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## International armed conflict


An international armed conflict is an armed conflict between two or more states.


Common Article 2 to the four 1949 Geneva Conventions provides that they ‘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’.  *A declaration of war is an explicit affirmation of the existence of a state of war between belligerents. It triggers a state of war and therefore the applicability of the four 1949 Geneva Conventions even when such a declaration is not followed by armed hostilities. This also serves humanitarian purposes, notably the protection of enemy civilians on the territory of the state that declares war. The use of such declarations of war has become rare. See Eritrea-Ethiopia Claims Commission, Jus Ad Bellum, Ethiopia’s Claims* ([http://legal.un.org/riaa/cases/vol\\_XXVI/457-469.pdf](http://legal.un.org/riaa/cases/vol_XXVI/457-469.pdf)), *Partial Award*, 19 December 2005, §17; T. Ferraro and L. Cameron, ‘Article 2: Application of the Convention’ ([https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#\\_Toc452462845](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#_Toc452462845)), *ICRC, Commentary on the First Geneva Convention, 2016*, §§201-209.

Rather than ‘war’, the Geneva Conventions use the term ‘armed conflict’ to highlight that the determination whether an armed conflict exists within the meaning of Common Article 2 depends on the prevailing circumstances, not the subjective views of the parties to the conflict.  T. Ferraro and L. Cameron, ‘Article 2: Application of the Convention’ ([https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#\\_Toc452462847](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#_Toc452462847)), *ICRC, Commentary on the First Geneva Convention, 2016*, §212; ICTY, *The Prosecutor v Ljube Boškoski and Johan Tarčulovski* ([http://www.icty.org/x/cases/boskoski\\_tarculovski/tjug/en/080710.pdf](http://www.icty.org/x/cases/boskoski_tarculovski/tjug/en/080710.pdf)), *Trial*

*Chamber, Judgment, IT-04-82-T, 10 July 2008, §174.* Similarly, the lawfulness of the resort to armed force under jus ad bellum does not have any impact on the determination whether or not an international armed conflict exists.

## A low threshold


The threshold for an international armed conflict to exist is very low: whenever there is resort to hostile armed force between two States, there is an international armed conflict. Contrary to non-international armed conflicts (<http://www.rulac.org/classification/non-international-armed-conflicts>), there is no minimum threshold of armed violence.  See *T. Ferraro and L. Cameron, 'Article 2: Application of the Convention'* ([https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#\\_Toc452462848](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#_Toc452462848)), *ICRC, Commentary on the First Geneva Convention, 2016, §236*; *D. Akande, 'Classification of Armed Conflicts: Relevant Legal Concepts', in E. Wilmschurts (ed), International Law and the Classification of Conflicts, OUP, 2012, available at SSRN ([https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2132573&rec=1&srcabs=1117918&alg=1&pos=6](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2132573&rec=1&srcabs=1117918&alg=1&pos=6))*. This view is not uncontroversial; see numerous examples speaking for the existence of a threshold in: *International Law Association Committee on the Use of Force, 'Final Report on the Meaning of 'Armed Conflict' in International Law' ([http://www.rulac.org/assets/downloads/ILA\\_report\\_armed\\_conflict\\_2010.pdf](http://www.rulac.org/assets/downloads/ILA_report_armed_conflict_2010.pdf))*, *Conference Report, The Hague, 2010, p 26ff.*; *M. E. O'Connell, 'Defining Armed Conflict' (<https://academic.oup.com/jcsl/article-lookup/doi/10.1093/jcsl/krp007>)*, *13 Journal of Conflict and Security Law 3 (2009) 393*. For an analysis of relevant case law, see *D. Kritsiotis, 'The Tremors of Tadić' (<https://www.cambridge.org/core/journals/israel-law-review/article/the-tremors-of-tadi/619B0A6D58607ED6BFBC4BFBFC7E3FCF>)*, *43 Israel Law Review 2 (2010) 262, 278ff*. For a description of both viewpoints, see *J. Kleffner, 'Scope of Application of International Humanitarian Law', in D. Fleck (ed), The Handbook of International Humanitarian Law, 2013, p 44f*.


Such an approach is functional: a single border skirmish between the armed forces of two states or the capture of an individual soldier may amount to an international armed conflict because international humanitarian law contains specific rules that apply to such circumstances. A state's intent may provide evidence against the existence of an armed conflict: movements by armed forces of one state onto the territory of another by mistake or accident without hostile intent do not amount to an armed conflict.  See *ICRC, 'Report on International Humanitarian Law and the Challenges of Contemporary Armed Conflicts' ([http://www.rulac.org/assets/downloads/2015\\_Contemporary\\_Challenges\\_report.pdf](http://www.rulac.org/assets/downloads/2015_Contemporary_Challenges_report.pdf))*, *32nd Conference of the Red Cross and Red Crescent, 2015, p 8*; *T. Ferraro and L. Cameron, 'Article 2: Application of the Convention' ([https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#\\_Toc452462848](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#_Toc452462848))*, *ICRC, Commentary on the First Geneva Convention, 2016, §241*.

## Use of force by states


For an international armed conflict to exist, the use of force must be by the state: the acts of purely private persons do not constitute an international armed conflict unless the private persons act on behalf of the state, including in instances when states use proxy forces

(<http://www.rulac.org/classification/contemporary-challenges-for-classification#collapse4accord>).

However, this does not mean that states must use their military forces: non-military forces such as border guards or coast guards may be engaged in acts constituting an armed conflict.  See T. Ferraro and L. Cameron, 'Article 2: Application of the Convention' ([https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#\\_Toc452462848](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#_Toc452462848)), ICRC, *Commentary on the First Geneva Convention*, 2016, §§226-229.

It is debated whether the use of force must be reciprocal in the sense that there must be armed confrontations between two states. A contemporary challenge for the classification of armed conflicts is the question whether a state's use of force against a non-state actor (<http://www.rulac.org/classification/contemporary-challenges-for-classification#collapse3accord>) on the territory of another state without the latter's consent amounts to an international armed conflict or whether the armed forces of two states must be involved for an international armed conflict to exist. Albeit controversial, RULAC adopts the first position.  For further information, see the *Contemporary challenges* (<http://www.rulac.org/classification/contemporary-challenges-for-classification>) section.

## National liberation movements

Article 1(4) of Additional Protocol I (<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=6C86520D7EFAD527C12563CD0051D63C>) to the 1949 Geneva Conventions extends the scope of application of the Geneva Conventions to include armed conflicts in which people are fighting against colonial domination, alien occupation or racist regimes in the exercise of their right of self-determination.  There is some discussion whether this means that such conflicts are a form of international armed conflict or rather that such conflicts are governed by the law applicable to international armed conflicts without being a form of international armed conflict, provided that the state(s) involved are a party to Additional Protocol I. See D. Caron, *L'acte déclencheur d'un conflit armé international* (<http://archive-ouverte.unige.ch/unige:75120>), Schulthess Verlag, 2016, p 131. She argues that both a textual and a historical interpretation of article 1(4) Additional Protocol I show that conflicts involving national liberation movements were to be included in the applicability of the law of international armed conflicts, but not in the definition of international armed conflicts.

The scope of the provision is very limited and was aimed primarily at the situation regarding Israel (<http://www.rulac.org/browse/countries/israel>)'s occupation of Palestine, the struggle against the Apartheid regimes in South Africa and Zimbabwe (then Rhodesia), and the colonial struggles. Article 1(4) does not cover armed conflicts fought against repressive regimes other than colonial or racist regimes or alien occupation. Therefore, it does not apply to secessionist armed conflicts.

On behalf of the people of Western Sahara, the Polisario Front, the Sahrawi rebel national liberation movement fighting for independence of the territory of Western Sahara from Morocco (<http://www.rulac.org/browse/countries/morocco>), deposited a unilateral declaration under Article 96(3) Additional Protocol I (<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=4B3EBFB356E8FA04C12563CD0051E2FC>) with the Swiss Federal


Council in 2015. Pursuant to the declaration, the Polisario Front undertakes to apply the Geneva Conventions and Additional Protocol I. As the depositary state, Switzerland accepted the declaration and notified it to the other states parties.


Such a declaration can be made only by an authority representing a people involved in a fight falling under Article 1(4) Additional Protocol I. The acceptance of this declaration implicitly recognizes that the Polisario Front and Morocco are in a situation falling under Article 1(4) Additional Protocol I.  For further information on the legal effects of the unilateral declaration made by the Polisario Front, see K. Fortin, 'Unilateral Declaration by Polisario under API accepted by Swiss Federal Council' (<https://armedgroups-internationallaw.org/2015/09/02/unilateral-declaration-by-polisario-under-api-accepted-by-swiss-federal-council/>), *Armed Groups and International Law Blog*, 2 September 2015; Geneva Call, *Geneva Conventions and Armed Movements: an Unprecedented Move* (<http://genevacall.org/geneva-conventions-armed-movements-unprecedented-move/>), 4 August 2015. The right to self-determination of the people of the territory of the Western Sahara has been recognized by the United Nations General Assembly and the Security Council, see UNGA Res 2229 (XXI) ([http://undocs.org/A/RES/2229\(XXI\)](http://undocs.org/A/RES/2229(XXI))), 20 December 1966; UNGA Res 34/37 ([http://www.rulac.org/assets/downloads/UNGA\\_Res\\_34\\_37.pdf](http://www.rulac.org/assets/downloads/UNGA_Res_34_37.pdf)), 21 November 1979; UNSC Res 2285 (2016) ([http://undocs.org/S/RES/2285\(2016\)](http://undocs.org/S/RES/2285(2016))), 29 April 2016. The International Court of Justice and, more recently, the European Court of Justice, also recognized their right to self-determination, see ICJ, *Western Sahara* (<http://www.icj-cij.org/docket/files/61/6195.pdf>), *Advisory Opinion*, 16 October 1975, §162; ECJ, *Council of the European Union v Front populaire pour la libération de la saquia-el-hamra et du rio de oro (Front Polisario)* (<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130d6a300237ffe5c41f78dd8eced&text=&docid=186489&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=630725>), *Judgment*, C-104/16 P, 21 December 2016, §92. For an analysis of the situation of the territory and the determination of the Western Sahara's population's right to self-determination in 1976, see T. Franck, 'The Stealing of the Sahara' (<http://www.jstor.org/stable/2200382>), 70 *The American Journal of International Law* (1976) 694-721 (restricted access). For an analysis of questions of recognition concerning Western Sahara, see R.T. Vance Jr., 'Recognition as an Affirmative Step in the Decolonization Process: The Case of Western Sahara' (<http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1094&context=yjil>), 7 *Yale Journal of World Public Order* (1980) 45 (restricted access).

## Secessionist entities

International armed conflicts take place between states. It is therefore necessary to establish the statehood of the entities taking part in an armed conflict to determine its nature as international.

International humanitarian law (<http://www.rulac.org/legal-framework/international-humanitarian-law>) does not regulate the question whether or under what circumstances an entity possesses statehood. Similarly, it is irrelevant whether the other parties to the conflict recognize the statehood of the entity in question.



 T. Ferraro and L. Cameron, 'Article 2: Application of the Convention' ([https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#\\_Toc452462848](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#_Toc452462848)),

ICRC, *Commentary on the First Geneva Convention*, 2016, §231; J. Kleffner, 'Scope of Application of International Humanitarian Law', in D. Fleck (ed), *The Handbook of International Humanitarian Law*, 2013, p 47. Instead, the question whether a belligerent party possesses statehood is determined by international law. Under the 1933 Montevideo Convention (<https://www.ilsa.org/jessup/jessup15/Montevideo%20Convention.pdf>), states are characterized by having a permanent population, a defined territory, a government and the capacity to enter into relations with other states. It is debated whether or not the recognition of statehood by other states is an additional criterion.  For a thorough analysis of all the criteria of statehood, see M. Craven, 'Statehood, Self-Determination and Recognition' (<http://eprints.soas.ac.uk/15795/>), in M.D. Evans (ed), *International Law*, 3rd edn, Oxford University Press, 2010, p 203. The ICRC seems to follow the so-called declaratory approach: recognition of other states is not necessary for an entity to be a state under international law; see T. Ferraro and L. Cameron, 'Article 2: Application of the Convention' ([https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#\\_Toc452462848](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#_Toc452462848)), ICRC, *Commentary on the First Geneva Convention*, 2016, §231. Recognition may, in any case, be evidentiary in cases of doubt about the statehood of an entity; see J. Kleffner, 'Scope of Application of International Humanitarian Law', in D. Fleck (ed), *The Handbook of International Humanitarian Law*, 2013, p 48.

If a secessionist movement is successful in becoming a state of its own, the classification of the conflict may change accordingly and become an international armed conflict.

## Who represents the state?

International armed conflicts are fought between states. However, the classification of the conflict may depend on who is considered to represent the state, in particular due to the important role played by consent (<http://www.rulac.org/classification/contemporary-challenges-for-classification#collapse2accord>).



If a state intervenes in the territory of another state with the latter's consent, there is no international armed conflict. Without such consent, there is an international armed conflict.  See T. Ferraro and L. Cameron, 'Article 2: Application of the Convention' ([https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#\\_Toc452462849](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#_Toc452462849)), ICRC, *Commentary on the First Geneva Convention*, 2016, §259; D. Caron, *L'acte déclencheur d'un conflit armé international* (<http://archive-ouverte.unige.ch/unige:75120>), Schulthess Verlag, 2016, p 131. For further information on the relevance of consent, see *Contemporary challenges - the relevance of consent* (<http://www.rulac.org/classification/contemporary-challenges-for-classification#collapse2accord>). Consequently, the classification of a conflict may depend on who represents the state and can validly express such consent. To be valid, consent must be given by a person or entity with the authority to speak on behalf of the state, such as heads of state and governments, or other highest authorities in a state. In addition, consent must be given without coercion.  See M. Milanovic and V. Hadzi-Vidanovic, 'A Taxonomy of Armed Conflict' in N. White, C. Henderson (eds), *Research Handbook on International Conflict and Security Law*, Edward Elgar, 2012, p 21ff, available at SSRN




([https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1988915](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1988915)); T. Ferraro and L. Cameron, 'Article 2: Application of the Convention' ([https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#\\_Toc452462849](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#_Toc452462849)), ICRC, *Commentary on the First Geneva Convention*, 2016, §263; International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* ([http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf)), with Commentaries, 2001, Article 20; T. Ruys and L. Ferro, 'Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen' (<https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/div-classtitleweathering-the-storm-legality-and-legal-implications-of-the-saudi-led-military-intervention-in-yemendiv/8A63C1293723EC59BD0FDA8BD709B25E>), 65 *International & Comparative Law Quarterly* (2016) 81; M. Byrne, 'Consent and the Use of Force: An Examination of "Intervention by Invitation" as a Basis for US Drone Strikes in Pakistan, Somalia and Yemen' (<http://www.tandfonline.com/doi/full/10.1080/20531702.2015.1135658>) 3 *Journal on the Use of Force and International Law* 1 (2016) 97.

Normally, the de jure government, i.e. the government that was constituted in accordance with domestic law and recognized as such, can validly express such consent. Yet, in some instances competing persons or entities may claim to constitute the government that represents the state, for example when the legality or legitimacy of the domestic transfer of power is contested or when the existing government no longer controls the entire state territory.

## Effectiveness and international recognition of governments



If contested, effectiveness determines who represents the state. The ability to exert regular state functions, including by the administration of state institutions, and control over territory, including the capital, are used to assess the effectiveness of a government.  T. Ferraro and L. Cameron, 'Article 2: Application of the Convention' ([https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#\\_Toc452462848](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#_Toc452462848)), ICRC, *Commentary on the First Geneva Convention*, §§234-235 and L. Cameron, B. Demeyere, J.-M. Henckaerts, E. La Haye, I. Müller, 'Article 3: Conflicts Not of an International Character' ([https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=59F6CDFA490736C1C1257F7D004BA0EC#\\_Toc465169867](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=59F6CDFA490736C1C1257F7D004BA0EC#_Toc465169867)), ICRC, *Commentary on the First Geneva Convention*, 2016, §399; D. Caron, *L'acte déclencheur d'un conflit armé international* (<http://archive-ouverte.unige.ch/unige:75120>), Schulthess Verlag, 2016, p 108 and p 131; M. Shaw, *International Law*, 6th edn, Cambridge University Press, 2008, p 457. When states resort to armed force against the de facto government, i.e. the effective government, there is an international armed conflict regardless of whether or not the latter is recognized by the intervening state or the international community. States can therefore not hinder the qualification of an armed conflict as international by refusing to recognize an effective government.  T. Ferraro and L. Cameron, 'Article 2: Application of the Convention' ([https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#\\_Toc452462848](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#_Toc452462848)),

ICRC, *Commentary on the First Geneva Convention*, §235. For example, the 2001 invasion of Afghanistan was an international armed conflict: the Taliban were the de facto government, although they were not the recognized government.

However, if during an armed conflict the established de jure government, i.e. the government that was constituted in accordance with domestic law and recognized as such, loses control over significant parts of the territory to an armed group, the latter does not automatically become the new government representing the state, although it may effectively control part of the state's territory. Instead, international law provides for a presumption in favor of the established de jure government. Even a de jure government in exile can continue to be the state's representative. Effectiveness only plays a role when it is contested who represents the state.  T. Ruys and L. Ferro, 'Weathering the Storm: Legality and Legal

*Implications of the Saudi-Led Military Intervention in Yemen*'

(<https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/div-classtitleweathering-the-storm-legality-and-legal-implications-of-the-saudi-led-military-intervention-in-yemendiv/8A63C1293723EC59BD0FDA8BD709B25E>), 65 *International & Comparative Law Quarterly* (2016) 82; on various questions concerning governments in exile, see S. Talmon, 'Who is a Legitimate Government in Exile? Towards Normative Criteria for Governmental Legitimacy in International Law' ([https://www.ilsa.org/jessup/jessup12/Talmon\\_Who%20is%20a%20legitimate%20government%20in%20e](https://www.ilsa.org/jessup/jessup12/Talmon_Who%20is%20a%20legitimate%20government%20in%20e). in G. S. Goodwin-Gill and S. Talmon (eds) *The Reality of International Law: Essays in Honour of Ian Brownlie*, Oxford University Press, 1999, p 499; S. Talmon, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile*, Oxford University Press, 2001.

The question of who represents a state – its de jure government or, in case it is contested who is the de jure government, the de facto government as determined by the criteria of effectiveness – is important to determine who may request or consent to foreign military intervention. International recognition of the government as representing the state also plays a role for the purposes of requesting or consenting to a foreign military intervention, including when such requests are made by governments in exile.  T. Ruys and L. Ferro, 'Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen' (<https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/div-classtitleweathering-the-storm-legality-and-legal-implications-of-the-saudi-led-military-intervention-in-yemendiv/8A63C1293723EC59BD0FDA8BD709B25E>), 65 *International & Comparative Law Quarterly* (2016) 81; S. Talmon, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile*, Oxford University Press, 2001, 149. Only 'legitimate' governments in exile are perceived as capable of representing their state and therefore requesting armed intervention from outside. However, as there are no criteria as such to determine the legitimacy of a government, recognition by the international community may be decisive in some circumstances.  S. Talmon, 'Who is a Legitimate Government in Exile? Towards Normative Criteria for Governmental Legitimacy in International Law'

([https://www.ilsa.org/jessup/jessup12/Talmon\\_Who%20is%20a%20legitimate%20government%20in%20e](https://www.ilsa.org/jessup/jessup12/Talmon_Who%20is%20a%20legitimate%20government%20in%20e). in G. S. Goodwin-Gill and S. Talmon (eds) *The Reality of International Law: Essays in Honour of Ian Brownlie*, Oxford University Press, 1999, p 499f, 532f.

Similarly, during an armed conflict, the interplay between effectiveness and international recognition may be used to determine at what point a new government comes into existence or when the armed opposition becomes the new government, including for the purposes of requesting or consenting to foreign military intervention with all the consequences such consent entails for the classification of conflicts. **i** For example, based on an analysis of state practice and policy considerations, M. Milanovic and V. Hadzi-Vidanovic conclude that three elements should be present for an armed group to become the new government that can consent to the presence of foreign forces and thus transform the classification of a conflict: a) The old regime has lost control over most of the territory and there is only a small or no prospect that it will regain control in the short to medium term; b) the new regime has established control over a significant part of the country and is legitimized by an inclusive process that makes it broadly representative of the people; and c) the new regime achieves broad international recognition. See M. Milanovic and V. Hadzi-Vidanovic, 'A Taxonomy of Armed Conflict' in N. White, C. Henderson (eds), *Research Handbook on International Conflict and Security Law*, Edward Elgar, 2012, p 23, available at SSRN ([https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1988915](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1988915)).

## Democratically elected governments

Every government, not only democratically elected governments, may consent to an intervention by a foreign state. **i** S. Talmon, 'Who is a Legitimate Government in Exile? Towards Normative Criteria for Governmental Legitimacy in International Law' ([https://www.ilsa.org/jessup/jessup12/Talmon\\_Who%20is%20a%20legitimate%20government%20in%20e](https://www.ilsa.org/jessup/jessup12/Talmon_Who%20is%20a%20legitimate%20government%20in%20e). in G. S. Goodwin-Gill and S. Talmon (eds) *The Reality of International Law: Essays in Honour of Ian Brownlie*, Oxford University Press, 1999, p 509f, 532. However, the consent of democratically elected governments carries a presumption of validity: they are capable of expressing the will of the state even in instances where they may no longer be the effective government during an armed conflict. **i** See G. Nolte, 'Intervention by Invitation' (<http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1702?prd=EPIL>), *Max Planck Encyclopedia of International Law*, 2010; M. Milanovic and V. Hadzi-Vidanovic, 'A Taxonomy of Armed Conflict' in N. White, C. Henderson (eds), *Research Handbook on International Conflict and Security Law*, Edward Elgar, 2012, p 23, available at SSRN ([https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1988915](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1988915)).

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