer of conventional weapons.

In the aftermath of an armed conflict, parties also retain several IHL obligations. Thus, the declassification of an armed conflict also does not signal, *strictu sensu*, the end of the application of IHL. For example, after the end of an IAC, parties retain all their obligations related to the treatment of protected persons in their power, including PoWs and civilian internees, who remain protected by the respective Convention until either their final release and repatriation (for PoWs), or release, repatriation or re-establishment (for civilian internees). In NIACs, persons protected under common Article 3, paragraph 2, continue "to benefit from the article's protection as long as, in consequence of the armed conflict, they are in a situation for which common Article 3 provides protection", or until other legal frameworks provide a more favourable protection to them.[9] In some instances, the end of hostilities signals the *start* of the application of certain rules of IHL. For example, Article 6(5) of Additional Protocol II (AP II), dealing with amnesties, and some IHL obligations relating to the clearance of certain weapons and remnants of war apply after the end of an armed conflict. Also under AP II, persons deprived of their liberty or whose liberty is restricted *after* the conflict for reasons related to that conflict benefit from key protections of the Protocol.[10]

The classification of an armed conflict also does not, in any circumstance whatsoever, legitimize, condone or legalize the *resort* to force by any of the parties to a conflict, nor does it necessarily reprehend or prohibit that resort to force. The legality of the resort to armed force between States is regulated by *jus ad bellum*, a separate body of law drawing its rules largely from the 1945 Charter of the United Nations (UN).[11] Therefore, the actual or perceived legitimacy of the resort to force as well as its lawfulness or unlawfulness under the UN Charter will have no effect on the applicability of IHL to a specific situation. The reason for this firm distinction between the two bodies of law is that the aims of *jus ad bellum* and IHL are profoundly different: the former was conceived to ensure, as far as possible, international peace and security between States. The latter is designed to protect victims of armed conflicts with no regard to who started the fighting or why fighting takes place. The applicability of IHL can thus be

9 2016 Commentary on GC I, above note 2, paras 501–502 (Art. 3). See also Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609, 8 June 1977 (entered into force 7 December 1978) (AP II), Art. 2(2).

10 All persons who have been deprived of their liberty or whose liberty has been restricted for reasons related to the conflict, as well as those deprived of their liberty or whose liberty is restricted after the conflict for the same reasons, enjoy the protection of Articles 5 and 6 of AP II until the end of such deprivation or restriction of liberty. See AP II, Art. 2(2).

11 Charter of the United Nations, 26 June 1945 (entered into force 24 October 1945) (UN Charter), Arts 2(4), 51. The legality of intra-State use of force is based on national law.

contingent only on the factual criteria discussed in this paper, rather than *jus ad bellum* considerations.

Similarly, a party's motivation in resorting to force is also irrelevant for conflict classification and its related IHL applicability.[12] This is important to recall in situations where one or both parties deny the existence of a conflict because they view the opposing party as illegitimate. Legitimacy – legal, political or otherwise – is not a relevant criterion; only the factual criteria discussed in this paper are dispositive for conflict classification. Once classified, a conflict neither legitimizes nor delegitimizes parties to conflicts.[13] Correspondingly, the application of IHL does not affect the legal status of the parties to a conflict.[14]

2. International armed conflicts

2.1. The beginning of an IAC

Aside from a narrow exception discussed below,[15] IACs are only those armed conflicts in which two or more States or other entities with international legal personality (including international organizations such as the UN or inter-State military alliances)[16] are opposed. Common Article 2 states that the Conventions shall apply "to all cases of declared war *or of any other armed conflict* which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them".[17] The terms "High Contracting Party" and "armed conflict" are not further defined in the Conventions. The former refers to the States that are party to the Conventions. Today, however, the Geneva Conventions are universally ratified by all States of the world; thus, "High Contracting Party" can be used interchangeably with "State" in reference to the Geneva Conventions. Regarding the latter term, in its seminal *Tadić* decision, the International Criminal Tribunal for the former Yugoslavia (ICTY) defined "armed conflict" in the context of an IAC as a resort to armed force between States.[18] This definition has since been adopted by both national and other international bodies and is considered customary international law. Accordingly, as stated in the ICRC's 1952 Commentary on Geneva Convention I (GC I),

12 In explicitly supporting the ICRC's position, the International Criminal Tribunal for the former Yugoslavia (ICTY) has also adopted this view. See e.g. ICTY, *The Prosecutor v. Limaj et al.*, Case No. IT-03-66-T, Judgment (Trial Chamber II), 30 November 2005, para. 89.

13 For a detailed discussion on the inapplicability of motivation in the classification of a NIAC, see e.g. Sylvain Vité, "Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations", *International Review of the Red Cross*, Vol. 91, No. 876, 2009, pp. 69, 78.

14 GC I, Art. 3 (cited here in GC I, but common to the four Geneva Conventions). See also AP II, Art. 4.

15 See section 2.2 below.

16 For simplicity, this opinion paper will continue to use only the term "State", though the entities mentioned in this sentence may also be party to an IAC.

17 GC I, Art. 2 (cited here in GC I, but common to the four Geneva Conventions).

18 ICTY, *The Prosecutor v. Duško Tadić*, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (Appeals Chamber), 2 October 1995, para. 70.

> any difference arising between two States and leading to [a resort to armed force] is an armed conflict within the meaning of [Article 2 common to the Geneva Conventions] …. It makes no difference how long the conflict lasts, how much slaughter takes place, or how numerous are the participating forces.[19]

This is true regardless of the organ within that State that has resorted to force. Of course, only acts attributable to a State can trigger an IAC; acts by private persons not acting on behalf of a State do not trigger an IAC.[20] An IAC can, however, be triggered on the basis of a unilateral attack, including attacks directed towards the territory, population or infrastructure of a State. Thus, the reference to "between" in *Tadić* is understood broadly in terms of the existence of a belligerent relationship between parties; indeed, even a unilateral use of force is *between* an attacker and a recipient of that force, and so "between" does not only refer to reciprocal uses of force among two or more parties.

In contradistinction to the higher intensity threshold discussed below for NIACs, there is no specific level of intensity required for IACs.[21] Even minor skirmishes between armed forces – be they land, air or naval forces[22] – may spark an IAC and lead to the applicability of IHL.[23] There are of course other acts that, while potentially having a link to a conflict, do not meet this threshold; neither the sale nor the donation of military equipment to a party to a conflict triggers an IAC. However, once a State starts using force against another, it is both logical and in conformity with the humanitarian purpose of the Geneva Conventions that there be no requirement of a high intensity of violence to trigger an IAC.[24] The force used does, however, need to be a *hostile* act; that is, not the result of a mistake or of an individual acting *ultra vires*. Accidental "friendly fire" between co-belligerents does not, for example, trigger an IAC between them. Therefore, when a situation objectively shows that, for example, a

19 1952 Commentary on GC I, above note 1, Art. 2.

20 The question of whether acts by *de facto* organs trigger an IAC is discussed in section 2.5.2 below.

21 This view has been endorsed by international tribunals. See e.g. ICTY, *The Prosecutor v. Delalić et al.*, Case No. IT-96-21-T, 16 November 1998, para. 184 (see also para. 208); ICTY, *Tadić*, above note 18, para. 70; International Criminal Court, *The Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06, Decision on the Confirmation of Charges, 29 January 2007, para. 207; Special Court for Sierra Leone, *The Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-03-1-T, Judgment (Trial Chamber), 26 April 2012, paras 563–566.

22 As discussed in greater detail in the 2017 Commentary on Geneva Convention II (GC II), not every use of force between States at sea will qualify as an IAC – for example, when coastguards, suspecting a violation of their State's fisheries legislation, attempt to board a vessel owned or operated by another State but are met with resistance. See 2017 Commentary on GC II, above note 6, para. 249 (Art. 2).

23 Caution should be taken, however, before dispensing with the notion of a threshold altogether. For example, it is generally accepted among experts that cyber operations having similar physical effects to classic kinetic operations would trigger an IAC. However, cyber operations do not always have such effects. The law is not yet settled on whether cyber operations only disrupting or disabling the functionality of digital infrastructure trigger an IAC. A thorough discussion on this question can be found in the 2020 Commentary on GC III, above note 6, paras 286–289 (Art. 2).

24 The legal rationale for a "low intensity" threshold is further developed in the 2016 Commentary on GC I, above note 2, paras 243–244.

State is involved as a matter of fact in military operations or any other hostile actions against another State (by neutralizing enemy military personnel or assets, hampering its military operations, or using or controlling its territory without its consent), the situation is an IAC.

2.2. IAC between a State and a non-State party: War of national liberation

The only situation in which an IAC may be classified outside of inter-State armed conflicts is a situation of organized armed violence taking place between a party to Additional Protocol I (AP I) and a people fighting against colonial domination, alien occupation or racist regimes in the exercise of their right to self-determination (i.e., a war of national liberation). Article 1(4) of AP I extends the definition of IAC to include such wars of national liberation; however, IHL applicable to IACs will only apply when, in accordance with Article 96(3) of AP I, the "authority representing a people" in this type of conflict makes a "unilateral declaration addressed to the depositary" of AP I.[25]

2.3. The end of an IAC

Just as the start of an IAC is determined on a fact-based analysis, so too is the end of an IAC. As noted above, this requires a factual assessment in every case. Peace treaties do not always indicate the end or even the suspension of hostilities. Conversely, IACs are sometimes characterized by unstable ceasefires, a progressive decrease in intensity, and/or intervention by peacekeepers, blurring the line between the suspension and definitive end of hostilities, and rendering it more difficult to determine with precision when an IAC has ceased to exist from a legal perspective.[26] Thus, as is the case with the *classification* of conflicts, the *declassification* of conflicts must be based on the facts on the ground analyzed in light of the applicable IHL legal criterion, which for the ICRC is the general close of military operations. Hostilities must end with a degree of stability and permanence for the IAC to be considered terminated. A general close of military operations means not only the end of active hostilities, but also the end of "military movements of a bellicose nature, including those that reform, reorganize or reconstitute, so that the likelihood of the resumption of hostilities can reasonably be discarded".[27]

25 Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978) (AP I).

26 2020 Commentary on GC III, above note 6, para. 310 (Art. 3). See also ICTY, *The Prosecutor* v. *Ante Gotovina et al.*, Case No. IT-06-90-T, Judgment (Trial Chamber), 15 April 2011, para. 1697.

27 2020 Commentary on GC III, above note 6, para. 311 (Art. 3).

2.4. The beginning and end of an occupation

In some cases, an IAC may take the form of an occupation. Common Article 2 stipulates the application of the Conventions to cases of partial or total *occupations* (regardless of whether the occupation is met with armed resistance), though the article does not define the concept. The definition of occupation is found, however, in Article 42 of the Hague Regulations, annexed to Hague Convention IV of 1907.[28] The definition in this provision is the standard for determining the existence of an occupation under IHL.[29] According to the Hague Regulations, "[t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised."[30] The term "authority" is not further defined in the Hague Regulations. Therefore, in order to qualify the meaning of "authority" (and thereby identify the constitutive elements of occupation), the concept of "effective control" must be considered. The phrase "effective control", while long associated with the notion of occupation, is found in neither the Geneva Conventions nor the Hague Regulations. Rather, it developed over time in the legal discourse to describe the circumstances and conditions for determining the existence of a state of occupation. An examination of IHL treaties and their preparatory work, scholarly literature, military manuals and judicial decisions supports a three-part test for effective control with the following constitutive elements of an occupation:

1. the armed forces of a State are physically present in a foreign territory or parts thereof without the consent of the effective local government in place at the time of the invasion;
2. the effective local government in place at the time of the invasion has been or can be rendered substantially or completely incapable of exerting its powers by virtue of the foreign forces' unconsented-to presence;
3. the foreign forces are in a position to exercise authority over the territory concerned (or parts thereof) *in lieu of* the local government.

All together, these elements constitute the so-called "effective control test" used to determine whether a situation qualifies as an occupation for the purposes of IHL. As this test is cumulative (that is, each of the three elements is a necessary condition, and not an indicator, of an occupation), an occupation is considered ended for the purposes of IHL when any one of the three conditions has ceased to exist.[31]

28 Hague Convention (IV) with Respect to the Laws and Customs of War on Land and Its Annex, 18 October 1907 (entered into force 26 January 1910) (Hague Convention IV), Art. 42.
29 2016 Commentary on GC I, above note 2, paras 296–299 (Art. 2).
30 Hague Convention IV, Art. 42.
31 However, in certain specific and exceptional cases when foreign forces withdraw from occupied territory (or parts thereof) while retaining key elements of authority or other important governmental functions that are typical of those usually taken on by an Occupying Power and that amount to effective control for the purposes of the law of occupation, this body of law might continue to apply within the territorial and functional limits of those competences. See 2016 Commentary on GC I, above note 2, paras 341–347 (Art. 2).

2.5. Selected issues related to the classification of an IAC

2.5.1. Consent

As noted above, any *unconsented-to* use of force by one State on the territory of another State or against a State's sovereignty is an IAC. This includes situations where a State attacks individuals or groups within the territory of another State without the territorial State's consent. In some cases, a State may consent to or even call for such an intervention on its territory, for instance to respond to a threat emanating from a group fighting the government or operating against other States from within its borders. As long as the use of force remains within the limits established by the territorial State and the consent is not withdrawn, these cases would not be classified as IACs, owing to the existence of the territorial State's consent to the use of force on its territory, and therefore the lack of a belligerent relationship between it and the attacking State. If a State directs violence within another State's territory *without* the latter's consent – even if the former claims that force is not used against the government or the territorial State's infrastructure, but rather only against another party it is fighting within the framework of *another* armed conflict – this will still constitute an unconsented-to use of force against the territorial State's sovereignty and would constitute an IAC.[32]

2.5.2. The classification of an IAC by proxy

As discussed in Part 3, below, sufficiently intense violence taking place between non-State armed groups (NSAGs) and States is classified as a NIAC. However, when one State exercises overall control over an NSAG fighting against another State, the conflict is classified as an IAC between the two States.[33] An NSAG is under the overall control of a State when that State is "not only … equipping and financing the group, but also … coordinating or helping in the general planning of its military activity".[34] An NSAG under the overall control of a State is subordinated to that State as its *de facto* organ, and members of the group become the equivalent of agents of the State. As a result, fighting between the group and an opposing State does not give rise to a NIAC. Rather, the situation

32 For an elaboration on the parameters of consent in this context, as well as an examination of diverging legal opinions on this issue, see *ibid.*, paras 262–263 (Art. 2).

33 This position is widely supported; the International Court of Justice (ICJ), which held that the overall control test was not dispositive for State responsibility, found the test dispositive for conflict-classification purposes – that is, the classification of IACs by proxy. See ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, Merits, ICJ GL No. 91, ICGJ 70 (ICJ 2007), 26 February 2007, paras 404–406. For the ICRC's detailed position on IACs by proxy, see 2016 Commentary on GC I, above note 2, paras 271–273 (Art. 2).

34 ICTY, *The Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgment (Appeals Chamber), 15 July 1999, para. 131.

is classified as an IAC between the State exercising overall control over the NSAG and the State fighting that NSAG.

Similarly, a State is an Occupying Power when it exercises overall control over *de facto* local authorities or other local organized groups that are themselves in effective control of all or part of a territory of another State. Such an occupation *by proxy* would be examined using an adaptation of the effective control test for occupation by considering whether the test's conditions are met by agents controlled by that State or acting on its behalf.[35]

2.5.3. The identification of parties in conflicts involving multinational forces

International organizations, as stated above, may become party to an IAC or a NIAC. The question then arises of who the parties to the conflict are: the individual member States that contribute their troops to that force (troop-contributing countries, TCCs), the organization itself, or both the organization and some or all of the TCCs. Answering this question requires determining to whom the sum of the multinational force's actions are attributable. IHL is silent on the issue of attribution. In the absence of specific criteria in IHL, one must rely on the general rules of public international law for determining under which conditions multinational forces' actions can be attributed to international organizations and/or the TCCs. Acts are attributable to either a State or an international organization when that entity has control over the acts undertaken by the forces, generally corresponding to the command-and-control structure of the forces. Therefore, in the presence of a multinational force, the dispositive question to answer is which entity or entities have command and control over the military operations. In some cases, command and control is largely transferred – albeit never fully – by the TCC to the organization; in that case, only the latter should be considered party to the conflict. In other cases, the TCCs retain enough command and control such that only they would individually be considered parties to the conflict. In still other cases, the facts may indicate that both the international organization and some or all of the TCCs may simultaneously be parties to the armed conflict, owing to the level of command and control over the military operations maintained by both those TCCs and the organization.

35 The adapted effective control test would thereby have the following formulation:
- the armed forces of a State or **agents controlled by the State** are physically present in a foreign territory without the consent of the local government effectively in place at the time of the invasion;
- the local government effectively in place at the time of the invasion has been or can be rendered substantially or completely incapable of exerting its powers by virtue of the foreign forces' unconsented-to presence or **by virtue of agents controlled by them**;
- the foreign forces **or agents acting on their behalf** are in a position to exercise authority over the territory concerned (or parts thereof) in lieu of the local government.

3. Non-international armed conflicts (NIACs)

3.1. The beginning of a NIAC

Without delving into the article's historical background,[36] it remains important to highlight the fundamental character of Article 3 common to the Geneva Conventions, the provisions of which, while being far less extensive than the provisions for IACs, have been recognized as a "minimum yardstick" binding in all NIACs.[37] Customary IHL also applies to NIACs. In some NIACs (discussed below), AP II applies as well. With the very narrow exception of wars of national liberation, discussed above, all armed conflicts where at least one party is not a State (nor a supranational organization) is a NIAC.

The preparatory works to the Geneva Conventions are rich with discussions on how to restrain common Article 3's application to only what could be factually described as "armed conflict".[38] Several delegates[39] sought to exclude the application of common Article 3 to situations of internal disturbances, banditry or other situations of violence. In its 1995 *Tadić* decision, the ICTY determined that a NIAC occurs "whenever there is … protracted armed violence between governmental authorities and organized armed groups or between such groups within a State".[40] As a result of this decision and subsequent jurisprudence, it is widely accepted today that two key conditions must be met for a situation of violence to be considered a NIAC and therefore subject to IHL: the non-State party/parties must be *organized*, and the violence between the parties must be sufficiently *intense*.[41] The existence of a NIAC is not predicated on any other threshold or condition. In particular, as noted above, political or other motivations of the parties play no role in the classification of a conflict.

3.1.1. Organization

Common Article 3 and subsequent rules of IHL applicable in NIAC are a noteworthy novelty of international law, in that they are binding on "parties" to a conflict rather than only States. The parties' obligation to require compliance with IHL among their members necessitates a certain degree of organization.

36 See, generally, 2020 Commentary on GC III, above note 6, paras 391–426.
37 *Ibid.*, para. 390.
38 See e.g. Diplomatic Conference for the Establishment of International Conventions for the Protection of War Victims, *Official Records of the Diplomatic Conference of 1949*, Vol. 2(B), Federal Political Department, Bern, 1949, pp. 336–343.
39 See e.g. *ibid.*, pp. 126, 330, 336.
40 ICTY, *Tadić*, above note 18.
41 See e.g. ICTY, *Limaj*, above note 12, para. 84; ICTY, *The Prosecutor v. Boškoski and Tarčulovski*, Case No. IT-04-82-T, Judgment (Trial Chamber), 10 July 2008, para. 175. See also International Criminal Tribunal for Rwanda (ICTR), *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgment (Trial Chamber), 2 September 1998, paras 619–620; ICTR, *The Prosecutor v. Georges Anderson Nderumbumwe Rutaganda*, Case No. ICTR-96-3-T, Judgment (Trial Chamber), 6 December 1999, paras 91–92.

Correspondingly, as the ICRC has established elsewhere, a non-State party to a conflict must "possess *organized* armed forces. This means for example that these forces have to be under a certain command structure and have the capacity to sustain military operations."[42] In *Tadić*[43] and subsequent jurisprudence,[44] the ICTY identified the threshold of organization as a requirement for the classification of a NIAC and produced a list of indicators of an armed group's organization. Indicators of organization include, *inter alia*:

- the existence of a command structure and disciplinary rules;
- the existence of a headquarters;
- the fact that the group controls a certain territory;
- the ability of the group to gain access to weapons or other military equipment, recruits and military training;
- the group's ability to establish a unified military strategy and use military tactics;
- the group's ability to plan, coordinate and carry out military operations, including troop movements and logistics; and
- the group's ability to speak with one voice and negotiate and conclude agreements such as ceasefires or peace accords.

The identification of an armed group as sufficiently organized for the purpose of IHL classification thus does not require the fulfilment of *all* indicative factors, nor of any one in particular. Judicial practice does not prioritize any of them, yielding rather to a case-by-case analysis based on a contextual examination of the totality of the circumstances.

3.1.2. Intensity

Ultimately, while the States party to the Geneva Conventions decided not to define the notion of "armed conflict", the discussion on the concept's thresholds served as an important tool to delineate the second necessary condition for the beginning of a NIAC: sufficient intensity. Once potential parties to a conflict (including NSAGs) are identified, indicators of intensity include, *inter alia*:

- the number, duration and intensity of individual confrontations between them;
- the type of weapons and other military equipment used;
- the number and calibre of munitions fired;
- the number of persons and types of forces partaking in the fighting;
- the number of casualties (including, *inter alia*, all persons killed, wounded, displaced or missing);
- the extent of material destruction;
- the number of civilians fleeing combat zones; and

42 ICRC, above note 5.
43 ICTY, *Tadić*, above note 18.
44 ICTY, *The Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-T, Judgment (Trial Chamber), 3 April 2008, para. 38; see also ICTR, *The Prosecutor v. Musema*, Case No. ICTR-96-13-T, Judgment (Trial Chamber), 27 January 2000, paras 248–251; ICTY, *Boškoski*, above note 41, paras 196–197.

- the involvement of the UN Security Council, which may also be a reflection of the intensity of a conflict.[45]

A meaningful analysis of both intensity and organization can be challenging as, owing to the nature of armed conflict and the fog of war, it is often difficult to collect sufficient data on several of their indicators. However, given that the manifestation of some indicators can in turn imply the existence of others not yet empirically confirmed, it may be possible to draw some conclusions on organization based on the findings normally only relevant to intensity, and vice versa. For example, when information on a group's command-and-control structure or military equipment is unavailable, the number, duration and intensity of individual confrontations between armed groups (an indicator of intensity) may suggest that one or both sides are able to mount coordinated military operations and gain access to weapons or other military equipment, recruits and military training (an indicator of organization). This approach invokes the permeability between certain *indicators* of organization and intensity; it does not, however, replace either as a necessary condition for the classification of a NIAC.

A NIAC begins only when the threshold of intensity between the parties is reached. As with IACs, the notion of armed violence "between the parties" in NIACs includes unilateral uses of force. Armed violence is thus considered *part of an analysis* on intensity even if it is not responded to by an opposing party, as long as the opposing party meets the criterion of organization.

Strictly speaking, there is no *minimum* specific duration required for the classification of a NIAC, so hostilities of only a brief period may still reach the intensity threshold if, in a particular case, there are other indicators to justify such an assessment.[46] However, as the magnitude of most indicators of intensity is also expressed over time, the duration of hostilities cannot be overlooked and is considered to be an element in the assessment of intensity. It is therefore extremely unlikely that a single use of force will meet the intensity threshold required for the classification of a NIAC.

3.1.3. The applicability of Additional Protocol II

AP II develops and supplements the IHL rules applicable during certain NIACs with a more robust legal framework. While common Article 3 establishes basic humanitarian protections applicable in all NIACs, AP II is designed to provide further protection to victims in only a subset of NIACs, as established by its material scope of application. Article 1 of AP II states, in part, that it applies to NIACs taking 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

45 ICTY, *Haradinaj*, above note 44, para. 49; see also ICTY, *Boškoski*, above note 41, para. 177.
46 2016 Commentary on GC I, above note 2, para. 440 (Art. 3).

enable them to carry out sustained and concerted military operations and to implement [the] Protocol.

From this, the following five conditions can be obtained for the identification of a NIAC to which AP II applies:

1. A NIAC under the classical conditions of organization and intensity exists.
2. The NIAC is taking place in the territory of a party to AP II.
3. The NIAC is taking place between the territorial State's armed forces "and dissident armed forces or other [NSAGs]".
4. The non-State party is under responsible command.
5. The non-State party exercises "such control over a part of its territory as to enable [it] to carry out sustained and concerted military operations and to implement [AP II]".[47]

While the first three conditions are relatively straightforward, the fourth and fifth can be further clarified. "Responsible command" indicates a certain organized structure within the NSAG, even if it does not have a hierarchical military organization similar to those of regular armed forces. Such a responsible command structure needs to be able both to impose discipline among the group members and to plan and carry out military operations. A responsible command permits, in turn, the criteria listed in the fifth condition to be fulfilled. Indeed, given that AP II contains several obligations that go beyond the basic humanitarian protections of common Article 3, the additional criteria required for the Protocol's application offer "a degree of realism" corresponding to the "actual circumstances in which the parties may reasonably be expected to apply the rules developed in the Protocol, since they have the minimum infrastructure required therefor".[48] Of course, the exact amount, type or stability of territorial control by the non-State party is not precisely set out in AP II and is context-dependent. However, the territory should elude government control. The territory's geography, terrain, size, accessibility and population may also be relevant to assessing the level of control of the non-State party.

3.2. The classification of NIACs involving coalitions

Parties to conflicts increasingly tend to fight in coalitions, often in complex relationships, which makes it necessary to identify conflict relationships and determine the applicable law. In addition to the situations described below, it is worth restating that multinational forces, as noted above, are also sometimes party to NIACs.[49] In these cases, the same analysis regarding the identification of parties, notably through an examination of the entity's command-and-control structure, is required.

47 AP II, Art. 1.

48 Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds), *Commentary on the Additional Protocols*, ICRC, Geneva, 1987, para. 4470, available at: https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977.

49 See section 2.5.3 above.

3.2.1. Support-based approach

NIACs involving coalitions of multiple States, NSAGs or supranational organizations raise a question related to the threshold of intensity. Traditionally, for a situation of violence to be classified as a NIAC, the intensity of the violence between each individual State and the opposing NSAG, or between NSAGs, must reach the required intensity threshold. However, when an entity – a State, an NSAG or an international organization – supports parties to pre-existing NIACs, the supporting entity might not itself necessarily enter into such confrontations with the adversary so as to reach the threshold of violence required to constitute a separate NIAC. Rather, the supporting entity's involvement might take the form of logistical support, intelligence activities for the benefit of one party over another, or participation in the planning and coordination of military operations. These actions may effectively make the supporting entity a *de facto* co-belligerent while illogically allowing it to avoid responsibility for its IHL obligations and simultaneously claim protection from direct attacks. As a result, in the view of the ICRC, the classical approach expounded in *Tadić* must be complemented by a support-based approach to third-party operations in pre-existing NIACs. The decisive element here is the third party's direct and effective contribution to the collective conduct of hostilities by the support it provides to the State(s) involved in the pre-existing NIAC.

However, a clear distinction must be made between support that has a direct impact on the opposing party's ability to carry out its military operations and more indirect forms of support that would only allow the beneficiary to build up its military capabilities. Only the former would turn the supporting entity into a party to the armed conflict. Furthermore, it must be evident from the actions undertaken by the third party that it is pooling or marshalling military resources or coordinating actions with one of the belligerents of the pre-existing NIAC in order to fight a common enemy.

Using the support-based approach,[50] IHL applies to a State, an organized armed group or an international organization[51] when:

1. there is a pre-existing NIAC ongoing in the territory where an entity that is a State, an international organization or an organized armed group intervenes;
2. actions related to the conduct of hostilities are undertaken by the entity in the context of that pre-existing conflict; and

50 See, generally, Tristan Ferraro, "The ICRC's Legal Position on the Notion of Armed Conflict Involving Foreign Intervention and on Determining the IHL Applicable to this Type of Conflict", *International Review of the Red Cross*, Vol. 97, No. 900, 2016, p. 1227 (expanding further on the ICRC's legal position on the support-based approach; note, however, that while this article explains the ICRC's legal position within the parameters of foreign intervention, the application of the support-based approach is not limited only to these situations, as clarified in this opinion paper).

51 With regard to international organizations or multinational forces (such as coalitions of States), an additional criterion requires that the action in question be undertaken pursuant to an official decision by the entity to support a party involved in that pre-existing conflict. The support-based approach would thereby not apply to cases in which some elements of multinational forces acted *ultra vires* with regard to the scope of the entity's mandate.

3. the entity's military operations are objectively carried out in support of a party to that pre-existing conflict, in particular by effectively pooling and mobilizing its military resources with that party.

For IHL to apply to a third party acting in support of one of the belligerents, all the above conditions must be fulfilled.

3.2.2. Incorporation of an armed group into a party

Conflicts can sometimes involve dozens of armed groups fighting each other in varying forms of alliances and pacts, making it difficult to identify discrete parties to these conflicts.

Sometimes, armed groups, including so-called "self-defence forces", form part of a State's armed forces. Armed groups that are either incorporated by law as organs of the State or are empowered by law to conduct hostilities on the State's behalf are incorporated into the State's armed forces for the purposes of classification. Armed groups that are otherwise under a command responsible to a State form part of the State's irregular armed forces for the purposes of classification.

Armed groups are also considered incorporated into a party for the purposes of classification when those groups are under the command and control of a "parent" NSAG.

3.2.3. Aggregating intensity between multiple organized armed groups, State and non-State alike

In other situations when there is no pre-existing NIAC, several States, organized armed groups or international organizations may operate in a coalition where a narrow reading of *Tadić* would lead to legal and operational loopholes when there is a clear coordination between these entities. Such situations arise when the level of violence between each entity operating in a coalition and an opposing party (for example, the territorial State) *may not* meet the required intensity threshold but, taken together, the level of violence between the coalition and the opposing party *does* meet this threshold. In such a situation, it would be unrealistic to expect the opposing party to respond to high-intensity violence by several entities operating as a coalition only with law-enforcement measures. It is therefore submitted that, when multiple organized armed groups maintain a sufficient level of coordination in a coalition, the intensity between each of them and an opposing party may be aggregated when considering whether the threshold of intensity has been reached.[52]

To determine a sufficient level of coordination in a coalition, a shared ideology, similarities of political views or the mere existence of a common enemy

52 See also ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, Geneva, 2019, p. 51, available at: www.icrc.org/en/document/icrc-report-ihl-and-challenges-contemporary-armed-conflicts.

would not be sufficient. Rather, factual indicators must be considered, including, *inter alia*, the establishment of a coordination structure,[53] the sharing of operational tasks, the existence of common standard operating procedures and/or rules of engagement, the coordination of simultaneous attacks against the opposing party, and the conduct of joint military operations.

3.3. Geographical scope of IHL during NIACs

Today, many NIACs around the globe do not take the form of so-called civil wars, but they are nevertheless governed by IHL applicable to NIACs; the armed conflict test in *Tadić* remains broad enough to classify what are ultimately other variants of NIACs. The territorial scope of NIACs has been the subject of some debate,[54] in particular when NIACs spill over into neighbouring territory, in the case of foreign interventions, and in relation to other situations of transnational violence:

- **Spillover NIAC**: NIACs sometimes spill over into the territory of a neighbouring State. In the view of the ICRC, the applicability of IHL can therefore also spill over, but only to the part(s) of the neighbouring State's territory into which the hostilities have been extended. This ensures that parties to the NIAC are not absolved of their IHL obligations by crossing an international border, while at the same time not overextending the territorial scope of IHL to the entire neighbouring country, which would not be adapted to the reality of that State.
- **Extraterritorial NIAC**: An extraterritorial NIAC is a situation where States or multinational armed forces are fighting against one or more NSAGs in another host State. In such a situation, IHL applies at least in the whole territory of the host State; the law is not yet settled on whether IHL would also apply in the territory of the sending State(s), though there are cogent legal reasons to suggest that it would apply, contemporaneously with international human rights law. In the territory of the sending State(s), based on the prevailing circumstances, the rules of international human rights law will normally be the *lex specialis*.[55]
- **Transnational situation of violence**: The ICRC does not share the view that a conflict of global dimensions can take place between a State and an NSAG – or between NSAGs transnationally – for the simple reason that IHL's *ratione loci* in a NIAC is necessarily limited to the territory of the State in which the NIAC is actually taking place (with only the very narrow exception of a spillover NIAC, defined above). Thus, against the backdrop of the phenomenon of so-called global terrorism, the ICRC has taken the approach of classifying some situations of violence as NIACs, some as IACs (when, for example, a State has not consented to the use of force on its territory by another State, even

53 A coalition's coordination structure will necessarily fall short of creating a relationship of subordination between discrete entities within the coalition; subordination is considered in section 3.2.2 above.

54 In NIACs, IHL normally applies in the whole territory of the parties, whether or not actual combat takes place there.

55 An elaboration of these arguments may be found in ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, Geneva, 2015, p. 13, available at: www.icrc.org/en/document/icrc-report-ihl-and-challenges-contemporary-armed-conflicts.

when that force is directed against an NSAG) and some as falling outside the scope of the definition of armed conflict.[56]

3.4. The end of a NIAC

As with the indicators of the start of a NIAC, common Article 3 does not provide formal requirements for determining when a conflict has come to an end. Nevertheless, for both legal and operational reasons, once a NIAC is classified, it is of course important to know when it has ended. NIACs often go through fluctuations of intensity, and temporary dips below the intensity threshold initially used to classify a conflict are not necessarily indicative of the end of a NIAC. The ICTY held in *Tadić* that IHL "applies from the initiation of [a NIAC] and extends beyond the cessation of hostilities until … in the case of internal conflicts, a *peaceful settlement* is achieved".[57] The notion of a "peaceful settlement" is something of a misnomer, as it does not require, necessarily, a peace agreement as such. The settlement, meant here in a factual and not legal sense, need not be one accepted *by* or even acceptable *to* either or both parties. A peaceful settlement is reached when one of the two following conditions is met, either being sufficient to qualify a NIAC as having ended:

1. **One of the parties ceases to exist.** Clearly, the complete military defeat of one of the parties to the conflict, the demobilization of one or both of the non-State parties, or the dissolution of the State party means that the armed conflict has come to an end.[58]
2. **There is a lasting cessation of armed confrontations without real risk of resumption.** If both parties continue to exist, the armed conflict will also continue to exist until there is a lasting cessation of armed confrontations without real risk of resumption, based on a factual assessment on the ground. A party may, for instance, decide to temporarily suspend hostilities, or the pattern of violence may be such – owing to culture, climate, diplomacy or other causes – that there are periods of cessation and resumption of armed confrontations. In such cases, the conflict will continue even in the face of any intervening ceasefires, armistices or peace agreements, which, while being indicators, are not dispositive in determining the end of a NIAC. Rather, a *lasting* cessation necessarily excludes any temporary lulls in fighting or oscillations in intensity. Indicators of a lasting cessation of armed confrontation without a risk of resumption include, *inter alia*:
   - the *effective implementation* of a peace agreement or ceasefire;
   - declarations by the parties, not contradicted by the facts on the ground, that they definitely renounce all violence;
   - the dismantling of government special units created for the conflict;
   - the implementation of disarmament, demobilization and/or reintegration programmes;

56 *Ibid.*, pp. 16–21.
57 ICTY, *Tadić*, above note 18, para. 70.
58 2017 Commentary on GC II, above note 6, para. 526.

- the increasing duration of the period without hostilities; and
- the lifting of a State of emergency or other restrictive measures.

Conflict trends – 2024

The ICRC classifies armed conflicts solely on the basis of facts and legal criteria established in international humanitarian law.

The trends obtained from this exercise are, for the ICRC, alarming. There are over 120 armed conflicts around the world, which involve over sixty States and 120 non-State armed groups. The ICRC has noted that the number of armed conflicts has steadily risen since the 1990s; worryingly, since the year 2000, the number of non-international armed conflicts has tripled from under thirty to around 100, and the number of international armed conflicts is also on the rise. This upsurge is the result of several factors (many of them discussed in this paper): armed groups sometimes split into factions and emerge as new, independent groups; partnered operations result in conflicts involving coalitions; and places affected by conflict become fertile ground for the further proliferation of armed conflict. The ICRC's largest operations take place in countries affected by armed conflicts; many of them have lasted decades.

Annex: Sample memorandum on the rules of IHL to be complied with by the parties to an international armed conflict

Disclaimer: This document is presented only for illustrative purpose. When used by the ICRC, such memoranda are adapted to the type of conflict (international or non-international) and to the IHL treaties, including weapons treaties, applicable to the specific situation. This memorandum is a summary of some IHL rules and is by no means exhaustive.

1. Protection of persons not or no longer taking a direct part in hostilities

Persons not or no longer taking a direct part in hostilities such as the sick, wounded, shipwrecked, prisoners of war (PoWs) and civilians must be respected and protected in all circumstances, without adverse distinction.

All sick and wounded persons must be collected and cared for, without any discrimination and in accordance with the relevant provisions of international humanitarian law (IHL).

Upon the outbreak of the conflict, each party to the conflict must establish a National Information Bureau (NIB) to account for the protected persons in its power, including PoWs, wounded, sick and shipwrecked military personnel of the adverse party, and civilians deprived of their liberty. Within the shortest possible period, each party to the conflict must give its NIB information about these

protected persons. The NIB must immediately forward such information to the Powers concerned, through the intermediary of the Protecting Powers where relevant and in any case of the International Committee of the Red Cross (ICRC) Central Tracing Agency, so that the next of kin can be quickly advised.

Captured combatants must be granted PoW status and treated in accordance with the provisions of the Third Geneva Convention.

Persons who take part in hostilities and are captured shall be presumed to be entitled to PoW status, if they claim such status, or if they appear entitled to such status, or if the party on which they depend claims such status by notification to the party into whose hands they have fallen.

Should any doubt arise as to whether persons having committed a belligerent act are entitled to PoW status, such persons shall enjoy the protection of the Third Convention until such time as their status has been determined by a competent tribunal.

The Third Geneva Convention and customary IHL provide, among other things, that:

- The personal details of persons deprived of their liberty must be recorded.
- The ICRC has the right to visit PoWs, under Article 126 of the Third Geneva Convention, which must be respected. PoWs must be allowed to send a capture card to their family and to the ICRC's Central Tracing Agency as rapidly as possible.
- PoWs shall be allowed to send and receive correspondence to or from any destination in the world, without distinction. The only restrictions that may be placed on this right are those specifically permitted under the Convention.
- They must be held in places where their safety is ensured and which offer adequate material conditions of internment, including in terms of food, water, clothing, shelter, hygiene and medical attention.
- Torture and other forms of ill-treatment are strictly prohibited; PoWs must also be protected from acts of violence or intimidation and from public curiosity.
- Women shall be held in quarters separate from those of men, except where members of the same family are housed together, and shall be under the immediate supervision of women; they shall furthermore be treated with all the regard due to their sex.
- Children shall be held in quarters separate from those of adults, except where members of the same family are housed together.

Civilians must be respected and treated humanely. The Fourth Geneva Convention and customary IHL provide, among other things, that:

- The personal details of persons deprived of their liberty must be recorded.
- The ICRC has the right to visit civilians deprived of their liberty under Article 143 of the Fourth Geneva Convention, which must be respected. Civilian internees must be allowed to send a capture card to their family and to the ICRC's Central Tracing Agency as rapidly as possible.

- They shall be allowed to send and receive correspondence, as well as to receive visitors, especially near relatives, at regular intervals and as frequently as possible.
- They must be held in places where their safety is ensured and which offer adequate material conditions of detention, including in terms of food, water, clothing, shelter, hygiene and medical attention.
- Women must be held separate from men and children from adults, except where members of the same family are housed together.
- Violence to the life and person of civilians deprived of liberty, including torture, sexual violence and other forms of ill-treatment, is strictly prohibited.
- Civilians deprived of liberty for whatever reason are equally entitled to other fundamental guarantees without discrimination. These include the prohibition of hostage-taking and the right to a fair trial.

The parties to the conflict must refrain from transferring a person in their power to another place or authority if there are substantial grounds for believing that the person would be in danger of suffering the violation of certain fundamental rights, in particular violence to life and person, such as murder or torture and other forms of ill-treatment.

Children shall be the object of special respect and protection; parties to the conflict must provide them with the care and aid they require. In particular, children affected by armed conflict are entitled to age-appropriate access to education, food and health care. When deprived of their liberty, they continue to benefit from the special protection they are entitled to as children. The unlawful recruitment of children by armed forces is prohibited; children must not be allowed to take part in hostilities. When necessary, persons unlawfully recruited must be accorded all appropriate assistance for their physical and psychological recovery and their social reintegration.

2. Conduct of hostilities

The parties to the conflict are not entitled to an unlimited choice of means and methods of warfare and must therefore observe a number of rules on the conduct of hostilities, in particular:

- A clear distinction must be drawn at all times between combatants and civilians as well as between military objectives and civilian objects.
- In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.
- Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.
- Attacks which strike military objectives and civilians or civilian objects indiscriminately are prohibited.
- Attacks against military objectives which may be expected to cause incidental loss of civilian life, injury to civilians or damage to civilian objects, or a

combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, are prohibited.

- All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects; each party to the conflict must do everything feasible to verify that targets are military objectives and cancel or suspend an attack if it becomes apparent that the target is not a military objective or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.
- When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected must be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects.
- Each party to the conflict must give effective advance warning of attacks that may affect the civilian population, unless circumstances do not permit.
- Each party to the conflict must also take all feasible precautions to protect the civilian population and civilian objects under its control against the effects of attacks.
- The use of human shields is prohibited.
- Starvation of civilians as a method of warfare is prohibited. Objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, must not be attacked, destroyed, removed or rendered useless.
- Cultural property must be respected and protected; cultural objects and places of worship must not be the object of attack unless they have become military objectives.
- Works or installations containing dangerous forces, as well as other military objectives located at or in the vicinity of these works or installations, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population.
- Methods and means of warfare must be employed with due regard to the protection and preservation of the natural environment. In the conduct of military operations, all feasible precautions must be taken to avoid, and in any event to minimize, incidental damage to the natural environment. It is prohibited to use methods or means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.
- It is prohibited to order or to threaten that there shall be no survivors or to conduct hostilities on this basis.
- It is prohibited to kill, injure or capture an adversary by resort to perfidy, i.e. to commit a hostile act under the cover of a legal protection.
- Reprisals against civilians or civilian objects protected by the Geneva Conventions are prohibited.

- All feasible precautions must be taken in the choice of means and methods of warfare with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects.
- It is prohibited to use means or methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering.
- It is prohibited to use weapons which are by nature indiscriminate.
- It is prohibited to use the following specific means of warfare:
  - poison or poisoned weapons;
  - biological weapons;
  - chemical weapons;
  - bullets which expand or flatten easily in the human body;
  - exploding bullets;
  - riot-control agents;
  - weapons primarily injuring by non-detectable fragments;
  - blinding laser weapons.
- It is furthermore prohibited to use:
  - nuclear weapons, according to the 2017 Treaty on the Prohibition of Nuclear Weapons;
  - anti-personnel mines, according to the 1997 Anti-Personnel Mine Ban Convention;
  - cluster munitions, according to the 2008 Convention on Cluster Munitions.
- According to the 2003 Protocol V of the Convention on Certain Conventional Weapons, High Contracting Parties and parties to an armed conflict shall, to the maximum extent possible and as far as practicable, record and retain information on the use of explosive ordnance or abandonment of explosive ordnance, to facilitate the rapid marking and clearance, removal or destruction of explosive remnants of war, risk education, and the provision of relevant information to the party in control of the territory and to civilian populations in that territory.

3. Rules to be respected in situations of occupation

In situations of occupation within the meaning of IHL, the following rules apply and must be respected:

- The Occupying Power is responsible for taking all measures in its power to restore and ensure, as far as possible, public order and safety.
- The Occupying Power shall treat humanely persons who are in its power. It shall respect their persons, their honour, their family rights, and their religious convictions and practices, as well as their manners and customs, and not discriminate against them, in particular not on the grounds of race, religion or political opinion.
- The Occupying Power shall protect persons who are in its power from acts of violence, in particular from torture, cruel treatment, sexual violence or any form of humiliating or degrading treatment. Collective punishments are prohibited.

- The Occupying Power is responsible for ensuring public health and sanitation and the provision of food and medical supplies, to the fullest extent of the means available to it.
- The Occupying Power must agree to relief schemes on behalf of the population of the occupied territory if the whole or part of the population is inadequately supplied – in particular when such relief is offered by the ICRC or other impartial humanitarian organizations.
- The civilian population of an occupied territory may not be forcibly transferred or deported, in whole or in part, unless the security of the civilians involved or imperative military reasons so demand. The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.
- The Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children.

4. Missing persons and the dead

Each party to the conflict is required to furnish the members of the armed forces and the auxiliary personnel under its jurisdiction with means of personal identification.

Each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate.

The NIB of each of the parties must reply to all enquiries which may be received regarding protected persons.

Dead persons must be respected and accounted for:

- Whenever circumstances permit, and particularly after an engagement, each party to the conflict must, without delay, take all possible measures to search for, collect and evacuate the dead. It must prevent the dead from being despoiled. Mutilation of dead bodies is prohibited.
- The return of the remains of the deceased must be facilitated upon request of the party to which they belong or upon the request of their next of kin.
- The dead must be disposed of in a respectful manner.
- With a view to identification of the dead, each party to the conflict must record all available information prior to disposal and mark the location of the graves.
- In respect of the dead of the adverse party falling into their hands, each party to the conflict shall record any particulars which may assist in their identification and transmit this information as soon as possible to its NIB.
- At the commencement of hostilities, each party to the conflict shall organize an Official Graves Registration Service, to allow subsequent exhumations, identifications and possible transportation of the bodies to the home country.
- As soon as the circumstances permit, and at latest at the close of hostilities, the Official Graves Registration Service of the parties to the conflict shall exchange

lists showing the exact location and marking of the graves, together with particulars of the dead interred therein, through the NIB.
- Deceased civilian internees: the Detaining Power shall forward lists of graves of deceased internees, including all particulars necessary for their identification, to the powers on whom these depended, through the NIB.

5. Respect and protection for medical activities and the red cross and red crescent emblems

Medical personnel, hospitals and other medical units, as well as ambulances and other medical transports exclusively assigned to medical duties or purposes, must be respected and protected in all circumstances.

Attacks directed against medical personnel and objects displaying the red cross or red crescent emblem are prohibited.

Any misuse of the red cross or red crescent emblem is prohibited. Each party to the conflict must take all measures necessary for the prevention and repression of any abuse of the emblems.

6. Relief operations

Humanitarian relief personnel and objects used for humanitarian relief operations must be respected and protected.

The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control.

The parties to the conflict must ensure the freedom of movement of authorized humanitarian relief personnel essential to the exercise of their functions. Only in case of imperative military necessity may their movements be temporarily restricted.

7. Respect and ensure respect for IHL

States must respect and ensure respect for IHL in all circumstances:

- Each party to the conflict must respect and ensure respect for IHL by its armed forces and other persons or groups acting in fact on its instructions, or under its direction or control, as well as by other States and non-State parties.
- Each party to the conflict must provide instruction in IHL to its armed forces and must encourage the teaching of IHL to the civilian population.
- Each party to the conflict must make legal advisers available, when necessary, to advise military commanders at the appropriate level on the application of IHL.
- The obligation to respect and ensure respect for IHL does not depend on reciprocity.

8. Role of the ICRC

The ICRC, as an impartial, neutral and independent humanitarian organization, whose primary mandate is to ensure the faithful application of IHL and to protect and assist victims of armed conflicts, will be for its part ready to perform the tasks entrusted to it by the Geneva Conventions of 12 August 1949 and their Additional Protocols, and by the Statutes of the International Red Cross and Red Crescent Movement. In particular, the ICRC requests that it be granted all the facilities necessary to gain access to all persons affected by hostilities, be they residents, displaced, wounded or sick, or deprived of their liberty.