





categories may be used to illustrate these new types of armed conflict, but carry no legal significance:

Pursuant to international humanitarian law every situation still has to be classified as international or non-international.  See L. Cameron, B. Demeyere, J-M. Henckaerts, E. La Haye, 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=59F6CDDFA490736C1C1257F7D004BA0EC#\\_Toc465169872](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=59F6CDDFA490736C1C1257F7D004BA0EC#_Toc465169872)),

ICRC, *Commentary on the First Geneva Convention*, 2016, §472; *International Committee of the Red Cross Opinion Paper, How is the Term 'Armed Conflict' Defined in International Humanitarian Law?* ([http://www.rulac.org/assets/downloads/ICRC\\_Armed\\_Conflict\\_2008.pdf](http://www.rulac.org/assets/downloads/ICRC_Armed_Conflict_2008.pdf)), March 2008, p 1; D. Akande, 'Classification of Armed Conflicts: Relevant Legal Concepts', in E. Wilmschurst (ed), *International Law and the Classification of Conflicts*, Oxford University Press, 2012, p 56, available at SSRN (<https://ssrn.com/abstract=2132573>). For an argument that the distinction between international and non-international armed conflict should be abolished, see J. Stewart, 'Towards a Single Definition of Armed Conflict in International Humanitarian Law: A Critique of Internationalized Armed Conflict' ([http://www.rulac.org/assets/downloads/Stewart\\_Single\\_Definition\\_of\\_Armed\\_Conflict\\_2003.pdf](http://www.rulac.org/assets/downloads/Stewart_Single_Definition_of_Armed_Conflict_2003.pdf)), 85 *International Review of the Red Cross* 850 (2003) 313.

RULAC accordingly classifies each armed conflict as either international or non-international.

## Fragmentation of armed conflicts


The key distinguishing factor (<http://www.rulac.org/classification#collapse1accord>) between a non-international armed conflict and an international armed conflict is the identity of the parties: international armed conflicts take place between two or more states; non-international armed conflicts between a state and an organized non-state armed group, or between such groups.  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, §221; *International Committee of the Red Cross, International Humanitarian Law and the Challenges of Contemporary Armed Conflicts* ([http://www.rulac.org/assets/downloads/2011\\_Contemporary\\_Challenges\\_report.pdf](http://www.rulac.org/assets/downloads/2011_Contemporary_Challenges_report.pdf)), 31st International Conference of the Red Cross and Red Crescent, 2011, p 8; 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 40, available at SSRN (<https://ssrn.com/abstract=1988915>); D. Akande, 'Classification of Armed Conflicts: Relevant Legal Concepts', in E. Wilmschurst (ed), *International Law and the Classification of Conflicts*, Oxford University Press, 2012, p 21ff, available at SSRN (<https://ssrn.com/abstract=2132573>). The question is more controversial concerning situations of military occupation (<http://www.rulac.org/classification/military-occupations>). If the occupying state fights an armed conflict against a non-state armed group within the occupied territory, some authors qualify the situation as non-international, given the identity of the two parties, whereas others argue that the context of a military occupation makes the law of international armed conflicts applicable to everything that occurs within the occupied territory. See for the first view M. Milanovic, 'Lessons for Human Rights and Humanitarian Law in the War on Terror: Comparing Hamdan and the Israeli Targeted Killings Case'

([http://www.rulac.org/assets/downloads/Milanovic\\_Hadzi-Vidanovic\\_and\\_Targeted\\_Killings\\_case\\_2007.pdf](http://www.rulac.org/assets/downloads/Milanovic_Hadzi-Vidanovic_and_Targeted_Killings_case_2007.pdf)) 89 *International Review of the Red Cross* 866 (2007) 373, 383–6; for the latter view Israeli High Court of Justice, *The Public Committee against Torture in Israel v The Government of Israel* ([http://www.haguejusticeportal.net/Docs/NLP/Israel/Targetted\\_Killings\\_Supreme\\_Court\\_13-12-2006.pdf](http://www.haguejusticeportal.net/Docs/NLP/Israel/Targetted_Killings_Supreme_Court_13-12-2006.pdf)), *Judgment, HCJ 769/02, 11 December 2005, §18 and §21.*


If there are more than two actors involved in an armed conflict, the situation is broken down into a network of separate conflicts or bilateral relationships between the belligerent parties. Each of these relations can then be qualified as either an international or a non-international armed conflict.

If within one state's territory, an armed conflict takes place between two or more states in parallel to an armed conflict in which at least one side is a non-state armed group, an international armed conflict (<http://www.rulac.org/classification/international-armed-conflict>) coexists with a non-international armed conflict (<http://www.rulac.org/classification/non-international-armed-conflicts>) on the same territory.  See L. Cameron, B. Demeyere, J.-M. Henckaerts, E. La Haye, 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#\\_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, §404*; 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 42, available at SSRN (<https://ssrn.com/abstract=1988915>); D. Akande, 'Classification of Armed Conflicts: Relevant Legal Concepts', in E. Wilmshurst (ed), *International Law and the Classification of Conflicts*, OUP, 2012, p 45 f, available at SSRN (<https://ssrn.com/abstract=2132573>). For a critical view of the concept of fragmentation see J. Stewart, 'Fragmented Armed Conflicts: 'Internationalized' Internal Conflicts and 'Internalized' International Armed Conflicts', in *Armed Conflicts and Parties to Armed Conflicts under IHL: Confronting Legal Categories to Contemporary Realities* (<https://www.coleurope.eu/content/publications/pdf/Collegium40.pdf>), *Proceedings of the Bruges Colloquium, August 2010, p 53*; T. Hoffmann, 'Squaring the Circle – International Humanitarian Law and Transnational Armed Conflicts' in M. J. Matheson and D. Momtaz (eds), *Rules and Institutions of International Humanitarian Law Put to the Test of Recent Armed Conflicts*, Martinus Nijhoff Publishers, 2007, pp 20 ff, available at SSRN (<https://ssrn.com/abstract=1734486>). For example, in 2011, there was an international armed conflict pitting a number of NATO member states against the State of Libya under the Gadhafi regime alongside a separate non-international armed conflict between the regime and armed opposition groups taking place in Libya.



RULAC reflects this by having two separate conflict entries for international and non-international armed conflicts that coexist on the same territory. However, RULAC does not add separate entries for each bilateral relationship between belligerent parties within a type of armed conflict. For example, if there is a multitude of armed groups involved in a non-international armed conflict against government forces or with each other, RULAC contains only one situation of non-international armed conflict, which lists the various parties involved.

Foreign states may intervene militarily in the territory of other states against non-state armed groups, with or without the consent of the territorial state. This may happen if a non-international armed conflict (<http://www.rulac.org/classification/non-international-armed-conflicts>) originating within the territory of a single state between government armed forces and one or more organized armed groups spills over into the territory of a neighbouring or adjacent state or if state armed forces are engaged in hostilities with a non-state armed group that operates from the territory of another state.  For examples of such scenarios, 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, pp 31ff, available at SSRN (<https://ssrn.com/abstract=1988915>). These cases raise the question whether the lack of consent of the territorial state plays a role in the qualification of such conflicts.

## Consent and qualification

There is agreement that in cases in which the territorial state consents to a foreign state's intervention, there is no international armed 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#\\_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; 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 36, available at SSRN (<https://ssrn.com/abstract=1988915>); D. Akande, 'Classification of Armed Conflicts: Relevant Legal Concepts', in E. Wilmschurst (ed), *International Law and the Classification of Conflicts*, Oxford University Press, 2012, pp 44, 59, available at SSRN (<https://ssrn.com/abstract=2132573>); S. Vité, '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](http://www.rulac.org/assets/downloads/Vite_Typology_of_Armed_Conflicts_IRRC.pdf)), 91 *International Review of the Red Cross* 873 (2009) 73.

However, there are different positions concerning the consequences of the lack of consent.

- Some argue that there is only a non-international armed conflict, and no parallel international armed conflict. The question of consent plays no role: the determining criterion remains the identity of the parties to the actual conflict.  D. Caron, 'Transnational Armed Conflicts. An Argument for a Single Classification of Non-international Armed Conflicts' (<http://booksandjournals.brillonline.com/content/journals/10.1163/18781527-00701002>), 7 *Journal of International Humanitarian Legal Studies* 1 (2017); F. Szesnat, A. Bird, 'Colombia' in E. Wilmschurst (ed), *International Law and the Classification of Conflicts*, Oxford University Press, 2012, p 236f; T. Hoffmann, 'Squaring the Circle – International humanitarian law and transnational armed conflicts' in M.J. Matheson, D. Momtaz (eds), *Rules and Institutions of International Humanitarian Law Put to the Test of Recent Armed Conflicts*, Martinus Nijhoff Publishers, 2007, p 28, available at SSRN (<https://ssrn.com/abstract=1734486>).
- Another view considers that the conflict becomes internationalized as a whole, so that there is only a single international armed conflict.  D. Akande, 'Classification of Armed Conflicts: Relevant Legal Concepts', in E. Wilmschurst (ed), *International Law and the Classification of Conflicts*, Oxford

University Press, 2012, pp 59, 64f, available at SSRN (<https://ssrn.com/abstract=2132573>); M. Milanovic, 'What Exactly Internationalizes an Internal Armed Conflict?' (<https://www.ejiltalk.org/what-exactly-internationalizes-an-internal-armed-conflict/>), *EJIL: Talk!*, 07 May 2010.

- Others argue that there is a parallel international armed conflict between the intervening and the territorial state alongside the non-international armed conflict between the state and the armed group.
  - 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 48, available at SSRN (<https://ssrn.com/abstract=1988915>); M. Sassóli, 'Transnational Armed Groups and International Humanitarian Law' (<http://hhi.harvard.edu/publications/transnational-armed-groups-and-international-humanitarian-law>), *Program on Humanitarian Policy and Conflict Research, Harvard University, Occasional Paper Series, February 2006*, p 4f; K. Ohlenschlaeger Buhl, 'Legalization of Civil Wars: The Legal Institutionalization of Non-International Armed Conflicts' (<http://www.ssoar.info/ssoar/handle/document/19196>), 8 *Journal on Ethnopolitics and Minority Issues in Europe* 1 (2009), 11; M-D. Marouda, 'Application of International Humanitarian Law in Contemporary Armed Conflicts: Is it "Simply" a Question of Facts?' in S. Perrakis, M.D. Marouda (eds), *Armed Conflicts and International Humanitarian Law 150 Years After Solferino. Acquis and Prospects*, *Sakkoulas Ant. N.*, 2009, p 236.


The International Committee of the Red Cross adopts the view that consent of the territorial state plays a determinative role: 'the presence or absence of consent is essential for delineating the applicable legal framework between the two States as it affects the determination of the international or non-international character of the armed conflict involving those States. Should the third State's intervention be carried out without the consent of the territorial State, it would amount to an international armed conflict between the intervening State and the territorial State. Any unconsented intervention, even when purportedly directed exclusively against a non-state armed group, amounts to an international armed conflict under this view.'

• 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, §260 and §261.



RULAC adopts the same position: consent or lack thereof determines whether there is a parallel international armed conflict or not. • For a thorough analysis, see D. Akande, 'Classification of Armed Conflicts: Relevant Legal Concepts', in E. Wilmschurst (ed), *International Law and the Classification of Conflicts*, Oxford University Press, 2012, pp 55ff, available at SSRN (<http://ssrn.com/abstract=2132573>); M. Milanovic and V. Hadzi-Vidanovic, 'A Taxonomy of Armed Conflict' in Nigel White, Christian Henderson (eds.), *Research Handbook on International Conflict and Security Law*, Edward Elgar, 2012, pp 34ff, available at SSRN (<http://ssrn.com/abstract=1988915>).

## The nature of consent

As defined for the purposes of the establishment of State responsibility, consent must be 'previously expressed or established (explicitly or tacitly); valid, i.e. given by an authority authorized to do so on behalf of the State; and given without any coercion from the intervening State.' • 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; and more detailed: *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, §§3-7. For the question who can represent the state for the purposes of giving such consent, see the section on international armed conflicts (<http://www.rulac.org/classification/international-armed-conflict>). In some circumstances, it may be difficult to establish such consent. According to the International Committee of the Red Cross, 'the absence of a protest is a strong indicator of the existence of - at least - tacit consent'. Yet, if protest is explicit, the presumption is that there is no consent.  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.


## Consent and military occupation

The absence of valid consent is also one of the constitutive criteria to establish the existence of a military occupation (<http://www.rulac.org/classification/military-occupations>). If the territorial state consents to the presence of a foreign state's armed forces, there is no military occupation.  E. Benvenisti, *The International Law of Occupation, 2nd edn, Oxford University Press, 2012*, p 43 and p 67. However, the lack of consent has to be distinguished from the mere lack of armed resistance: even without resisting to the occupation, the territorial state may still not consent to it. This case is a military occupation under common Article 2(2) (<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=41229BA1D6F7E573C12563CD00519E4A>) to the four Geneva Conventions of 1949.  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#\\_Toc452462852](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#_Toc452462852)), *ICRC, Commentary on the First Geneva Convention, 2016*, §288.



## Targeting non-state armed groups abroad


When states use force against an armed group in another state's territory, the territorial state is not the target. In many instances, the territorial state does not consent and does not respond or is unable to respond with force against the intervening state. The territorial state may also be involved in an armed conflict against the same armed group. Such situations do not fall within the traditional understanding of use of force (<http://www.rulac.org/legal-framework/use-of-force>) between states, raising the question whether the target of a use of force matters for the purposes of qualification.


Two situations are uncontroversial.


- First, if the territorial state consents to the intervention, there is no international armed conflict between the territorial state and the intervening state by virtue of such consent. If the requisite criteria of intensity and organization are fulfilled, there is a non-international armed conflict (<http://www.rulac.org/classification/non-international-armed-conflicts>) between the non-state armed group and the intervening state.
- Second, there is agreement that, at the very least, an international armed conflict (<http://www.rulac.org/classification/international-armed-conflict>) exists when the intervening state invades or occupies part of the territorial state, even if in pursuance of a non-state armed group.  See also D. Akande, 'Classification of Armed Conflicts: Relevant Legal Concepts', in E. Wilmshurst (ed), *International Law and the Classification of Conflicts*, Oxford University Press, 2012, p 59, available at SSRN (<https://ssrn.com/abstract=2132573>).


However, without consent or absent an invasion, the classification of such situations remains controversial:

- According to one view, the targeting of a non-state armed group means that the conflict does not change its purely non-international character. No international armed conflict is called into existence.  See A. Paulus, M. Vashakmadze, 'Asymmetrical War and the Notion of Armed Conflict – a Tentative Conceptualization' (<https://www.cambridge.org/core/journals/international-review-of-the-red-cross/article/div-classtitleasymmetrical-war-and-the-notion-of-armed-conflict-a-tentative-conceptualizationdiv/BD23DB6791FECE13665EB9CCD160147D>), 91 *International Review of the Red Cross* 873 (2009) 111 ff; C. Kreß, 'Some Reflections on the International Legal Framework Governing Transnational Armed Conflicts' (<https://academic.oup.com/jcsl/article-lookup/doi/10.1093/jcsl/krq009>), 15 *Journal of Conflict & Security Law* 2 (2010) 245; D. Caron, 'Transnational Armed Conflicts. An Argument for a Single Classification of Non-International Armed Conflicts' (<http://booksandjournals.brillonline.com/content/journals/10.1163/18781527-00701002>) 7 *Journal of International Humanitarian Legal Studies* 1 (2017) 13.
- Others argue that any use of force on the territory of another state is a use of force against the territorial state, leading to an international armed conflict, except if the territorial state consents to this intervention.  D. Akande, 'Classification of Armed Conflicts: Relevant Legal Concepts', in E. Wilmshurst (ed), *International Law and the Classification of Conflicts*, Oxford University Press, 2012, pp 57ff, available at SSRN (<https://ssrn.com/abstract=2132573>); see also the section on the relevance of consent (<http://www.rulac.org/classification/contemporary-challenges-for-classification#collapse2accord>) above.


The International Committee of the Red Cross adopts the position that 'any attack directed against the territory, population, or the military or civilian infrastructure constitutes a resort to armed forces against the State to which this territory, population or infrastructure belongs'.  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, §224. Such a situation must then be classified as an international armed conflict. Various reasons are advanced for this. First, in addition to government, territory and population are also constitutive elements of the state. Second, even if the

exclusive target of the attack is an armed group, any attack invariably affects the civilian population or state infrastructure.  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, §§224 and 261-262. The inability or unwillingness of the territorial state to respond is irrelevant.  D. Akande, 'Classification of Armed Conflicts: Relevant Legal Concepts', in E. Wilmshurst (ed), *International Law and the Classification of Conflicts*, Oxford University Press, 2012, p 61, available at SSRN (<https://ssrn.com/abstract=2132573>).


The International Committee of the Red Cross criticizes as 'too narrow' the view that there must be at least two states and their armed forces involved, as even the unilateral use of armed force results in an armed confrontation involving two or more states: the attacking state and the state(s) subject to the attack. This satisfies the requirement of common Article 2(1) (<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=41229BA1D6F7E573C12563CD00519E4A>) for the existence of an international armed 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#\\_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, §§222ff.


RULAC adopts the same position as the International Committee of the Red Cross: if there is force used against a state without its consent, even if purportedly directed exclusively against an armed group, there will be an international armed conflict. This view does not exclude that there may be a parallel non-international armed conflict against the non-state armed group on the same territory.  For a thorough analysis, see D. Akande, 'Classification of Armed Conflicts: Relevant Legal Concepts', in E. Wilmshurst (ed), *International Law and the Classification of Conflicts*, Oxford University Press, 2012, pp 55ff, available at SSRN (<https://ssrn.com/abstract=2132573>).


## Control over proxy forces

In addition to or instead of using its own armed forces, a state may support local armed groups acting on another state's territory. On a first glance, such a conflict may look like a non-international armed conflict (<http://www.rulac.org/classification/non-international-armed-conflicts>) between the territorial state and the armed group.

However, the situation amounts to an international armed conflict (<http://www.rulac.org/classification/international-armed-conflict>) between the territorial state and the state that supports the local armed groups if the latter exercises overall control over the armed group.  The notion of control necessary to establish the link between an armed group and a state has been debated. Two different standards have been proposed: effective control and overall control. The International Court of Justice adopted the test of effective control for the purposes of determining state responsibility in *Military and Paramilitary Activities in and against Nicaragua* (<http://www.icj-cij.org/docket/files/70/6503.pdf>) (*Nicaragua v the United States of America*), Judgment (Merits), 27 June 1986, §115; and *Application of the Convention on the Prevention and Punishment of the Crime of*







Genocide (<http://www.icj-cij.org/docket/files/91/13685.pdf>) (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment (Merits), 26 February 2007, §§392 ff; whereas in the context of conflict classification, the International Criminal Tribunal for the Former Yugoslavia adopted the test of overall control in *The Prosecutor v Duško Tadić* (<http://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf>), Appeals Chamber, Judgment, IT-94-1-A, 15 July 1999, §131. The overall control test has since been adopted by the International Criminal Court, *The Prosecutor v Thomas Lubanga Dyilo* ([https://www.icc-cpi.int/CourtRecords/CR2007\\_02360.PDF](https://www.icc-cpi.int/CourtRecords/CR2007_02360.PDF)), Pre-Trial Chamber, Decision on the Confirmation of Charges, ICC-01/04-01/06, 29 January 2007, §211 and *The Prosecutor v Thomas Lubanga Dyilo* ([https://www.icc-cpi.int/CourtRecords/CR2012\\_03942.PDF](https://www.icc-cpi.int/CourtRecords/CR2012_03942.PDF)), Trial Chamber, Judgment pursuant to Article 74 of the Statute, ICC-01/04-01/06-2842, 14 March 2012, §541. The International Committee of the Red Cross considers the overall control test to be more suitable, 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, §271f; L. Cameron, B. Demeyere, J.-M. Henckaerts, E. La Haye, 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=59F6C DFA490736C1C1257F7D004BA0EC#\\_Toc465169867](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=59F6C DFA490736C1C1257F7D004BA0EC#_Toc465169867)), ICRC, Commentary on the First Geneva Convention, 2016, §409ff. In any event, even the International Court of Justice admits that the overall control test is suitable for the purpose of conflict classification, see ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (<http://www.icj-cij.org/docket/files/91/13685.pdf>) (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment (Merits), 26 February 2007, §404. It is therefore the test to be used for the purposes of RULAC. Such overall control exists where 'a State has a role in organizing, coordinating, or planning the military actions of the organized armed groups and that State finances, trains, equips or provides operational support to that group'.  *International Criminal Tribunal for the Former Yugoslavia, The Prosecutor v Ante Gotovina and others* ([http://www.icty.org/x/cases/gotovina/tjug/en/110415\\_judgement\\_vol2.pdf](http://www.icty.org/x/cases/gotovina/tjug/en/110415_judgement_vol2.pdf)), Trial Chamber, Judgment, IT-06-90-T, 15 April 2011, §1675; 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, pp 34 ff, available at SSRN (<https://ssrn.com/abstract=1988915>); D. Akande, 'Classification of Armed Conflicts: Relevant Legal Concepts', in E. Wilmshurst (ed), *International Law and the Classification of Conflicts*, Oxford University Press, 2012, pp 36 ff, available at SSRN (<https://ssrn.com/abstract=2132573>).

If a state exercises such overall control over an armed group, the armed group is a proxy force acting on behalf of that state. If this armed group is fighting another state, there is an international armed conflict as there are states involved on both sides.  S. Vité, '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](http://www.rulac.org/assets/downloads/Vite_Typology_of_Armed_Conflicts_IRRC.pdf)), 91 *International Review of the Red Cross* 873 (2009) 71.


## Intervention by foreign forces, including peacekeeping operations

### Intervention by foreign forces

In many contemporary armed conflicts, foreign states intervene.  While foreign states may be involved to various degrees, not every kind of involvement renders them a party to the conflict. On this question, see the following subchapter on who is a party to the conflict. The classification of the conflict depends on the side on which the foreign states intervene.

- When one or more foreign states fight alongside the armed forces of the territorial state against one or more armed groups with the consent or upon invitation of the territorial state, the situation is still classified as a non-international armed conflict.  For an opposing view, see G. Aldrich, 'The Laws of War on Land' (<http://heinonline.org/HOL/Page?public=false&handle=hein.journals/ajil94&page=42&collection=journals>) 94 *American Journal of International Law* 42 (2000), 62–3 (restricted access).
- When one or more foreign states fight on the side of the armed group, the fragmentation theory is applied: fighting between the intervening state's and the territorial state's forces is an international armed conflict (<http://www.rulac.org/classification/international-armed-conflict>), while there continues to be a non-international armed conflict (<http://www.rulac.org/classification/non-international-armed-conflicts>) between the territorial state's forces and the armed group, provided that the requisite criteria of intensity and organization are fulfilled.  See D. Akande, 'Classification of Armed Conflicts: Relevant Legal Concepts', in E. Wilmshurst (ed), *International Law and the Classification of Conflicts*, Oxford University Press, 2012, p 36, available at SSRN (<https://ssrn.com/abstract=2132573>).
- When there are several states intervening on different sides, each conflict relationship has to be assessed individually and qualification will depend on whether it opposes two states or a state and a non-state armed group.  S. Vité, '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](http://www.rulac.org/assets/downloads/Vite_Typology_of_Armed_Conflicts_IRRC.pdf)), 91 *International Review of the Red Cross* 873 (2009) 88.


The question whether or not outside intervention has been authorized by the United Nations Security Council is irrelevant for the purposes of qualification.

RULAC follows this approach, which is also the position taken by the International Committee of the Red Cross.  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, §§245, 246; 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=59F6C DFA490736C1C1257F7D004BA0EC#\\_Toc465169867](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=59F6C DFA490736C1C1257F7D004BA0EC#_Toc465169867)), *ICRC, Commentary on the First Geneva Convention*, 2016, §411; see also S. Vité, '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](http://www.rulac.org/assets/downloads/Vite_Typology_of_Armed_Conflicts_IRRC.pdf)), 91 *International Review of the Red Cross* 873 (2009) 84.


## Intervention by peacekeeping forces under the auspices of an international organization


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Nowadays, there is a broad variety of peace operations under command and control of the United Nations or of regional organizations. Their mandates generally include elements of peace enforcement and state building, including the authorization to use force to protect civilians and implement the mandate.



The multifaceted nature of such peace operations and their deployment in fragile and violent situations sometimes requires them to actively participate in hostilities, which raises the question of their status and the legal regime applicable to their conduct. For a long time, they were considered to be inherently incapable of being a party to a conflict.  T. Ferraro, 'The Applicability and Application of International Humanitarian Law to Multinational Forces'

([http://www.rulac.org/assets/downloads/Feraro\\_Multinational\\_forces\\_IRRC.pdf](http://www.rulac.org/assets/downloads/Feraro_Multinational_forces_IRRC.pdf)), 95 *International Review of the Red Cross* 891/892 (2014), 563; Marten Zwanenburg, 'International Organizations vs Troops Contributing Countries: Which Should Be Considered the Party to an Armed Conflict During Peace Operations?' ([https://www.coleurope.eu/sites/default/files/uploads/page/collegium\\_42\\_0.pdf](https://www.coleurope.eu/sites/default/files/uploads/page/collegium_42_0.pdf)), in *Proceedings of the Bruges Colloquium, International Organisations' Involvement in Peace Operations: Applicable Legal Framework and the Issue of Responsibility, October 2011*, pp 24ff. Today, some authors consider that any situation involving a peace keeping force would amount to an international armed conflict regardless of whether the peacekeeping forces oppose the state armed forces or a non-state armed group. Others claim that qualification depends on either the mandate of the force or its legal basis. Yet, there is no state practice to support either view.

The mere fact that a peacekeeping operation coalition intervenes in a non-international armed conflict does not automatically transform it into an international armed conflict.  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: 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, §413; 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, pp 41ff, available at SSRN (<https://ssrn.com/abstract=1988915>). For the applicability of international humanitarian law to peacekeeping forces, see D. Akande, 'Classification of Armed Conflicts: Relevant Legal Concepts', in E. Wilmshurst (ed), *International Law and the Classification of Conflicts*, Oxford University Press, 2012, pp 50 f., available at SSRN (<https://ssrn.com/abstract=2132573>); T. Ferraro, 'The Applicability and Application of International Humanitarian Law to Multinational Forces' ([http://www.rulac.org/assets/downloads/Feraro\\_Multinational\\_forces\\_IRRC.pdf](http://www.rulac.org/assets/downloads/Feraro_Multinational_forces_IRRC.pdf)) 95 *International Review of the Red Cross* 891/892 (2013) 561ff, 597f.

Instead, the classical criteria for qualification of conflicts are used.  *International Committee of the Red Cross, 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 *International*

*Conference of the Red Cross and Red Crescent, 2015, pp 21 ff; T. Ferraro, 'The Applicability and Application of International Humanitarian Law to Multinational Forces'* ([http://www.rulac.org/assets/downloads/Feraro\\_Multinational\\_forces\\_IRRC.pdf](http://www.rulac.org/assets/downloads/Feraro_Multinational_forces_IRRC.pdf)), *95 International Review of the Red Cross* 891/892 (2013) 564ff.

- First, each bilateral relationship between the belligerent parties must be analysed. Hence, when United Nations forces or forces operating under the auspices of a regional organization support a territorial host government involved in a non-international armed conflict (<http://www.rulac.org/classification/non-international-armed-conflicts>) to such a degree that they become a party to the conflict, there is still a non-international armed conflict, as the fighting takes place between states on one side and the organized armed groups on the other side. In the rare instances where peacekeeping forces are involved in hostilities against the armed forces of the host state, there will be an international armed conflict (<http://www.rulac.org/classification/international-armed-conflict>), although this raises the additional issue whether there can be an international armed conflict between an international organization and a state.  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, pp 18ff, available at SSRN (<https://ssrn.com/abstract=1988915>); T. Ferraro, 'The Applicability and Application of International Humanitarian Law to Multinational Forces' ([http://www.rulac.org/assets/downloads/Feraro\\_Multinational\\_forces\\_IRRC.pdf](http://www.rulac.org/assets/downloads/Feraro_Multinational_forces_IRRC.pdf)), *95 International Review of the Red Cross* 891/892 (2013), pp 575, 596 ff.
- Second, for non-international armed conflicts, the required degree of intensity must be fulfilled. Some contend that there must be a higher degree of intensity for a peace keeping force to become a party to a conflict. However, the International Committee of the Red Cross rejects such an approach, as there is no legal basis for it.  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, §§246f.

RULAC follows this approach.


## Multinational forces: Who is a party to an armed conflict?


When multinational forces intervene on a third state's territory, either under the auspices of an international or regional organization or outside such auspices merely as a coalition of state forces, the question arises who becomes a party to an armed conflict. While multinational forces may be involved to various degrees, not every kind of involvement renders a foreign state a party to the conflict.

On the one hand, multinational forces can become a party to a non-international armed conflict (<http://www.rulac.org/classification/non-international-armed-conflicts>) if they become engaged in a fight with a non-state armed group that meets the usual requirements for such a classification in terms of intensity and 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#\_Toc465169867*), ICRC, *Commentary on the First Geneva Convention*, 2016, §411. For a thorough analysis, see T. Ferraro 'The applicability and application of international humanitarian law to multinational forces' ([http://www.rulac.org/assets/downloads/Feraro\\_Multinational\\_forces\\_IRRC.pdf](http://www.rulac.org/assets/downloads/Feraro_Multinational_forces_IRRC.pdf)) 95 *International Review of the Red Cross* 891/892 (2013), 575. On the other hand, in many instances multinational forces are not directly involved in combat, but provide support to the territorial state engaged in an existing non-international armed conflict against a non-state armed group.


## Support based approach

Under the support based approach adopted by the International Committee of the Red Cross, multinational forces' contribution to the collective conduct of hostilities determines whether or not they become a party to a pre-existing non-international armed conflict: 'Only activities that have a direct impact on the opposing Party's ability to carry out military operations would turn multinational forces into a Party to a pre-existing non-international armed conflict'.  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, §446. Examples of such support include the transportation of troops to the front lines or refuelling fighter planes involved in aerial operations by the support state(s). In contrast, other forms of support to sustain military activities or build up military capacities, such as the delivery of weapons, would not be sufficient.  See T. Ferraro 'The applicability and application of international humanitarian law to multinational forces'

([http://www.rulac.org/assets/downloads/Feraro\\_Multinational\\_forces\\_IRRC.pdf](http://www.rulac.org/assets/downloads/Feraro_Multinational_forces_IRRC.pdf)) 95 *International Review of the Red Cross* 891/892 (2013), 585; 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, §§445f; *International Committee of the Red Cross, 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 *International Conference of the Red Cross and Red Crescent*, 2015, p 22.


The same support based approach is used to determine which troop contributing states to multinational forces are party to an armed conflict or whether the support provided to multinational coalitions involved in a non-international armed conflict renders the supporting states party to the latter.  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-](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?)



[databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?)  
*action=openDocument&documentId=59F6CDFA490736C1C1257F7D004BA0EC#\_Toc465169868*), ICRC, *Commentary on the First Geneva Convention*, 2016, §445. See also N. Weizmann, 'Are the U.S.

and the U.K. Parties to the Saudi-led Armed Conflict Against the Houthis in Yemen' (<https://www.justsecurity.org/33095/u-s-u-k-parties-saudi-led-armed-conflict-houthis-yemen/>), *Just Security Blog*, 22 September 2016.

RULAC follows the support based approach.

## International or regional organisations as a party to the conflict

In cases of multinational forces operating under the auspices of an international or regional organization, such as the African Union or NATO, member states place troops at the disposal of these organizations. The troop contributing countries retain some form of authority and control over their forces, which will act as organs of the state, but also on behalf of the international or regional organization.  Marten Zwanenburg, 'International Organizations vs Troops Contributing Countries: Which Should Be considered the Party to an Armed Conflict During Peace Operations?' ([https://www.coleurope.eu/sites/default/files/uploads/page/collegium\\_42\\_0.pdf](https://www.coleurope.eu/sites/default/files/uploads/page/collegium_42_0.pdf)), in *Proceedings of the Bruges Colloquium, International Organisations' Involvement in Peace Operations: Applicable Legal Framework and the Issue of Responsibility*, October 2011, p 25. There are then three possibilities as to who could become a party to the conflict: the troop contributing countries, the organization under whose auspices the troops operate, or both.

The attribution of concrete acts to the international organization or the troop contributing country depends on the general rules of attribution under international law, which, in turn, revolve around the notion of control. To assess this, according to the International Committee of the Red Cross, the command and control arrangements need to be assessed.  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, §§248-252. *The International Law Association proposes a test of effective control in order to attribute state troop's actions to international organizations. International Law Association, Draft articles on the responsibility of international organizations* ([http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_11\\_2011.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_11_2011.pdf)), with commentaries, 2011, article 7, in particular points (4)f, (8), (10). Dual attribution is possible.  See further T. Ferraro, 'The applicability and application of international humanitarian law to multinational forces' ([http://www.rulac.org/assets/downloads/Feraro\\_Multinational\\_forces\\_IRRC.pdf](http://www.rulac.org/assets/downloads/Feraro_Multinational_forces_IRRC.pdf)) 95 *International Review of the Red Cross* 891/892 (2013), 589; Marten Zwanenburg, 'International Organizations vs Troops Contributing Countries: Which Should Be considered the Party to an Armed Conflict During Peace Operations?' ([https://www.coleurope.eu/sites/default/files/uploads/page/collegium\\_42\\_0.pdf](https://www.coleurope.eu/sites/default/files/uploads/page/collegium_42_0.pdf)), in *Proceedings of the Bruges Colloquium, International Organisations' Involvement in Peace Operations: Applicable Legal Framework and the Issue of Responsibility*, October 2011, pp 26f; D. Akande, 'Classification of Armed Conflicts: Relevant Legal Concepts', in E. Wilmshurst (ed), *International Law and the Classification of Conflicts* OUP, 2012, pp 46ff, available at SSRN (<https://ssrn.com/abstract=2132573>); S. Vité, '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](http://www.rulac.org/assets/downloads/Vite_Typology_of_Armed_Conflicts_IRRC.pdf)), 91 *International Review of the Red Cross* 873 (2009) 87f.

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