

Classification (<http://www.rulac.org/classification>) » Non-international armed conflict

home?status=<http://www.rulac.org/classification/non-international-armed-conflicts>)

rk.com/sharer/sharer.php?u=<http://www.rulac.org/classification/non-international-armed-conflicts>)

ient.com?&subject=RULAC%20-

w%20in%20Armed%20Conflicts&body=I%20want%20to%20share%20this%20page%20with%20you%20-
g/classification/non-international-armed-conflicts)


Non-international armed conflict

Not every situation of armed violence within a state amounts to a non-international armed conflict: when a situation of violence is merely a situation of internal strife or civil disturbance, such a situation does not reach the threshold of 'non-international armed conflict' and international humanitarian law does not apply.

The assessment whether a situation amounts to a non-international armed conflict is based on the factual situation, not on the characterization given by states involved or by the international community. The latter can only serve as an indicative factor to be considered.


Threshold in Common Article 3


Common Article 3 to the Geneva Conventions (<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=BAA341028EBFF1E8C12563CD00519E66>) refers to a 'conflict not of an international character', but does not provide a definition.

The International Criminal Tribunal for the Former Yugoslavia stated that a non-international armed conflict exists when there is 'protracted armed violence between government authorities and organized armed groups or between such groups within a State.'  ICTY, *The Prosecutor v Dusko Tadić* (<http://www.icty.org/x/cases/tadic/acdec/en/51002.htm>), Appeals Chamber, *Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction*, IT-94-1-AR72, 2 October 1995, §70; ICTY, *The Prosecutor v Dusko Tadić* (<http://www.icty.org/x/cases/tadic/tjug/en/tad-ts70507JT2-e.pdf>), Trial Chamber, *Judgment*, IT-94-1-T, 7 May 1997, §562.



There are thus two core elements constituting a non-international armed conflict:

- Protracted armed violence is taking place, meaning a certain intensity of the armed violence
- The actors taking part in it must exhibit a certain degree of organization.

A variety of other actors have since adopted the same two criteria.  *Special Court for Sierra Leone, The Prosecutor v Sesay, Kallon and Gbao* (<http://www.rscsl.org/Documents/Decisions/RUF/1234/SCSL-04-15-T-1234-searchable.pdf>), Judgment, SSL-04-15-T, 2 March 2009, §95; *International Criminal Court, The Prosecutor v Thomas Lubanga Dyilo* (https://www.icc-cpi.int/CourtRecords/CR2007_02360.PDF), Pre-Trial Chamber, Decision of Confirmation of Charges, ICC-01/04-01/06, 29 January 2007, §233; *Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka* (http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf), 31 March 2011, §181; *Report of the International Commission of Inquiry to Investigate All Alleged Violations of International Human Rights Law in the Libyan Arab Jamahiriya, UN Doc A/HRC/17/44* (<http://undocs.org/A/HRC/17/44>), 1 June 2011, §§63f; *International Committee of the Red Cross, International Humanitarian Law and the Challenges of Contemporary Armed Conflict* (http://www.rulac.org/assets/downloads/2011_Contemporary_Challenges_report.pdf), 31st International Conference of the Red Cross and Red Crescent, 2011, p 8; L. Cameron, B. Demeyere, J-M. Henckaerts, E. La Haye and I. Müller, with contributions by C. Droege, R. Geiss and L. Gisel, 'Article 3: Conflicts Not of an International Character' (https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=59F6CDFA490736C1C1257F7D004BA0EC#_Toc465169863), ICRC, *Commentary on the First Geneva Convention, 2016*, §§378, 421ff; for further references see S. Sivakumaran, *The Law of Non-International Armed Conflict*, Oxford University Press, 2012, p 166.

The two criteria are closely related. Both must be present. However, the presence of one criterion may indicate the presence of the other: if there are intense armed confrontations between groups or between state forces and an armed group, this may indicate that these groups have reached the required degree of organization.  L. Cameron, B. Demeyere, J-M. Henckaerts, E. La Haye and I. Müller, with contributions by C. Droege, R. Geiss and L. Gisel, 'Article 3: Conflicts Not of an International Character' (https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=59F6CDFA490736C1C1257F7D004BA0EC#_Toc465169863), ICRC, *Commentary on the First Geneva Convention, 2016*, §§378, 434.


If the criteria are not met by a situation, there is no armed conflict. Banditry, unorganized or short lived insurrections or terrorist activities are thereby excluded from the applicability of the 1949 Geneva Conventions.

The question whether the requisite levels of intensity and organization have been met is assessed on a case-by-case basis. The ICTY developed a series of indicative factors in its jurisprudence to assess the degree of organization of the parties and the intensity of the armed violence.  ICTY, *The Prosecutor v Fatmir Limaj and others* (<http://www.icty.org/x/cases/limaj/tjug/en/lim-tj051130-e.pdf>), Trial Chamber, Judgment, IT-03-66-T, 30 November 2005, §90; ICTY, *The Prosecutor v Ramush Haradinaj and others* (<http://www.icty.org/x/cases/haradinaj/tjug/en/080403.pdf>), Trial Chamber, Judgment, IT-04-84-T, 3 April 2008, §§49,60; ICTY, *The Prosecutor v Ljube Bošković and Johan Tarčulovski* (http://www.icty.org/x/cases/boskoski_tarculovski/tjug/en/080710.pdf), Trial Chamber, Judgment, IT-04-82-T, 10 July 2008, §§177ff, 149ff. These factors are indicative and not conditions that need to be present. No single factor is determinative. They merely provide an indication on the kind of data and factual elements to be taken into account for the assessment.  S. Vite, 'Typology of Armed Conflicts in


Intensity of violence

Indicative factors to assess the intensity used by international jurisprudence include:

- The number, duration, and intensity of individual confrontations. This includes occupations, besieging or blocking of towns, the closure of roads, and the existence of front lines.
- The type of military equipment and weapons used, including the number and caliber of munitions fired. Efforts by an armed group to better arm itself can be taken into account.
- The number of persons and types of forces partaking in the fighting.
- The number of casualties and the extent of material destruction caused.
- The number of civilians fleeing the zone of hostilities.
- The frequency of fighting over time and the spreading over territory.
- The reaction by the government, e.g. an increase in the number of government forces or general mobilization, the use of its armed forces instead of the police, the claiming of the rights of a belligerent, the recognition of an armed group as a belligerent, the labelling of the situation as “civil war” or similar terms, the declaration of a state of emergency or the reliance on rules of international humanitarian.
- The reaction and involvement of the international community. This can include the situation being on the agenda of the Security Council or the General Assembly, the deployment of peacekeeping missions, calls of the international community for the respect of international humanitarian law; or whether attempts are made to broker ceasefire agreements.

 For a summary, see ICTY, *The Prosecutor v Ljube Boškoski and Johan Tarčulovski* (http://www.icty.org/x/cases/boskoski_tarculovski/tjug/en/080710.pdf), Trial Chamber, Judgment, IT-04-82-T, 10 July 2008, §177.

Organization

Government authorities are presumed to have armed forces that satisfy the criteria of organization.  L. Cameron, B. Demeyere, J-M. Henckaerts, E. La Haye and I. Müller, with contributions by C. Droege, R. Geiss and L. Gisel, ‘Article 3: Conflicts Not of an International Character’ (https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=59F6CDFA490736C1C1257F7D004BA0EC#_Toc465169868), ICRC, *Commentary on the First Geneva Convention*, 2016, §429; S. Vite, ‘Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations’ (http://www.rulac.org/assets/downloads/Vite_Typology_of_Armed_Conflicts_IRRC.pdf), 91 *International Review of the Red Cross* 873 (2009), 77; ICTY, *The Prosecutor v Ramush Haradinaj and others* (<http://www.icty.org/x/cases/haradinaj/tjug/en/080403.pdf>), Trial Chamber, Judgment, IT-04-84-T, 3 April 2008, §60.

For armed groups, international jurisprudence has developed a series of indicative factors to assess their organization:

- The presence of some kind of command structure, e.g. having an identifiable leader, general staff or high command, identifiable ranks and positions; the using of spokespersons, fixed headquarters or a basic system of disciplinary rules and mechanisms; or the existence of internal regulations.
- The operational capacity of the group, e.g. the ability to engage in protracted armed violence; to plan, coordinate and carry out military operations; to exercise some kind of territorial control or challenge the state's control; or to operate within defined zones of responsibility.
- The logistical capacity of the group; e.g. the existence of supply chains to gain access to weapons and other equipment; the ability to recruit and train new members, to provide uniforms and weapons, and to organize and move a certain number of fighters.
- The ability to speak with one voice and to participate in the negotiation of agreements.
- The existence of some kind of internal disciplinary mechanism.

i For a summary, see ICTY, *The Prosecutor v Ramush Haradinaj and others* (<http://www.icty.org/x/cases/haradinaj/tjug/en/080403.pdf>), Trial Chamber, Judgment, IT-04-84-T, 3 April 2008, §60.

The criterion of organization is necessary in particular to ensure that the armed group will be capable of implementing international humanitarian law.

However, armed groups do not need to be as organized as armed forces of the state. While some armed groups are organized hierarchically in a way similar to state armed forces, others will be decentralized with less clearly delineated roles and responsibilities or fractious and divided with shifting alliances. As long as these groups have enough of a structure to function over time, they may still meet the requisite criterion of organization.


Armed groups usually operate illegally and hence in secrecy, so their exact composition may not be known. Especially at the outset of an insurgency, an armed group will often not fulfil these criteria and only develop over time. **i** For further information, see S. Sivakumaran, *The Law of Non-International Armed Conflict*, Oxford University Press, 2012, p 172ff.


Irrelevance of purpose ▼

The legal or political characterization of armed groups (e.g. as terrorists or criminal gangs) is irrelevant for assessing whether there is an armed conflict under international humanitarian law. Similarly the purported aim or ideological motivation of the group is immaterial for the purposes of international humanitarian law. Just as in international armed conflicts (<http://www.rulac.org/classification/international-armed-conflict>) the parties to a conflict do not need to have a particular political agenda or purpose for engaging in armed violence. **i** L. Cameron, B. Demeyere, J-M. Henckaerts, E. La Haye and I. Müller, with contributions by C. Droege, R. Geiss and L. Gisel, 'Article 3: Conflicts Not of an International Character' (https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=59F6CDFA490736C1C1257F7D004BA0EC#_Toc465169868), ICRC, *Commentary on the First Geneva Convention*, 2016, §§447ff; ICRC, *International Humanitarian*


Law and the Challenges of Contemporary Armed Conflicts

(http://www.rulac.org/assets/downloads/2011_Contemporary_Challenges_report.pdf), 31st International Conference of the Red Cross and Red Crescent, 2011, p 6, 11; ICTY, *The Prosecutor v Fatmir Limaj and others* (<http://www.icty.org/x/cases/limaj/tjug/en/lim-tj051130-e.pdf>), Trial Chamber, Judgment, IT-03-66-T, 30 November 2005, §170; S. Vite, 'Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations' (http://www.rulac.org/assets/downloads/Vite_Typology_of_Armed_Conflicts_IRRC.pdf), 91 *International Review of the Red Cross* 873 (2009), 78.


Furthermore, an armed group's willingness to comply or not with international humanitarian law is irrelevant for the classification of the conflict.  C. Kress, 'The International Legal Framework Governing Transnational Armed Conflicts' (<http://www.uni-koeln.de/jur-fak/kress/Materialien/Chef/HP882010/Final19022011.pdf>), 15 *Journal of Conflict and Security Law* 2 (2010), p 259. The decisive factor is not which means and methods of warfare a group uses, but whether or not it is sufficiently organized to possess the capacity to comply with international humanitarian law.

 ICTY, *The Prosecutor v Ljube Boškoski and Johan Tarčulovski* (http://www.icty.org/x/cases/boskoski_tarculovski/tjug/en/080710.pdf), Trial Chamber, Judgment, IT-04-82-T, 10 July 2008, §§204ff.

'Global war on terror'?

Against the background of the so-called 'war on terror' waged against al-Qaida and associated forces, some claim that, if the situation amounts to an armed conflict, this would be a global one. However, most reject the view that there is such a globalized non-international armed conflict in favor of a case-by-case approach analyzing and classifying individual situations of violence.  ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*

(http://www.rulac.org/assets/downloads/2011_Contemporary_Challenges_report.pdf), 31st International Conference of the Red Cross and Red Crescent, 2011, p 10; for a thorough discussion see M. Sassòli, 'Transnational Armed Groups and International Humanitarian Law' (<http://www.hpcrresearch.org/sites/default/files/publications/OccasionalPaper6.pdf>), HPCR Occasional Paper Series, Winter 2006; M. Brookman-Byrne, 'Drone Use "Outside Areas of Active Hostilities": An Examination of the Legal Paradigms Governing US Covert Strikes' (<https://link.springer.com/article/10.1007/s40802-017-0078-1>), 64 *Netherlands International Law Review* 1 (2017), pp 4ff.

In particular, the International Committee of the Red Cross rejects the concept of a global non-international armed conflict between a non-state armed group and a state without having a territorial anchor. Instead, 'the existence of an armed conflict or the relationship of a particular military operation to an existing armed conflict has to be assessed on a case-by-case basis.'  See L. Cameron, B. Demeyere, J-M. Henckaerts, E. La Haye and I. Müller, with contributions by C. Droege, R. Geiss and L. Gisel, 'Article 3: Conflict Not of an International Character' (<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?>

action=openDocument&documentId=59F6CDFA490736C1C1257F7D004BA0EC#_Toc465169872), ICRC, *Commentary on the First Geneva Convention, 2016*, §§477-482. RULAC follows the same position.

Last updated: Monday 11th September 2017

IN THIS SECTION

Overview (<http://www.rulac.org/classification>)

International armed conflict (<http://www.rulac.org/classification/international-armed-conflict>)

Military occupation (<http://www.rulac.org/classification/military-occupations>)

Non-international armed conflict (<http://www.rulac.org/classification/non-international-armed-conflicts>)

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

The Geneva Academy, a joint centre of



INSTITUT DE HAUTES
ÉTUDES INTERNATIONALES
ET DU DÉVELOPPEMENT
GRADUATE INSTITUTE
OF INTERNATIONAL AND
DEVELOPMENT STUDIES

(<http://graduateinstitute.ch/home.html>)



UNIVERSITÉ
DE GENÈVE

FACULTÉ DE DROIT

(<http://www.unige.ch/droit/index.html>)

Copyright © 2019 Geneva Academy of International Humanitarian Law and Human Rights, Switzerland

Contact RULAC (<http://www.rulac.org/contact>) | Privacy Policy (<http://www.rulac.org/privacy-policy>) | Terms of Use (<http://www.rulac.org/terms-of-use>) |

Customize Cookies Preference | Designed by Optima (<http://www.optimadesign.co.uk>)