

## Definition of Internationalized Armed Conflicts and their Legal Nature

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### Abstract

*The rules of international humanitarian law have regulated two types of armed conflicts, namely, non-international and international armed conflicts. In addition, there are other armed conflicts that are difficult to be adapted and categorized in any of the two known conflicts, namely internationalized armed conflicts. In fact, internationalized armed conflicts have emerged due to the divergence of the political interests of states and their frequent interferences in the affairs of each other. This new type of armed conflicts has been termed differently, including mixed, internationalized or contemporary armed conflicts, but the most frequently used term is internationalized armed conflicts, in line with the International Committee of the Red Cross (ICRC), which has used this term on numerous occasions.*

*These armed conflicts still pose many problems, both in terms of providing an established legal definition and determining their legal nature, and thus the difficulty of characterizing them under any type of armed conflicts known at present. The importance of this study lies in the multiplicity of internationalized armed conflicts and their unprecedented spread. Despite the critical effects of such conflicts, the rules of international humanitarian law did not regulate them and were confined to international and non-international armed conflicts, with no compromises between them. In addition, internationalized armed conflicts pose a major challenge to the international community due to their obscure nature.*

*The problem lies in the absence of a legal and accurate description of internationalized armed conflicts, both in terms of their definition or their legal adaptation, and thus the lack of knowledge of the law applicable to them. It is noteworthy that adaptation is a difficult and complex issue, due to certain circumstances and the conflict of interests of the intervening countries. This raises many questions, including:*

- 1. What is meant by internationalized armed conflicts?*
- 2. Are they a third category of armed conflicts?*
- 3. What are the legal rules applicable to internationalized armed conflicts?*
- 4. Are there any criteria adopted by international jurisprudence to determine the responsibility of the parties involved in internationalized armed conflicts, and have they been effective?*

*This study relied on the inductive analytical approach of the texts of the international conventions related to the subject of the study, including the four Geneva Conventions and the relevant protocols, with the aim of knowing the position of internationalized armed conflicts in the law of international and non-international armed conflicts.*

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**Keywords:** *armed conflicts, political interests, international humanitarian law.*

## **Introduction**

The rules of international humanitarian law have regulated two types of armed conflicts, namely, non-international and international armed conflicts. In addition, there are other armed conflicts that are difficult to be adapted and categorized in any of the two known conflicts, namely internationalized armed conflicts. In fact, internationalized armed conflicts have emerged due to the divergence of the political interests of states and their frequent interferences in the affairs of each other. This new type of armed conflicts has been termed differently, including mixed, internationalized or contemporary armed conflicts, but the most frequently used term is internationalized armed conflicts, in line with the International Committee of the Red Cross (ICRC), which has used this term on numerous occasions.

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### **Research Significance**

The importance of this study lies in the multiplicity of internationalized armed conflicts and their unprecedented spread. Despite the critical effects of such conflicts, the rules of international humanitarian law did not regulate them and were confined to international and non-international armed conflicts, with no compromises between them. In addition, internationalized armed conflicts pose a major challenge to the international community due to their obscure nature.

### **Research Problem**

The problem lies in the absence of a legal and accurate description of internationalized armed conflicts, both in terms of their definition or their legal adaptation, and thus the lack of knowledge of the law applicable to them. It is noteworthy that adaptation is a difficult and complex issue, due to certain circumstances and the conflict of interests of the intervening countries. This raises many questions, including:

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### **Research Method**

This study relied on the inductive analytical approach of the texts of the international conventions related to the subject of the study, including the four Geneva Conventions and the relevant protocols, with the aim of knowing the position of internationalized armed conflicts in the law of international and non-international armed conflicts.

### **Research Organization**

This study included two sections. The first section presented the definition of internationalized armed conflicts from the jurisprudential and judicial perspectives, and then compared the internationalized armed conflicts with the relevant concepts. While the second section discussed the legal nature of internationalized armed conflicts through defining the characteristics of internationalized armed conflicts and the law applicable to them. Finally, the study discussed the most important conclusions and recommendations.

## Section One: The Definition of Internationalized Armed Conflicts

The difficulty of describing internationalized armed conflicts from a legal perspective has led to the difficulty of developing a comprehensive definition that prevents this type of conflicts. Then, many definitions have emerged for these conflicts, whether from a jurisprudential or judicial perspective. Moreover, these armed conflicts have to be distinguished from other relevant concepts. This, in turn, requires shedding light on these concepts of internationalized armed conflicts and distinguishing them from the relevant terms.

### 1. Definition of Internationalized Armed Conflicts

There are many definitions for internationalized armed conflicts, both from the jurisprudential and judicial perspective, which requires introducing and analyzing them in order to reach an almost acceptable definition of this new type of armed conflicts.

#### A. Definition of Internationalized Armed Conflicts from a Jurisprudential Perspective

Since internationalized armed conflicts are not legally defined, jurists have paid a great attention to this issue, providing many definitions for them, especially the term of internationalized armed conflicts tends to be a real and jurisprudential term, rather than a legal one.

Internationalized armed conflicts are defined as those conflicts that are originally internal armed conflicts between internal parties, but, at some point and in certain circumstances, they become internationalized through one or more armed external interventions to support one or more parties to the conflict in order to influence the outcome of this conflict and achieve certain political and economic interests, whether this intervention is overt or covert.

The jurist James J. Stewart defines them as the internal hostilities that become international due to real and complicated circumstances that lead to this internationalization. They include war between two internal parties, each of which receives the support of different states. They also include direct hostilities between two foreign countries that intervene militarily in an internal armed conflict to support opposing parties, as well as war involving foreign intervention in support of a rebel group fighting an existing and established government.

Moreover, internationalized armed conflicts are defined as a war that is fought between two internal parties, both supported by different states. Additionally, they refer to a war in which a foreign element intervenes to support the rebel group against the regular government. Among these conflicts is the intervention that happened when NATO intervened in the armed conflict between the Federal Union of Republic of Yugoslavia and the Kosovo Liberation Army in 1999, and the intervention that carried out by Rwanda, Zimbabwe and Uganda, in support of the opposing wings of the internal armed parties in the Democratic Republic of Congo in 1999.

The Dictionary of International Law of International Armed Conflicts has clarified the concept of internationalized armed conflict as a non-international armed conflict, which becomes internationalized in certain cases under certain conditions including: the victim State recognizes the rebels as combatants, one or more foreign States intervene with their armed forces on behalf of one of the conflicting parties, and two foreign States intervene with their armed forces that each of them supports a party to the conflict.

ICRC has used the term of internationalized armed conflicts to refer to situations in which one or more third States intervene in a pre-existing armed conflict affecting the territory or part of a particular State. These contemporary conflicts are increasingly characterized by the intervention of third parties to support one or more parties to the conflict, whether it is a military, financial or logistical support.

The term of internationalized armed conflict has been a controversial topic, and ICRC has eventually abandoned this term in light of fears that it may be misunderstood as a third category of armed conflicts, as in the case of today's ongoing conflicts in Ukraine, Syria and Yemen, and thus the non-international armed conflicts transform into internationalized conflicts. This term has become increasingly widespread. Noting that the term of internationalization is useful in constructing the legal characterization of these conflicts.

These definitions of internationalized armed conflicts indicate that they do not differ much except in terms of the words used in the definition, as they agree among themselves that the internationalized armed conflict is originally an internal conflict, but it develops due to the divergence and overlap of the interests of different countries in fueling and developing the conflict. In addition, these definitions refer to the intervention of one or more foreign states in the conflict. Consequently, the researcher defines internationalized armed conflicts as internal armed conflicts in their origin, but they quickly become internationalized, due to complicated external conditions, fueling the conflict in favor of this or that party.

#### B. Definition of Internationalized Armed Conflicts from a Judicial Perspective

The international jurisdiction has addressed the term of internationalized armed conflicts, as the International Criminal Tribunal for the former Yugoslavia (ICTY) has ruled that an armed conflict acquires an international character when it erupts between two or more States. In addition, if an internal armed conflict erupts, it can be considered international or has an international characteristic under certain conditions besides being an internal armed conflict, in the following cases:

1. If another State intervenes in this conflict by sending its armed forces.
2. If some of the participants in the internal armed conflict are fighting for the benefit of that other State.

This has been evident in the case of Tadić, the adaptation of the internal armed conflict at the time and whether it was an internationalized conflict or not in case if some of the participants in the internal armed conflict were fighting for another State.

The International Court of Justice, in turn, was criticized for its advisory opinion issued in the case of Military and Paramilitary Activities in Nicaragua against the nature of the ongoing armed conflict between the contras, which was under the auspices of the United States of America, and the Government of Nicaragua. This is due to that this Court adopted the criterion of (effective control), whereby it denied the responsibility of the United States of America for violations of international humanitarian law committed by the Contras, justifying that these violations were committed by these forces without the control of the United States.

It is clear that the International Court of Justice stipulated the criterion of effective control for attributing the international responsibility to the United States of America for violations committed by the contras in Nicaragua, and did not satisfy with the criterion of protection of these forces by the United States of America.

#### 2. Distinguishing Internationalized Armed Conflicts from Relevant Concepts

Internationalized armed conflicts represent the contemporary form of armed conflicts at the present time, as these conflicts combine elements of international and internal armed conflicts. In order to distinguish between these conflicts, they must be clarified as follows:

#### A. Distinguishing Internationalized Armed Conflict from Non-International Armed Conflict

In fact, there is no precise description of non-international armed conflicts, which has led to the emergence of many definitions, including that they refer to armed conflicts that take place in the territory of a State between the government, on the one hand, and dissident groups on the other hand.

In another, more precise definition, they are armed conflicts that erupt within the territory of a State between the existing authority, on the one hand, and a group of revolutionaries and rebels, on the other hand.

The provisions of international criminal tribunals, including the International Criminal Tribunal for the former Yugoslavia, that have defined the non-international armed conflict through the case of Tadić as that there is an armed conflict whenever armed force is used between States, or a long-term armed conflict between government authorities and organized armed groups, or between armed groups among themselves within a State.

The Court affirmed that the definition of non-international armed conflict contained in Common Article III covers situations involving several groups competing with each other without the intervention of the State armed forces. While the International Criminal Court, established under the Rome Statute, defined non-international armed conflicts as those armed conflicts that occur in the territory of a State when there is a protracted conflict between governmental authorities and armed or organized groups or between such groups.

Based on these definitions of non-international armed conflict, it is very close to the concept of internationalized armed conflict, since the latter is essentially an internal conflict, but it gradually develops due to certain conditions and the overlap of interests of different States, with the aim of fueling the conflict and developing it in the interest of these intervening parties or one of them. The laws applicable to non-international armed conflict are Common Article III and Additional Protocol II to the Geneva Conventions. The internationalized armed conflict must be legally adapted so that a specific law can be determined to apply to it. If it is adapted as an internal armed conflict, the law of the State in which the conflict occurred applies to it. But if it is adapted as an international armed conflict, the four Geneva Conventions and Additional Protocol I of 1977 apply to it. A good example of this is the armed conflict in Afghanistan in October 2001.

#### B. Distinguishing Internationalized Armed Conflict from International Armed Conflict

The international armed conflict is defined as a conflict between two or more States regulated by international law, with the aim of defending the national interests of belligerent States. It is also defined as an armed conflict between States with the intention of imposing a political point of view in accordance with the means regulated by international law. On this basis, international armed conflict differs from internationalized armed conflict in terms of the parties to the conflict, on the one hand, and the law applicable to the conflict on the other hand. The parties to the international armed conflict are undoubtedly States, while not all the parties to the internationalized armed conflict are States, but may be a State and other internal parties that are belligerent with it, and receive support from a foreign State or countries to achieve the goals and objectives behind this armed conflict.

As for the law applicable to international armed conflict, it is international humanitarian law, including the four Geneva Conventions and the relevant protocols, unlike internationalized armed conflict, which is usually vague and unclear, and the application of the law to it is based on adapting the conflict legally.

## Section Two: The Legal Nature of Internationalized Armed Conflict

Internationalized armed conflict is an armed conflict that combines elements of the internal armed conflict as well as the international armed conflict. Its adaptation seems to be a complicated issue. Its correct logical and legal adaptation will result in important consequences. The most important consequences include knowledge of the legal rules applicable to this type of conflict, the framework of determining the nature of conflict, and defining it whether as an internal or international armed conflict in accordance with the interest of State in this adaptation.

This internationalized armed conflict has become a major challenge to the international community, due to being a very complicated conflict as a result of the conditions that led to its internationalization. This, in turn, requires adapting it from a legal perspective, and stating the law applicable to it. The foreign intervention in internal armed conflicts or civil wars is not new, but it currently takes dangerous dimensions under complex international conditions that have paved the way for the spread of this type of conflict, which enjoys apparent or hidden external support. This matter requires addressing the characteristics of internationalized armed conflict because they are essential, and then stating the legal nature of these conflicts.

### A. Characteristics of Internationalized Armed Conflict

Internationalized armed conflicts are among the most difficult and complicated conflicts at the present time, as they are not clearly defined. In addition, the States in which such conflicts occur are not serious in determining their nature according to their basic interests that they seek from the continuation of this conflict. This case also applies to the intervening countries. Internationalized armed conflicts have characteristics distinguishing them from other internal and international armed conflicts known at present. The most important characteristics are:

#### 1. The intervention of many parties in internationalized armed conflict

The thing that distinguishes internationalized armed conflict is that many parties intervene in it, with the aim of supporting one of the conflicting parties without the others. At its beginning, this internal armed conflict may become an internationalized armed conflict, due to this intervention. This case is not only limited to the intervention of foreign countries, but also may witness the intervention of international organizations to provide assistance and support to one of the conflicting parties, as is the case in the intervention of the United States of America in Afghanistan. With this intervention, this conflict has become internationalized after it was an internal conflict originally. The external intervention in an armed conflict that erupts in the territory of a particular State would change the nature of that conflict, internationalize it and become a mixed armed conflict that combines the elements of armed conflict of both internal or international types. The matter in this aspect depends on the nature of the parties to the armed conflict, as it is often between government forces and State forces or intervening States, or between non-State armed groups and the intervening State forces, as happens with the intervention of a group of States, one of which supports government forces and the other one supports other non-governmental armed forces, or between armed groups only. Therefore, the rules of international humanitarian law do not apply to this type of conflict, as the conflict is either international or internal and there is no middle ground between them.

#### 2. Conducting external intervention via an armed force

External intervention in internationalized armed conflict is usually carried out in favor of one of the parties to the conflict by armed forces of the intervening State or States, i.e. they participate in military operations directly. Therefore, other interventions that are not described in this way, including interventions for humanitarian or diplomatic reasons or having an economic perspective, must be excluded. In this case, the armed conflict is not

internationalized, but remains an internal armed conflict, and there is no problem in determining the law applicable to it.

### 3. The mixed nature of internationalized armed conflict

As explained previously, this type of conflict is described as a mixed conflict whose entire elements do not belong to any type of internal and international armed conflict, but they combine these two types of conflict, and therefore it combines elements of internal and international armed conflict at the same time. Such conflicts are prevailed in the contemporary world.

### 4. Conducting external intervention to achieve certain objectives

The problem of external intervention and fueling the internal armed conflict conceals the achievement of certain objectives of the intervening State or States, as they intervene to support one or more parties to the conflict, with the aim of influencing the outcome of this conflict and achieving certain political and economic interests, whether such intervention occurs overtly or covertly.

### 5. The existence of an internal armed conflict prior to external intervention

Internationalized armed conflict is an internal armed conflict at the moment of its outbreak in the territory of a particular State. Such armed conflicts are numerous at the present time, and there is no problem that arises in determining the law applicable to them. But this conflict quickly develops from an internal armed conflict to become an internationalized armed conflict when an external party or parties intervene in it, and their participation in military actions alongside a specific party or more of the conflicting parties. Thus, it becomes an internationalized armed conflict, and then legal problems arise in its precise description.

Based on the above, it is clear that internationalized armed conflict differs from other armed conflicts, as it is a mixed armed conflict, which makes the issue of adapting it very difficult and complicated that requires the international community to intervene to reduce these conflicts. In fact, such conflicts have become a concern for this society, preventing its proper stability.

## B. The Legal Nature of Internationalized Armed Conflict

The rules of international humanitarian law regulate two types of armed conflicts, namely, internal and international armed conflicts, and therefore it is easy to know the legal rules applicable to them. However, the basic problem is that the rules of this law did not address the mixed armed conflicts, either because of the absence of their accurate legal description, or because of the conflict of interests of the countries involved in these conflicts to achieve their basic interests. Therefore, internationalized armed conflict has remained the subject of controversy among jurists to this day. The reason for this controversy is the difficulty of adapting the conflict from a legal perspective. Now, the question is that:

Is the law of international armed conflict or that of non-international armed conflict applicable to internationalized armed conflict?

Examining the legal nature of this contemporary type of conflicts requires focusing on the difficulties encountered in the application of the rules of international humanitarian law to it, and then the criteria for the internationalization of these conflicts.

### 1. The difficulties of applying the international humanitarian law to internationalized armed conflicts

These difficulties include:

a) For the purpose of applying international humanitarian law to these conflicts, it is mainly required to adapt them from a legal perspective, considering them either as an

international armed conflict, or as an internal armed conflict. This is very difficult, due to the overlap of the parties involved in the internationalized armed conflict, as it may be between internal belligerent groups, and each group receives support from a foreign State or States, or between foreign groups and parties. This means the occurrence of armed conflicts between two or more States, or between two or more armed parties indirectly.

b) There is no real equality between the legitimate States that are trying to defend themselves and the rebel groups, as these States seek to deny the existence of rebel forces and not recognize certain rights for them. This makes it difficult to apply the international humanitarian law to the armed conflict between these states and the rebels.

c) States involved in the internationalized armed conflict fail to fulfil their obligations to respect and apply the international humanitarian law, as these conflicts are not legally adapted, and therefore each of the parties to the conflict tries to adapt the conflict in line with its own interest.

d) In the absence of a legal and accurate characterization of internationalized armed conflicts, the judiciary competent to hear violations that occur during the conflict will also face a problem in determining the responsibility of the perpetrators of such violations.

## 2. The Criteria for the Internationalization of Non-International Armed Conflict

Undoubtedly, internationalized armed conflict is an internal armed conflict, and therefore its internationalization is a subsequent characteristic to it, after proving the intervention of external parties in fueling it in a way that serves their interests. This external intervention does not necessarily have to be direct, but it can occur indirectly, and therefore it is difficult to know the roles played by the parties involved in the conflict. However, the international judiciary did not stand still on this subject, but relied on two basic criteria, namely, the effective control and the total control.

### A. The criterion of effective control for the adaptation of internationalized armed conflict

This criterion was established by the International Court of Justice while considering the *Military and Paramilitary Activities in and against Nicaragua*. The Court attempted to determine the responsibility of the United States of America in the ongoing armed conflict between the contras, which were receiving support and assistance from the United States, and the armed forces of Nicaragua. The Court ultimately found that the United States of America was not responsible for violations of international humanitarian law committed by the contras, justifying this by the fact that the United States of America did not exercise effective control on the military operations of the contras.

The International Criminal Tribunal for the former Yugoslavia (ICTY) followed the same approach, in its judgment in the case of *Tadić*. It proved that the Republic of Yugoslavia was not responsible for the military operations committed by the Armed Forces of the Republic of Serbia, due to the absence of effective control.

### B. The criterion of total control for the adaptation of internationalized armed conflict

This criterion is represented by the control of a foreign State over rebel and anti-government groups, its provision of military support to these groups directly, as well as allowing rebel and dissident groups to carry out their activities in the territory of the State, so that the internal conflict or civil war turns into an internationalized armed conflict, due to that the rebel groups carry out their activities against the government from the territory of a neighboring State or States.

The opposing groups also receive instructions on the conduct of military operations from a foreign State against the legitimate government. This is confirmed by the International Criminal Tribunal for the former Yugoslavia in the case of *Tadić*, which adopted the



criterion of total or comprehensive control to determine the responsibility of the parties involved in the internationalized armed conflict.

Thus, there has been a development with regard to the adoption of the appropriate criterion for the internationalization of internal armed conflicts. After the International Criminal Tribunal for the former Yugoslavia (ICTY) approved the criterion of effective control to determine the responsibility of intervening States, the International Court of Justice also followed the same approach through adopting this criterion. Then, the International Criminal Tribunal for the former Yugoslavia (ICTY) considered another more explicit criterion, which is the criterion of total or comprehensive control by the intervening parties, in terms of providing military and financial support and receiving instructions for the conduct of military operations.

## **Conclusions and Recommendations**

Internationalized armed conflicts are a modern or contemporary type of non-international armed conflict. They still raise many legal problems, both in terms of their definition and their legal adaptation. In this concern, the study reached some conclusions and provided some recommendations clarified as follows:

### 1. Conclusions

- a) Internationalized armed conflict is essentially an internal conflict, but it quickly becomes internationalized due to certain and complicated conditions and the overlapping interests of different countries in the conflict.
- b) The rules of international humanitarian law regulate two types of armed conflicts, namely, international and internal armed conflicts, and did not originally address internationalized armed conflicts, which constitutes a major obstacle to the application of the rules of this law to internationalized armed conflicts.
- c) The international judiciary has relied on some criteria for the internationalization of non-international armed conflicts, including the effective control and the total or comprehensive control, in order to determine the responsibility of the countries involved in these conflicts, although the criterion of total or comprehensive control is in line with logic and justice.

### 2. Recommendations

- a) The necessity of developing legal rules that guarantee the organization of internationalized armed conflicts, with emphasis on their ratification by States and international global and regional organizations, as parties intervening in non-international armed conflicts, provided that they guarantee the protection of victims of this type of conflict.
- b) The necessity for having an international body or committee to undertake the task of adapting armed conflicts from a legal perspective, and determining the nature of the legal rules guaranteeing protection.
- c) The necessity for holding accountable all parties involved in internationalized armed conflicts, whether States or international organizations, provided that the responsibility of each intervening party is determined to the extent of its contribution to these conflicts.

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