

# **Classification of Conflicts**

# Importance

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- “In the absence of a classification of a situation as an armed conflict, detained military personnel would not enjoy equivalent legal protection under the domestic law of the detaining State, even when supplemented by international human rights law”
- Determines when IHL applies - Tadic (ICTY)
  - Resort to armed force between States (IACs)
  - Protracted armed violence between governmental authorities and organised armed groups (NIACs)
  - Protracted armed violence between organised armed groups within a State (NIACs)
- IHL applies to the whole of the territory of the warring States, or (in case of internal conflicts) in the territory of the State until a general conclusion of peace / peaceful settlement reached.

# International Armed Conflicts

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- Common Article 2, Geneva Conventions: 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.
- Article 1(4), Additional Protocol I: extends to wars for self-determination fighting against colonial domination, alien occupation and against racist regimes.

# Non-international armed conflicts

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- Non-international armed conflicts (NIACs) under the Geneva Conventions
  - Common Article 3, Geneva Conventions: minimum protections in the case of a conflict 'not of an international character'
- Factors when determining NIAC
  - Nature of parties to the conflict, i.e., at least one has to be a group of non-State actors. Both parties can also be non-State actors for CA3 to apply.
  - Character of the parties, i.e., degree of organisation, degree of territorial control
  - Location of armed conflict
  - Threshold of violence.

# Non-International Armed Conflicts

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- NIACs under Additional Protocol II
  - Non-state actors have a responsible command structure
  - Exercise territorial control
  - Between State Party and non-State actors (does not include conflicts between two non-State groups).
  - Threshold - shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature

# Relevance of Classification

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- Accountability
  - Tadic - in IACs, “a foreign State may in certain circumstances be held responsible for violations of international law perpetrated by the armed groups acting on its behalf.”
  - More rules in IACs than NIACs in treaties and customary IHL.
  - Cannot affect sovereignty of a State in maintaining law and order within its borders - reluctance of States to regulate internal conflicts.

# Issues

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- What happens when a NIAC becomes an IAC?
  - Test of attribution according to rules of state responsibility.
  - Tadic - 'overall control' test, i.e., State must exercise overall control over non-State armed group for it to become an IAC.
- Distinction between IACs and NIACs eroded
  - More frequent and crueller civil wars.
  - However, still need distinction - protections such as prisoner of war status in IACs, combatant privilege in IACs, different lists of war crimes across IACs (34) and NIACs (29).

# NIACs Criteria

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- ICTY in Tadic - 'an armed conflict exists whenever there is a (i) protracted armed violence between governmental authorities and organized armed groups or (ii) between such groups within a State.'
- Two criteria
  - Intensity of violence
  - Organised armed group(s)



# Intensity of Violence

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- ICTY in Haradinaj:

The 'criterion of protracted armed violence has therefore been interpreted in practice... as referring more to the intensity of the armed violence than to its duration... [i]ndicative factors include

- The number, duration and intensity of individual confrontations;
- The type of weapons and other military equipment used;
- The number and calibre of munitions fired;
- The number of persons and type of forces partaking in the fighting;
- The number of casualties; the extent of material destruction; and
- The number of civilians fleeing combat zones.

The involvement of the UN Security Council may also be a reflection of the intensity of a conflict.'

# Organised Armed Group

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- ICTY in Haradinaj:

parties that are sufficiently organised to confront each other with military means'... 'indicative factors include

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

# IACs Criteria

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- No requirement of violence reaching a certain threshold in IACs. Can include minor skirmishes.
- Wars of national liberation are IACs under Article 1(4), API, due to demands of formerly colonised States - gives combatant status to those fighting for self-determination.