

## THE CONCEPTUAL FRAMEWORK OF INTERNATIONAL AND NON-INTERNATIONAL ARMED CONFLICTS: AN ANALYTICAL STUDY IN LIGHT OF THE PROVISIONS OF INTERNATIONAL HUMANITARIAN LAW

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**Received: 16/02/2025    Accepted: 28/08/2025    Published: 03/10/2025**

### **Abstract**

Armed conflicts are as ancient as humanity itself. While their classification into international and non-international categories is a classical issue that has generated extensive scholarly discourse and legislative regulation, the complexity of the subject—compounded by the emergence of conflicts with a special character—has rendered this a topic of contemporary urgency. Given the proliferation and entanglement of modern conflicts, it is impossible to delineate the scope of legal provisions without first providing a precise definition of the conflicts themselves.

The significance of this study is derived from its focus on conflicts that result in devastating casualties and losses—victims who may remain outside the scope of legally prescribed protection if the conflict is not properly classified. Consequently, this study aims to provide a definition of both international and non-international armed conflicts, from both legal and doctrinal perspectives, to ensure the protection of victims and to maintain international peace and security.

This paper addresses the legal and jurisprudential concepts of armed conflicts based on the findings of law and doctrine by posing the following research problem: What constitutes International Armed Conflicts, and what constitutes Non-International Armed Conflicts?

To address this problem, the study employs both the descriptive-analytical approach and the comparative approach, which are deemed appropriate for the subject matter. The study is divided into the following two axes:

Axis One: The Nature of International Conflicts.

Axis Two: International Armed Conflicts and Non-International Armed Conflicts.

**Keywords:** Armed Conflict, International, Non-International, Humanitarian Law, Common Article 3, Civil War.

### **Introduction**

Armed conflicts have evolved significantly throughout history. This evolution encompasses both inter-state conflicts and those occurring within the sovereign borders of a single state. Consequently, complex legal and humanitarian challenges have emerged, impacting International Humanitarian Law (IHL) and necessitating a reformulation of its concepts to align with these contemporary dynamics.

The distinction between international and non-international armed conflicts remains a subject of extensive debate within legal and doctrinal circles. This distinction is critical as it determines the applicable legal regime, delineates the nature of obligations imposed upon the parties to the conflict, and defines the scope of protection afforded to civilians and combatants.

Defining the conceptual framework for these two categories of conflict contributes significantly to understanding the mechanisms for implementing IHL provisions and ensuring adherence to them. This is particularly pertinent given current international shifts, such as internal conflicts with cross-border dimensions, the rise of new non-state actors—including multinational corporations and mercenaries—and the direct participation

of civilians in hostilities. Furthermore, the utilization of modern technology and the cyber domain has further complicated the criteria for the legal characterization of conflicts. Thus, an examination of the conceptual framework governing international and non-international armed conflicts has become an indispensable undertaking.

In this context, this study aims to construct a precise conceptual framework for international and non-international armed conflicts. This is achieved through the analysis of international instruments—primarily the Geneva Conventions of 1949 and their Additional Protocols of 1977—as well as international jurisprudence, specifically the decisions of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Court (ICC). The study seeks to deduce the fundamental distinctions between these conflict types and examine the extent to which IHL rules are compatible with the realities of contemporary warfare.

Consequently, this leads to the formulation of the following research problem:

**Does the legal dichotomy classifying armed conflicts into international and non-international categories encompass the full spectrum of contemporary conflicts? Furthermore, has International Humanitarian Law succeeded in extending protection to all victims of these conflicts?**

To address the aforementioned research problem, the researcher adopted a descriptive-analytical approach to examine and analyze legal texts—such as Common Article 3 of the Geneva Conventions of 1949 and the two Additional Protocols of 1977—with the objective of deducing the precise intended meaning of international and non-international conflicts. Additionally, the study reviews doctrinal opinions regarding the definitions of these conflicts. The comparative approach is utilized to synthesize similarities and differences between various doctrinal definitions and to juxtapose legal definitions found in international instruments.

The study is structured into two main axes:

-**Axis One:** The Nature of International Conflicts.

-**Axis Two:** International Armed Conflicts and Non-International Armed Conflicts.

#### **Axis One: The Nature of International Conflicts**

The term "international armed conflicts" emerged in the mid-20th century. It is a relatively modern concept compared to its predecessors, appearing for the first time in Common Article 3 of the four Geneva Conventions of 1949, marking the shift in international law away from the traditional term "war." First: Definition of Conflicts

To clarify the intended meaning of armed conflicts, it is essential to elucidate its linguistic connotation before addressing its terminological definition, as follows:

**1. Linguistic Definition of Conflicts:** In the Arabic language, "conflicts" (Niza'at) is the plural of Niza'. It is derived from the root naza'a, meaning to extract or uproot a thing from its place. To say "so-and-so is in niza'" implies the agony of death (i.e., the soul being pulled out/uprooted from the body).

The verb naza'ahu (he disputed with him) implies a struggle in hostility. The term Tanazu' implies mutual dispute and animosity regarding a right or claim. The phrase naza'at al-nafs (the soul yearned) means it longed for something. Thus, the root concept involves pulling, struggle, and contention. This meaning is reflected (Ibn Manzur, p. 4395) in the words of the Almighty: "O believers! Obey Allah and obey the Messenger and those in authority among you. Should you disagree on anything, then refer it to Allah and His Messenger, if you 'truly' believe in Allah and the Last Day. This is the best and fairest resolution." (Surah An-Nisa: 59).

**2. Terminological Definition of International Conflicts:** An international conflict is defined as "a disagreement between two states regarding a legal issue or a specific incident, or arising from a conflict in their legal viewpoints or interests. (Atlam, 2002, p. 15)" This definition does not differ significantly from the general legal definition of a dispute.

**3. Definition of International Conflicts in Judicial Jurisprudence:** The Permanent Court of International Justice (PCIJ) defined an international dispute in its judgment of August 30, 1924, in the *Mavrommatis Palestine Concessions* case (Preliminary Objections). The Court stated that an international dispute is: "A disagreement on a point of law or fact, a conflict of legal views or of interests between two persons."

### **Second: Types of International Conflicts**

International conflicts have been classified into legal conflicts, political conflicts, and technical conflicts. Regarding the parties involved, they are classified into bilateral and collective conflicts. Based on other considerations regarding their nature, they are divided into political, economic, and ideological conflicts. In terms of geographic scope, they may be regional, internal, or international. Finally, in terms of severity or gravity, they range from armed conflict to conflicts of dialogue or gamesmanship.

#### **1. Legal Disputes**

International legal scholarship distinguishes between legal and political disputes, notwithstanding that both categories occur between states. Legal disputes share a commonality with political disputes in that both constitute international conflicts between legal subjects and are subject to the dispute settlement mechanisms prescribed by the rules of international law. In this regard, Lauterpacht posits that a dispute may be classified as legal or non-legal, or alternatively, as justiciable or non-justiciable. The Hague Conventions of 1899 and 1907 delineated legal disputes, establishing recourse to international arbitration and the application of international conventions (Abdullah, 1989, p. 49).

Thus, Lauterpacht categorized disputes into two distinct types: legal disputes and political disputes—essentially distinguishing between those that are justiciable and those that are not amenable to judicial settlement.

Professor Kelsen argues that existing international law cannot be applied to all potential disputes between states due to their inherent nature. Specifically, certain disputes cannot be settled by a judicial decision, such as those affecting the vital interests, independence, honor, or dignity of one of the parties to the conflict. This indicates the existence of a substantive distinction between legal and political disputes (Al-Shaeri, 2006, p. 23).

#### **2. Political Disputes**

The Dictionary of Public International Law defines a political dispute as: "A dispute in which the parties demand a modification of a factual or existing legal situation, or demand a change in the prevailing legal order based on political expediency" (Rabbash, p. 38).

The distinction between political disputes and legal disputes is frequently regarded as theoretical and lacking practical utility, owing to the inherent difficulty in dissociating political considerations from legal ones. Contemporary jurists tend to differentiate between these two categories by examining the animus or objectives of the disputing parties: where the parties seek the enforcement of their legal rights, the dispute is classified as legal and is thus justiciable (subject to the jurisdiction of courts). Conversely, where one or both parties seek to secure a specific interest—even if such a pursuit necessitates the modification of the prevailing legal status quo—the dispute is classified as political and is deemed non-justiciable. (Alwan, 1997, pp. 180–181)

### **3. Technical Disputes**

As a corollary to the evolution of international relations and significant scientific advancements across all fields, a sui generis category of disputes has recently emerged: technical disputes. Consequently, numerous diplomatic conferences have been convened in recent years to address issues pertaining to technical disputes and to draft specific conventions governing them. Notable examples include United Nations conferences regarding the preparation of agreements on the production, manufacture, and export of commodities (such as rubber), as well as the settlement of export-related technical matters. (Yousef, 2013, p. 309).

#### **Axis Two: The Conceptual Framework of International and Non-International Armed Conflicts**

International Law has accorded the preponderant share of regulation to International Armed Conflicts (IACs) through the four Geneva Conventions of 1949, Additional Protocol I (1977), and the general rules of the Hague Conventions. International legal doctrine has similarly engaged extensively with this subject. To comprehend the true legal nature of this category of conflict, it is imperative to delineate it from analogous concepts, such as revolution, struggle, and crisis.

#### **First: Definition of International Armed Conflicts**

International Armed Conflicts received the most extensive regulation under traditional international law. This legal framework established the principle of distinction between combatants and non-combatants, extended a protective regime to civilians and civilian objects, and incorporated oversight mechanisms to ensure compliance with these rules.

##### **1. International Armed Conflicts in International Legal Doctrine**

An international armed conflict is defined doctrinally as a dispute arising between two states that leads to the intervention of members of the armed forces, even if one of the parties denies the existence of a formal state of war (Alwan, 1997, p. 48).

This category of armed conflict is governed by the four Geneva Conventions of 1949, Additional Protocol I of 1977, the Hague Rules, and other fundamental legal principles. (Alwan, 1997, p. 49)

Professor Sadek Abu Heif defined conflict as: "A struggle between the armed forces of each of the opposing parties, where each aims to preserve its rights and interests vis-à-vis the other party." (Abu Heif, 1995, p. 817)

Thus, Professor Abu Heif identified two requisite elements for an international conflict: the presence of armed forces and a conflict of interests.

Professor Ghanem views armed conflict as "a struggle between two or more states regulated by international law, the purpose of which is to defend the national interests of the belligerent states."

This definition restricts the parties to the conflict to states, thereby excluding other subjects of international law, (Ghanem, 1966, p. 715) such as international organizations, which are capable of being parties to an international armed conflict. From the preceding definitions, it can be deduced that international armed conflicts refer to a divergence and contradiction of opinions, and a clash of interests and objectives between two or more states, conditioned upon the deployment of armies and the use of weapons.

##### **2. International Armed Conflicts in International Conventions**

The Geneva Conventions and their First Additional Protocol did not provide a distinct definition of armed conflict per se; rather, Common Article 2 limits the scope of the Geneva Conventions to conflicts wherein one or more states resort to armed force against another

state. The Commentary on the Geneva Conventions elucidates this, stating: "Any difference arising between two States and leading to the intervention of members of the armed forces is an armed conflict within the meaning of Article 2, even if one of the Parties denies the existence of a state of war. It makes no difference how long the conflict lasts, or how much slaughter takes place, the fact remains the same." (Office of the High Commissioner for Human Rights [OHCHR], 2011/2012, p. 34).

Furthermore, the International Criminal Tribunal for the former Yugoslavia (ICTY) has famously posited that: "an armed conflict exists whenever there is a resort to armed force between States." International Humanitarian Law distinguishes between four categories of armed conflicts, each governed by a distinct set of applicable rules (Ismail, 2015, p. 46):

**1. International Armed Conflict (IAC):** To which the four Geneva Conventions of 1949, Additional Protocol I of 1977, the Hague Rules, and other legal principles apply.

**2. Wars of National Liberation:** As defined and regulated by Additional Protocol I of 1977.

**3. Non-International Armed Conflicts (NIACs):** Regulated by Common Article 3 of the four Geneva Conventions and certain customary rules.

**Non-International Armed Conflicts (NIACs):** Governed by Additional Protocol II of 1977.

## **Second: Distinguishing International Armed Conflicts from Analogous Concepts**

Terms such as crisis, tension, struggle (*sira'*), or revolution are frequently employed interchangeably to denote armed conflict. Consequently, it is imperative to distinguish the legal concept of armed conflict from other terminologies bearing proximate meanings. This distinction is elucidated as follows:

### **1. Distinction between Conflict and Revolution**

Revolution is a political term denoting a sudden and radical transformation occurring within specific socio-political contexts, utilizing unconventional means that are not devoid of violence. It represents an attempt at reform; regardless of whether it is deemed righteous or erroneous, it is a path chosen by human agency from among various options. Typically precipitated by the injustice of a ruler, a revolution is thus an uprising directed against a tyrannical or deviant leader (Al-Jasim, 2015, p. 275).

### **2. Distinction between Conflict (Niza') and Struggle (Sira')**

The term "Struggle" (or broad Conflict) is derived from the Latin word *conflictus*, which implies striking together using force, indicating a lack of agreement. (Al-Tarawneh & Al-Musa'dah, 2016, p. 195). Political scientists have accorded special attention to the study of struggle, a term frequently utilized synonymously with conflict (Niza').

The Dictionary of Social Sciences defines struggle (*Sira'*) as: "The contention or contradiction, ranging from mild to firm, between two or more parties, groups, classes, or individuals; it also exists between aspects, trends, or justifications within the same person. The subject of struggle is present in all human sciences and occupies a place in various theories" (Al-Tarawneh & Al-Musa'dah, 2016, p. 196). While the terms "struggle" and "conflict" (Niza') are often used as synonyms, the majority of researchers in political science consider the concept of "struggle" to be broader than that of "conflict." (Al-Khazandar, 2014, p. 63). They posit that the concept of "conflict" (Niza') refers to a less intense and less comprehensive degree of difference than "struggle." Furthermore, a conflict can be contained and controlled, arising from a clash of values or interests wherein the parties feel that their counterpart is utilizing their position to achieve victory or, at the very least, to prevent loss (Al-Tarawneh & Al-Musa'dah, 2016, pp. 197–198).

### **3. Distinction between Conflict and Crisis**

The term "Crisis" originated in the ancient Greek era, where it denoted a critical pathological moment upon which human life depended. In the 17th century, the concept evolved to indicate a heightened degree of tension in the relations between political authority and ecclesiastical authority. By the 19th century, with the emergence of democracy and liberalism in Europe, the term was employed to refer to moments of transformation and serious problems in political, social, or economic relations (Al-Khazandar, 2014, p. 105).

Charles Hermann is considered one of the first scholars to present a conceptual definition of a crisis, describing it as a situation characterized by:

1. A threat to the high-priority goals of decision-makers.
2. Restricted time available for decision-making before the situation alters.
3. Surprise to the decision-makers regarding the occurrence of the event. (Al-Khazandar, 2014, p. 106).
4. "Crisis is an advanced stage of the stages of struggle." Furthermore, a crisis is a phase of tension that is situational rather than merely incidental in international relations (Al-Ma'ini, 2002, p. 20).

### **4. Distinction between Conflict (Niza') and Tension**

Tension is a state of anxiety and mutual mistrust between two or more states. Tension may serve as a precursor and a cause of international conflicts and obligations, or it may be a consequence of such conflicts. The intensity of tension may lead to the escalation of a crisis into a conflict, which may further transform into an armed conflict if not resolved through peaceful means. Moreover, the causes of conflict are often intrinsically linked to the causes of tension (Berkan, 2009/2010, p. 14).

Third: Types and Forms of International Armed Conflicts

#### **1. Types of International Armed Conflicts Armed**

conflicts are classified into three categories based on the means employed in the conflict and the conduct of military operations within the respective territories:

A. Land Armed Conflicts These are conflicts wherein hostilities are conducted on land between belligerent forces comprising regular armies and other combatants. Article 1 of the Convention of October 18, 1907 (Hague Regulations), defined belligerents as "members of armies," as well as members of militias and volunteer corps, provided they fulfill the following conditions:

- To be commanded by a person responsible for his subordinates.
- To have a fixed distinctive emblem recognizable at a distance. To carry arms openly.
- To conduct their operations in accordance with the laws and customs of war (Yazji, 2004, p. 124).

#### **B. Naval Armed Conflicts**

These conflicts are conducted within the territorial sea, internal waters, exclusive economic zones (EEZ), and continental shelves of the belligerent states, and—where necessary—within the archipelagic waters of such states. Hostilities may also take place on the high seas, subject to the rights of neutral states to explore and exploit the natural resources of the seabed and its subsoil beyond the limits of national jurisdiction.

#### **C. Aerial Armed Conflicts**

Air warfare extends over the land territories of the belligerent parties, as well as their territorial and internal waters. Furthermore, military and auxiliary aircraft have the right of transit passage over neutral international straits and archipelagic sea lanes, provided that the neutral state is notified of any intent to engage in hostile acts. (San Remo Manual, 1994, Arts. 23–24)

Rousseau defined this type of conflict as follows: "Air warfare is the war that takes place in airspace, encompassing all military actions—surveillance, destruction—carried out by balloons, dirigibles, hydroplanes, and helicopters directed against the enemy." The regulation of air warfare was virtually non-existent prior to 1914, with the exception of a few specific acts.

Subsequently, following World War I, efforts were undertaken to regulate air warfare. The Washington Conference appointed a Commission of Jurists to limit aerial weaponry. This Commission convened in The Hague from December 11, 1922, to February 19, 1923, resulting in the Draft Rules of Aerial Warfare of 1923 (Rousseau, p. 276).

## **2. Forms of International Armed Conflicts**

Since antiquity, war has been the language mastered by every powerful state in its relations with other nations, as force constituted the fundamental basis of international relations. International armed conflicts have assumed various forms, represented by aggression, self-defense, the threat of use of force, war, occupation, wars of national liberation, the war on terror, and the war on organized crime. The following sections provide an elucidation of each: Aggression- Self-Defense- Threat of Use of Force- War- Occupation- Wars of National Liberation- War on Terror.

### **A. Aggression**

The definition of aggression is considered the longest legal process in the history of law-making, as international legal scholars have not agreed upon a unified definition. International conventions regard aggression as a crime punishable under international law. Among those who offered a general definition is the jurist Pella, who defined it as: "Every resort to force by an international group, except in cases of self-defense and participation in a joint action deemed lawful by the United Nations".

The International Law Commission (ILC) defined it as: "Any use of force or threat thereof by a state or government against another state in any form whatsoever, regardless of the weapons used or the underlying cause or purpose, with the exception of cases of individual or collective self-defense, or the implementation of a decision or recommendation issued by a competent organ of the United Nations" (Sakri, 2011/2012, p. 26).

### **B. Self-Defense**

The right of self-defense is among the rights recognized by international law since ancient times. It is considered a logical consequence of a state's right to survival when other means necessary to preserve this survival are unavailable; the foremost of these means is the right to defend itself. The right of self-defense is predicated on the basis that a state has the right to utilize all means, including military ones, to ward off imminent danger. In doing so, it may commit acts otherwise deemed unlawful and prohibited under international law, such as the use of force against a specific state or terrorist entity attempting to cause harm (Abdul Aziz, 2013, p. 42).

The substance of the right of self-defense derives from the text of Article 51 of the Charter of the United Nations. This interpretation is contested by two theories: The Broad Interpretation Theory: This theory recognizes the right of preventive self-defense (anticipatory self-defense). Its proponents include McDougal and Kellogg. The Narrow Interpretation Theory: This theory sets strict conditions for self-defense. Its proponents include Oppenheim, Kelsen, and Kunz (Mantawy, 2015, p. 12).

The Security Council frequently invokes Chapter VII to adopt resolutions in this regard, thereby endowing them with a binding force not afforded by other chapters of the Charter. This occurs only after the Council characterizes the facts as constituting a threat to the peace, a breach of the peace, or an act of aggression, exercising its wide discretionary authority pursuant to Article 39 of the UN Charter (Hammad, 1998, p. 23).

### **C. Threat of Use of Force**

The concept of a "threat to the peace" derives its meaning from Article 1, Paragraph 1 of the UN Charter. This provision calls upon the Organization to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace (United Nations, 1945, Art. 1(1)).

### **D. War**

Rousseau defines war as: "An armed struggle between states intended to impose political directives, utilizing means regulated by international laws" (Abdul Aziz, 2013, p. 7).

Kelsen, in his examination of the concept of Just War (Bellum Justum), argues that the resort to force for the purpose of restoring a right is a lawful act. He elucidates that not every act of aggression is unlawful, nor is every defensive war considered lawful unless the objective for which the war is waged is clearly established. War is thus viewed as a phenomenon concomitant with international relations (Tashtoush, 2010, p. 103).

War is a legal status existing between two states, conditioned upon a declaration of war or an ultimatum containing a conditional declaration of war. It constitutes a notification to the opposing state that all peaceful means have been exhausted and that recourse is being made to non-peaceful means—such as blockade or reprisals—thereby placing the state in a formal state of war (Al-Nsour & Al-Majali, p. 76).

### **E. Occupation**

Talaat Al-Ghunaimi defines it as: "Movements grounded in the right of a people to recover their usurped territory. They derive their existence from the support of the masses against the usurper, and typically utilize the territory of neighboring countries as a sanctuary from which they draw funding and conduct training. Due to their capabilities, they focus their efforts on breaking the usurper's will rather than defeating the occupying armies in organized warfare" (Al-Ghunaimi, 1993, p. 394).

According to the laws of land warfare adopted by the Institute of International Law in 1880, Article 41 states: "Territory is considered occupied when, as a consequence of invasion by an aggressor State, the State to which the territory belongs has ceased, in fact, to exercise its ordinary authority therein, and the invading State is in a position to maintain order."

### **F. War on Terror**

The phenomenon of terrorism, in its modern conceptualization, was not defined until the modern era. Sottile defined terrorism as: "A criminal act coupled with terror, violence, or intimidation for the purpose of achieving a specific goal." This definition, however, did not specify the objective of terrorism.

Saldana proposed two definitions for terrorism: one broad and one narrow. The broad definition is: "A felony or misdemeanor of a political or social nature, the execution or expression of which provokes general panic due to the creation of a common danger." The narrow definition refers to: "Criminal acts whose primary objective is to spread fear and terror (as the subjective element), utilizing means capable of creating a state of common danger (as the material element)" (Ramadan, Vol. 31, Part 3, pp. 11–15).

### **Second: The Concept of Non-International**

Armed Conflicts Humanity has known non-international armed conflicts since ancient times. Wherever they have occurred, they have left destruction and devastation in their wake; indeed, they may be considered more severe and dangerous than wars fought between

states. However, traditional jurisprudence did not recognize them as "real wars," either because they did not take place between states or because one of the parties was not a state.

This type of conflict has been referred to by various names, including revolution, rebellion, struggle, violence, and occasionally, civil war.

### **1. Definition of Non-International Armed Conflicts in Traditional Jurisprudence**

Certain jurists addressed internal wars despite the absence of the legal regulation that exists today. Their perspectives on this type of conflict varied, as did their definitions:

#### **A. Definition by Grotius**

The jurist Grotius is considered among the first to address war within a single state in his seminal work *The Law of War and Peace (De Jure Belli ac Pacis)*, specifically in the final chapter concerning belligerents and types of war. He divided war—and by extension, non-international armed conflicts—into three categories: Public War, Private War, and Mixed War. Public War refers to conflicts between states (sovereign entities). Private War is that which occurs between subjects of a single state (private individuals themselves). Mixed War, in his view, combines the characteristics of both Private and Public War (between nobles and private individuals), encompassing Civil War. Thus, he distinguished between international conflicts and internal conflicts occurring within the same state, making him the first to differentiate between civil war and international war (Amer, 2007, p. 29).

It is our view that Grotius's definition considered every armed conflict occurring within a state as a non-international armed conflict, regardless of its intensity or severity. It is noteworthy that the aforementioned definition is characterized by generality and flexibility. While he distinguished between Public War (international war between states), Private War (within the state itself), and Mixed War (Civil War, combining attributes of the former two), he did not provide specific criteria to distinguish between them. This may be attributed to the lack of interest in this type of warfare during that era, as such conflicts were regarded as purely internal matters falling under the exclusive jurisdiction of the state based on its sovereignty.

#### **B. Definition by Pufendorf**

The jurist Pufendorf defined non-international armed conflicts as: "That war in which members of the same society fight among themselves" (i.e., internal conflicts) (Ammar, 2008/2009, p. 15).

#### **C. Definition by Clausewitz**

The jurist Clausewitz defined non-international armed conflicts as: "An act of social life, and a conflict of major interests which can only be settled by bloodshed." (Awashriya, 2001, p. 18)

Clausewitz added to the previous definitions that the cause of non-international armed conflicts is the contradiction and conflict of interests that cannot be resolved except through fighting.

From the preceding definitions, it is observable that these jurists adopted a broad interpretation of the term non-international armed conflicts. They regarded non-international armed conflicts as internal conflicts arising between two factions, sects, or more within a single state (Awashriya, 2001, p. 19), without specifying the conditions or limits required for them to be characterized as such.

These definitions are characterized by generality and flexibility, intended to imbue the concept with a degree of humanity. However, this was of little utility under traditional international law, which regarded non-international armed conflicts as being at the core of domestic matters falling under the jurisdiction of the internal law of the state where the conflict occurred. Indeed, the "Conservative Theory" advocated for the total exclusion of

non-international armed conflicts from the scope of international law (Abdul Rahman, p. 61).

### **3. Doctrinal Attempts Advocating for the Application of the Law of War to Non-International Armed Conflicts**

Doctrinal attempts emerged calling for the subjection of non-international armed conflicts to a degree of regulation. Jurists advocated for the application of the law of armed conflict to this type of conflict to mitigate the atrocity of its consequences, influenced by the ideas of Montesquieu and Rousseau, which had revolutionized the concept of war.

Both Vattel and Francis Lieber were influenced by the ideas of the Enlightenment; consequently, they made significant attempts to develop International Humanitarian Law through their focus on non-international armed conflicts and their demand to subject such conflicts to the provisions of international law.

#### **A. Vattel**

Emmerich de Vattel was the first to advocate for the application of the law of war to civil war in his seminal work *The Law of Nations or the Principles of Natural Law Applied to the Conduct and to the Affairs of Nations and of Sovereigns*. Vattel stated: "This form exists within a single State when there is a party that does not obey and does not submit to the sovereign, and finds itself strong enough to be at the helm; thus, the nation is split, divided into two opposing factions, each resorting to arms. This constitutes civil war." Vattel explicitly called for the application of the law of war to non-international armed conflicts (Abdel Karim, 2015/2016, p. 21). We find that Vattel added a new condition to previous definitions: force and the use of arms. Vattel argued that civil war arises within a single homeland between two independent parties, each seeking vengeance against the other as if they were enemies. Neither side acknowledges any judgment that diminishes the rights of the other, thereby inciting discord between the supporters of both sides. He posited that humanitarian rules arise between the two parties in a civil war, which must be adhered to (Zidan, p. 61).

Vattel defined "rebels" as: "Those persons who unjustly bear arms against the leadership of the society, whether out of ambition to usurp power, or in opposition to its orders in certain particular matters, or to impose certain conditions upon it." He further provided a definition for Civil War, stating: "When a party is formed in a State which no longer obeys the sovereign, and is sufficiently strong to make head against him; or when, in a republic, the nation is divided into two opposite factions, and both sides take up arms, this is called civil war" (Ammar, 2008/2009, p. 16).

Thus, Vattel posited that civil war commences when the citizens of a single nation are divided into two armed factions: one representing the state, and the other comprising rebels who seek power or oppose the orders of their ruler, possessing sufficient force to bear arms and to appoint a leader to command them.

He further adds that, in such cases, recourse must be had to the laws and customs of war due to the gravity of the damages created. Moreover, Vattel distinguished between rebellion (Sedition/Revolt) and civil war, positing that civil war is waged against the ruler for a just cause, whereas rebellion refers to a war waged against the ruler for an unjust cause. He advocated for the necessity of subjecting civil war to the provisions of the laws and customs of war, considering its impacts on a single society. It generates two separate factions within the nation, each viewing the other as an enemy to be eliminated; therefore, they must be regarded as two separate bodies and treated as two distinct nations in the event they resort to arms (Brabah, 2011/2012, p. 17).

Based on the foregoing, the jurist Vattel contributed significantly through his ideas to the development of the rules of International Humanitarian Law by calling for the application of

the law of war to civil wars, notwithstanding that he restricted non-international armed conflicts to their most violent manifestation: civil war (Zayed, 2016/2017, p. 67).

### **B. Francis Lieber**

The jurist Francis Lieber attempted to distinguish between Insurrection, Civil War, and Revolution in the second section of his Code, titled "Insurrection—Civil War—Rebellion" (Articles 149 to 151).

He defined Insurrection as: "The rising of people in arms against their government, or a portion of it, or against one or more of its laws, or against an officer or officers of the government. It may be confined to mere armed resistance, or it may have greater ends" (Hartigan, 1983, p. 22).

He defined Civil War as: "War between two or more portions of a country or state, each contending for the mastery of the whole, and each claiming to be the legitimate government. The term is also sometimes applied to war of rebellion, when the rebellious provinces or portions of the state are contiguous to those containing the seat of government" (Hartigan, 1983, p. 23).

As for Revolution, he defined it as: "An insurrection on a large scale, and usually is a war between the legitimate government and a portion or portions of the country, aiming at the overthrow of the government or the change of the organic law, and the establishment of a new government" (Hartigan, 1983, p. 24).

The Lieber Code—formally the Instructions for the Government of Armies of the United States in the Field—distinguished between revolution, civil war, and insurrection in Articles 149, 150, and 151, respectively. Article 149 posited that if the scope of military operations is limited, the situation constitutes an insurrection. Article 150 stated that if the objective of military operations is the establishment of a new state, it is a revolution. Conversely, Article 151 defined civil war as an attempt to establish a new government to replace the existing one. Promulgated by the United States War Department in 1863 under General Orders No. 100, these instructions represent the first attempt to codify the rules of land warfare. The Code exercised a profound influence on the laws and customs of war and on subsequent codification efforts, whether in the form of military manuals or international instruments such as the Brussels Declaration of 1874, the Hague Regulations of 1907, and even certain provisions of the Geneva Conventions of 1949. (Amer, pp. 983–984)

Thus, Lieber differentiated between the three terms: insurrection, revolution, and civil war. If the scope of operations is restricted, it constitutes an insurrection; if extensive, it is a revolution. Furthermore, if the conflict's objective is to secede and establish a new state, it is a revolution; whereas if the aim is to usurp the existing government with a new one, it is a civil war.

While jurist Lieber's effort was significant in delineating the concepts of insurgency, insurrection, revolution, and civil war, it is marred by certain conceptual limitations. Specifically, the definition relies on a subjective element—intent—that is often difficult to ascertain until the conflict's conclusion. Determining whether the intent is to establish a new state or merely a new government is a retrospective assessment. Furthermore, the Code originally lacked an international character; drafted to regulate the conduct of Union forces during the American Civil War, it was a domestic instrument not originally intended for universal application among states (Fadil, 2013/2014, p. 104).

Lieber recognized the distinction between combatants and non-combatants; however, he did not establish a rigid taxonomic rule for this distinction. While he posited the protection of non-combatant civilians as a baseline, he maintained that if the attainment of legitimate military ends required their suffering, then they must suffer. This approach diverges

significantly from Kantian philosophy, as the principle of military necessity in the Code is deeply rooted in utilitarian calculus: any measure necessary to terminate the war swiftly and restore peaceful cooperation is deemed advisable (Wojoudi, p. 80).

We can conclude that Vattel and Lieber were instrumental in shaping the trajectory of International Humanitarian Law. Vattel, specifically, established the legal underpinnings for the theory of 'recognition of belligerency' by defining the parameters of civil war. This theoretical framework constituted the earliest legal regime under traditional international law to extend a degree of regulatory oversight to non-international armed conflicts (Djaballah, p. 19).

Similarly, Lieber's codification—despite its specific context within the American Civil War—had a substantial impact, prompting numerous states to issue manuals on the laws of war to their armies. This catalyzed a codification movement and a surge in jurisprudential literature on the laws of war, elevating the subject's status within international law (Shehata, 1981, p. 24).

Undoubtedly, both Vattel and Lieber paved the way for the distinction between international and non-international armed conflicts—even prior to the crystallization of these specific terms—and contributed to the evolution of the laws of war.

### **3.Non-International Armed Conflicts in Contemporary International Legal Doctrine**

The methodologies and rationales employed to formulate a precise and specific definition of non-international armed conflicts (NIACs) have varied considerably. Some scholars have adopted an expansive approach, extending the definition to encompass all forms of NIACs, while others have restricted the scope to a single manifestation of these conflicts to the exclusion of others (Bakour, 2001, p. 16).

Two distinct trends have emerged regarding the definition of NIACs, primarily due to the failure of Common Article 3 to explicitly define the nature of such conflicts, thereby leaving the matter open to doctrinal interpretation. Consequently, scholarship has divided into two camps: the first adopts the "Restrictive Approach" (or Narrow Trend), which equates the concept with civil war, while the second opts for the "Expansive Approach," broadening the concept to include all forms of non-international armed conflicts without exception. These trends are detailed below:

#### **A. The "Restrictive Approach": Civil War**

This trend limits the scope of NIAC strictly to civil war, excluding other forms of armed conflict. Civil war is characterized as the most ferocious form of conflict, possessing the most profound impact on the rights of civilians. Jurists have diverged in their definitions of the term "civil war" as a result of their varying political and ideological convictions, as well as the different socio-political environments in which they operate.

Professor Eric David argues that non-international armed conflicts are narrow and specific concepts—essentially synonymous with civil war. He defines this as a conflict occurring between the government and rebels who exercise continuous control over a portion of the territory. Historical examples cited include the Spanish Civil War (1936–1939), the American Civil War (1861–1865), and the conflicts in El Salvador, the former Yugoslavia, and Rwanda (Ismail, 2014/2015, p. 27).

Dr. Salah El-Din Amer defined civil war as: "hostile operations taking place within the framework of a single state, existing when two opposing parties resort to arms within the state for the purpose of accessing power, or when a significant proportion of the state's citizens take up arms against the legitimate government" (Awashriya, p. 29).

Thus, he restricted the definition of civil war to ongoing hostilities within a single state aimed at seizing power. Regardless of the multiplicity of these definitions, they concur that civil war is one of the forms of non-international armed conflict—and indeed the most

violent—wherein rebellion reaches its zenith, threatening national unity due to confrontations between insurgent groups and the ruling government, or among insurgent groups fighting one another.

#### **B. The Expansive Approach to the Concept of Non-International Armed Conflicts**

Among those who adopted the expansive definition of non-international armed conflicts are the jurists Pinto and Wilhelm. However, they excluded the condition of territorial control (control over a part of the territory). Importantly, they did not intend to include internal disturbances and tensions within the concept of non-international armed conflicts (Awashriya, p. 19).

Jurist Pinto, in his commentary on the 1962 Committee of Experts' attempt to define non-international armed conflicts, opined that such conflicts possess a collective character and a minimum level of organization, without necessitating a specific duration for the conflict or requiring the insurgents to seize a portion of the territory.

Consequently, the concept of non-international armed conflict can be considered broader than the concept of civil war (Awashriya, p. 21).

Similarly, jurist Wilhelm argues that the term "non-international armed conflict" has a broader meaning than the traditional concept of civil war, which required the revolution to possess an international character, specifically the condition of effective control over a part of the territory.

Although jurists Pinto and Wilhelm adopted the broad interpretation of non-international armed conflict, they explicitly excluded the restrictive conceptualization associated with the traditional definition of civil war—specifically the condition of territorial control. However, they did not intend to subsume internal disturbances and tensions under the concept of non-international armed conflicts (Awashriya, p. 21).

Professor Salah El-Din Amer posits that: "the phrase armed conflict of a non-international character is subject to permanent and continuous interpretation by the international community".

Based on the foregoing, it is evident that the definition of non-international armed conflict is influenced by the political and economic objectives of states and the application of the principle of non-intervention in internal affairs. Furthermore, the concept of humanity constitutes the foundation of the expansive definition, aiming to extend protection to the maximum number of victims possible.

Professor Georges Abi-Saab also adopted the expansive approach, propounding the concept of the emergence of a new generation of non-international armed conflicts, typified by "anarchic conflicts." This concept may draw upon the theory of "creative chaos" articulated by former U.S. Secretary of State Condoleezza Rice on numerous occasions. (Rawabhi, 2017/2018, p. 98). These constitute a novel form of non-international armed conflict characterized by a lack of organization, occurring against less-structured governments, involving revolutionary forces and rival gangs in the absence of a central authority. They feature a multiplicity of semi-organized military factions without clear leadership, rendering the identification of belligerent parties and the enforcement of International Humanitarian Law upon them an arduous endeavor (Abdel Kader, p. 31).

#### **4. Non-International Armed Conflicts in Contemporary International Law**

Since the adoption of the four Geneva Conventions of 1949, non-international armed conflicts have entered a new era. For the first time, international legislation formally codified a regime—distinct from the traditional system of recognition of belligerency—subjecting these conflicts to a degree of international regulation aimed at ensuring a minimum standard of humanitarian requirements. This was achieved through Common Article 3 of the 1949 Geneva Conventions, which has been described, due to its

significance, as a "mini-convention" or a "convention within a convention" (Medafer, 2015/2016, p. 31).

#### **A. Non-International Armed Conflicts under Common Article 3 of the 1949**

Geneva Conventions Common Article 3 represents the bedrock of International Humanitarian Law regarding non-international conflicts, constituting the first major achievement of this body of law. To examine non-international armed conflicts, it is essential to address the drafting history and the debates of the 1949 Diplomatic Conference that led to the adoption of Common Article 3.

Common Article 3 is the fruit of prolonged deliberations by the Diplomatic Conference of 1949. It constitutes, in itself, a "mini-treaty" containing a complete and exclusive codification of state obligations in non-international armed conflicts, while providing a minimum threshold of protection for the victims of such conflicts (Al-Shammari, 2016, p. 363).

Some scholars argue that the conferees in Geneva, by adopting the term "non-international armed conflicts," intended specifically to refer to civil war, to the exclusion of other forms of armed conflict.

The report of the Committee of Experts, which convened in Geneva in October 1962, extrapolated the conditions necessary for the application of Common Article 3, stating: "Any hostile act directed against a legal government falls within the scope of application of Article 3 if it presents a collective character and a minimum of organization. The following conditions may be taken into account, without necessarily being all present: the duration of the conflict, the number and framework of the insurgent groups, the degree of insecurity, the means employed by the government, and the restoration of order..." (Fadil, 2013/2014, p. 116).

Based on the foregoing, two fundamental conditions must be met by the insurgent group for Common Article 3 to apply:

- **The hostile operations must possess a collective character:** This necessitates recourse to military force rather than merely relying on police measures used to maintain the rule of law. Some of the aforementioned circumstances may be considered, though it is not required that they all be present simultaneously.
- **The existence of a minimum level of organization:** Common Article 3 cannot be applied to acts of banditry, isolated acts of violence, or riots.

#### **B. Non-International Armed Conflicts under Additional Protocol II of 1977**

The challenge of defining non-international armed conflict and delineating its scope of application was among the most critical issues debated during the Diplomatic Conference (1974–1977). Consequently, the following section will address the definition adopted by the aforementioned Conference. However, prior to this, we will examine the definition proposed by the International Committee of the Red Cross (ICRC) in its draft Protocol to facilitate a comparison between the two definitions, as follows:

##### **The Proposed Definition of Non-International Armed Conflicts by the ICRC**

The draft Additional Protocol II prepared by the ICRC contained a definition of non-international armed conflict in its Article 1, which stated the following (as cited in Zayed, p. 148):

1. The present Protocol applies to all armed conflicts not covered by Article 2 common to the Geneva Conventions of 12 August 1949, which take place between armed forces or other organized armed groups under responsible command.

2. The present Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature.

3. The foregoing provisions do not modify the conditions of application of Article 3 common to the Geneva Conventions of 12 August 1949.

It is notable that this definition clearly delineates the scope of application of Additional Protocol II by establishing its upper and lower thresholds. regarding the upper threshold, it encompasses all conflicts not covered by Common Article 2 of the Geneva Conventions (i.e., international armed conflicts), as stated in the first paragraph. As for the lower threshold, it includes all conflicts that surpass the level of internal disturbances and tensions and other similar acts, as stated in the second paragraph of Article 1 (Zayed, p. 149).

In its commentary on the first paragraph of this definition, the ICRC clarified that it applies to the following forms:

-Armed conflicts occurring between government forces themselves.

-Armed conflicts between government forces and insurgents.

-Armed conflicts between forces usurping power and organized popular forces resisting them.

-Armed conflicts between different parties where government forces are not involved, either due to the absence of a government or its non-intervention in the conflict.

Regarding the third paragraph of Article 1 of the ICRC's proposed definition, it maintained the independence of Common Article 3 from Protocol II. This was because certain government experts drew the ICRC's attention to the fact that low-intensity non-international armed conflicts could be covered by Common Article 3 without being subject to Protocol II. Linking the latter to Common Article 3 could potentially narrow the scope of that Article. Given this interest, the ICRC preferred that its draft Protocol remain separate and independent from Common Article 3 (Zayed, p. 150).

### **The Definition of Non-International Armed Conflict Adopted by the Diplomatic Conference**

The Conference ultimately adopted a definition different from the one proposed by the International Committee of the Red Cross (ICRC). This occurred after the draft Additional Protocol II prepared by the ICRC regarding non-international armed conflicts was presented to the Diplomatic Conference (1974–1977). Taking into account all viewpoints and opinions expressed during the discussions, the Working Group was finally able to formulate the following definition:

"The present Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol" (Zayed, p. 152).

However, this new draft was rejected in the final plenary session of the Diplomatic Conference for several reasons. Consequently, the final text of Article 1 of the Protocol was adopted, defining non-international armed conflict as follows:

1. "The present Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article 1 of the

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) ..."

2. "This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts" (International Committee of the Red Cross [ICRC], 1977, Art. 1).

It is observed that the definition adopted by the Diplomatic Conference is narrower in scope than the definition originally submitted by the ICRC to the Conference. This distinction will be elucidated in the following comparison between the two definitions.

### **The Difference between the ICRC Definition and the Definition Adopted by the Diplomatic Conference**

The distinction between the definition proposed by the International Committee of the Red Cross (ICRC) and the definition ultimately adopted by the Diplomatic Conference consists of four points, as follows:

1. The ICRC draft was inspired by the formulation adopted by the Committee of Experts of 1962, which established two conditions for the existence of a non-international armed conflict: first, a collective character, and second, a minimum level of organization. The ICRC draft combined these two conditions into the phrase "under responsible command." However, the Protocol adopted by the Diplomatic Conference added a third condition to the previous two: control over a part of the territory. As is well known, this condition is not easily met in all non-international armed conflicts. This led to a narrowing of the scope of the adopted Protocol II, excluding many conflicts from its application due to their failure to satisfy the requirement of territorial control.

2. Unlike the ICRC draft, which applied to all non-international armed conflicts—whether the government was a party or not—Protocol II applies only to conflicts in which the government is a party, thereby excluding other conflicts where government forces do not participate (i.e., conflicts solely between non-state armed groups).

3. The definition provided by the ICRC draft maintained the independence of Common Article 3, preserving the possibility of its future development. However, with the restrictive conditions introduced by Additional Protocol II, the independence of Common Article 3 became a necessity. This is because Protocol II applies only to a specific type of non-international armed conflict (high-intensity civil wars), to which Common Article 3 also applies simultaneously; however, the reverse is not true (Common Article 3 covers a broader range of conflicts). This context elucidates the intent of Paragraph 1 of Article 1 of Protocol II, which states that: "The present Protocol, which develops and supplements Article 3 common to the Geneva Conventions... without modifying its existing conditions of application..."

4. Paragraph 2 of Article 1 of the adopted Protocol II is nearly identical to its counterpart in the ICRC draft; both excluded internal disturbances and tensions and similar acts from the scope of application. However, unlike the ICRC draft, the adopted Protocol added the phrase "as not being armed conflicts" in reference to internal disturbances and tensions. This was inserted to preclude humanitarian intervention in such situations and to ensure that the scope of Common Article 3 does not extend to cover them (Zayed, p. 153).

### **C. The Definition of Non-International Armed Conflicts by the International Criminal Tribunal for the former Yugoslavia (ICTY)**

The Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY), in the seminal Tadić case, established criteria to ascertain the existence of an armed conflict, stating: "an armed conflict exists whenever there is a resort to armed force between

States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State."

From this, it can be deduced that the judicial methodology of the Tribunal relies on two primary criteria to verify the existence of an armed conflict: Resort to armed force (inter-state).

Resort to armed violence (intra-state).

Drawing from the jurisprudence of the ICTY, five indicators can be distilled to measure the degree of organization of an armed group:

**1.Organizational Structure:** Among the most critical indicators identified by the ICTY to determine the existence of a clear chain of command is the presence of a general command center and a commander-in-chief of the armed forces within the organization. This command structure issues orders and directives, assigns tasks to group members and units, and issues political statements on behalf of the organization. Furthermore, there must be military ranks, with responsibility distributed according to this hierarchy, and an official spokesperson for the group.

**2.The Capacity to Conduct Organized Operations:** This is determined by the group's ability to define a unified military strategy, conduct large-scale military operations, and seize control of a portion of the territory (Ichrakieh, 2016, p. 14).

**3.Logistical Capabilities:** This refers to the capacity for recruitment, training, coordination, and military supply, as well as the utilization of communication systems between the central command and subordinate units.

**4. Discipline and the Ability to Implement Common Article 3:** This entails the group's capacity to apply the provisions of Common Article 3, particularly the existence of an internal disciplinary system or code of conduct disseminated to the group's members.

**5. The Ability to Speak with One Voice:** This signifies the group's capacity to negotiate with international organizations, bodies, and other states to reach understandings on specific matters, as well as to negotiate with the adversary to achieve ceasefires or peace agreements.

Thus, the ICTY has significantly contributed to the development of the definition of non-international armed conflict. It did not limit itself to establishing two fundamental criteria (intensity and organization) but also added a set of subsidiary indicators to assist in identifying these core criteria (Ichrakieh, 2016, p. 15).

It is observed that the Tribunal's classification of armed conflicts is often retrospective (*ex post facto*), occurring after the conflict has concluded and all data is available. However, the classification process is far more arduous when conflicts are still raging, and competent authorities lack the time or access to intervene effectively.

According to the aforementioned definition, an armed conflict exists whenever there is a resort to armed force between states, or protracted armed violence between governmental authorities and organized armed groups, or between such groups within a state. International Humanitarian Law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, until a peaceful settlement is achieved.

Furthermore, the Trial Chamber in the Haradinaj case stated that the criterion of protracted armed violence should be interpreted as indicative of the intensity of the armed violence rather than merely its duration (Office of the High Commissioner for Human Rights [OHCHR], p. 37).

The aforementioned definition is considered to possess a binding customary character, as the Tribunal employed it in all subsequent rulings, and it has been adopted by other international tribunals.

The Court established criteria for qualifying a conflict as non-international, namely: the intensity of violence and the degree of organization of the parties. These criteria serve to distinguish non-international armed conflicts from internal disturbances, tensions, isolated acts of violence, and acts of terrorism.

#### **D. Non-International Armed Conflicts in the Statute of the International Criminal Court**

The Statute of the International Criminal Court (ICC) defines non-international armed conflicts as: "armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups" (UN Diplomatic Conference of Plenipotentiaries, 1998, p. 23).

The Statute posits that non-international armed conflicts are those occurring within the territory of a single state—rather than involving multiple states acting as subjects of the international community. Furthermore, such conflicts are contingent upon the existence of an armed struggle that must persist for a duration of time; one cannot conceive of a non-international armed conflict lasting merely a day, two days, or even a week. The ICC Statute explicitly excludes situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, or other acts of a similar nature (Fodil, p. 23).

This definition aligns with that provided by the International Criminal Tribunal for the former Yugoslavia (ICTY), as both retain the criterion of "protracted armed violence." Both tribunals consider a non-international armed conflict to exist only when the element of protracted armed violence is present.

The Rome Statute did not provide a precise definition regarding the material scope of application for Common Article 3 of the 1949 Geneva Conventions. However, it clarified the concept of non-international armed conflict regarding serious violations of the laws and customs of war by referencing the concept of protracted armed conflict. Consequently, the ICC Statute did not offer a novel conceptualization of non-international armed conflicts; rather, it served merely to delineate the structural framework for the Court's exercise of its jurisdiction (Fodil, pp. 22–23).

#### **5. Stages of Non-International Armed Conflicts**

A non-international armed conflict requires the fulfillment of certain conditions, primarily that the conflict reaches a specific level of intensity and that the armed group or groups within the state attain a sufficient degree of organization. These stages are classified as follows: Rebellion, Insurgency (Asyan), and Civil War.

##### **A. Rebellion (Al-Tamarrud)**

Rebellion is considered a state of internal violence directed against the authority, falling within the capacity of the state's police forces to contain. If the police are capable of suppressing the insurgent element, the situation does not enter the scope of international law. Under traditional international law, rebels in this stage do not enjoy any legal rights or protection (Bartels, 2009, p. 19).

In the judgment of the International Criminal Tribunal for the former Yugoslavia (ICTY) in the Kunarac and Kovačević cases, it was stated that: "The primary legal issue is whether armed violence has reached a sufficient level of intensity between an organized armed group and a state or another organized armed group. Consequently, if the armed group in question is sufficiently organized and there is a high level of intensity in the military operations, the conflict may be classified as a non-international armed conflict to which the relevant rules of international humanitarian law apply. An armed conflict is said to exist between governmental authorities and organized groups, or between such groups within the State" (Fodil, pp. 22–23).

## **B. Insurgency (Al-Asyan)**

If the rebellion manages to withstand the legitimate government for a prolonged period, it evolves into an insurgency. In this instance, the rebels become rivals to the government rather than mere outlaws. A prerequisite for this status is that the legitimate government explicitly recognizes them.

This recognition of insurgency constitutes a "partial internationalization" of the conflict without creating a full de facto state of war. As noted by Richard Falk, this status allows for the participation of other states in an internal war without finding themselves in a state of war. This represents the intermediate stage of non-international armed conflicts.

It is imperative to emphasize the "armed" nature of the insurgency, as civil disobedience does not fall within the scope of non-international armed conflicts. Furthermore, a degree of organization within the group or parties is a requisite condition; acts of violence committed by isolated individuals cannot transform violence into an armed conflict (Bakkour, p. 42).

## **C. Civil War (Al-Harb Al-Ahliya)**

Civil war is considered the oldest and most organized form of non-international armed conflict, and it has received significant attention from international legal scholars.

Civil war is defined as: "Any armed conflict not of an international character occurring within the territory of a State, directed against its authority, between forces or armed groups of the population that have rebelled against it or are divided among themselves. It involves the use of armed violence on both sides with a degree of density and intensity that renders it

more than a chaotic, unorganized rebellion, or a limited armed insurrection in time and space, or any other form of violent internal disturbances and tensions. The use of armed force by the rebels against state authority, or by factions divided among themselves, must lead to the exercise of control, under responsible command answerable for its actions, over a part of the State's territory. This is contingent upon the development of the armed conflict, its use as a base for launching coordinated attacks against government forces or between factions, and the observance of the laws and customs of war applicable in this type of conflict" (Bakkour, p. 71).

Traditional jurisprudence stipulated three conditions for a civil war to be subject to the law of war, in addition to the condition of recognition of belligerency:

1. The parties to the conflict must be: the State on one side, representing the sole international legal person, and the revolutionaries or insurgents on the other.
2. The revolutionaries or insurgents must succeed in occupying a portion of the State's territory.
3. The administration of the occupied territory by the insurgents must be organized (Bakkour, p. 69).

Harry Eckstein defined it as: "An attempt to change the government policies, leaders, or organization through violence or the threat of violence." This concept encompasses: revolutions, guerrilla warfare, internal disturbances, armed ideological conflicts, and military coups (Al-Khazandar, 2014, p. 82).

Traditional international law adopted the principle of non-intervention in civil wars, as manifested in the regulations of the Institute of International Law (Institut de Droit International) of 1900 regarding the rights and duties of foreign powers and their nationals in the event of an insurgent movement against established and recognized governments struggling with insurrection (Al-Zamali, 1997, p. 33).

According to Salah El-Din Amer, civil war is not considered "war" in the strict sense; rather, it constitutes a power struggle between the government and revolutionaries.

Consequently, it is subject to domestic law and falls outside the scope of international war according to the traditional concept of war (Amer, p. 998).

This exclusion places civil war outside the protective sphere provided by Common Article 3 and Additional Protocol II of 1977, leaving it to the will and authority of the State, thereby subjecting it to domestic law and labeling the combatants as "rebels."

### **Conclusion**

The traditional dichotomy of armed conflicts into international and non-international categories was a classical division based on the premise that international conflicts involve the intervention of the armed forces of one state against another, while non-international armed conflicts are represented by civil war. Both categories have undergone numerous evolutionary stages, particularly non-international armed conflicts. Each is associated with a specific set of legal rules designed to provide feasible protection to the victims of these conflicts.

### **findings**

1. International Armed Conflicts (IACs) differ from Non-International Armed Conflicts (NIACs) in their respective concepts and applicable legal rules. While IACs correspond to "war" in traditional law, NIACs transcend the concept of civil war to encompass other forms of tensions and disturbances. 2. International criminal jurisprudence has contributed significantly to distinguishing between IACs and NIACs. The non-international character of conflicts has not prevented the punishment of perpetrators of certain crimes through special tribunals, such as the ICTY (Yugoslavia) and the ICTR (Rwanda).

3. From the 19th century until the mid-20th century, international law treated NIACs as an internal matter for the State, regulated by domestic law based on the principle of sovereignty.

4. The jurisprudence of international criminal tribunals, particularly the ICTY, developed numerous legal concepts according to precise criteria, distinguishing NIACs from internal tensions and acts of terrorism.

5. Common Article 3 of the 1949 Geneva Conventions defined non-international armed conflicts by dispensing with the term "war" in all subsequent conventions.

6. The distinction between IACs and NIACs entails significant political and legal implications regarding the concept of sovereignty, the legitimacy of intervention for humanitarian purposes, and the rights and duties of belligerents during armed conflicts.

### **Recommendations**

**1. Establishment of an International Body:** The creation of an international body composed of experts from all UN member states to be responsible for the classification of conflicts, or alternatively, reaching an agreement to assign the task of conflict classification to the International Committee of the Red Cross (ICRC) as an official mandate.

**2. Re-evaluation of Classification:** There is a necessity to reconsider—or potentially abolish—the binary classification of armed conflicts into international and non-international. Efforts should be directed toward establishing criteria that align with the evolution of contemporary conflicts to ensure the provision of necessary protection to victims.

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