

## PRIMERS FOR INTERNATIONAL ACCOUNTABILITY IN ASIA: CLASSIFICATION OF ARMED CONFLICT AND INTERNATIONAL LAW

### What Is An ‘Armed Conflict’ Under International Law?

While there is [no international treaty definition](#) of ‘armed conflict’ the term is generally used as another way of saying ‘war’. An ‘armed conflict’ cannot be one-sided; there will always be [at least two sides](#), or ‘parties’. An ‘armed conflict’ will exist where there is the [use of armed force](#) (often violence). This may be by a State against another State, a State against an armed group (for example, between a State military and rebel groups), or between two or more armed groups (for example intercommunal fighting). In this way, the term ‘armed conflict’ is used to describe fighting from the two World Wars, to wars of liberation, to civil wars. Amongst other situations, ‘armed conflict’ it also includes military occupation.

### What Law Applies To Armed Conflicts?

The law of armed conflict, or [International Humanitarian Law](#) (IHL), is the body of international law that governs what can and cannot be done during a war. Although it has existed for centuries, IHL is most likely familiar from the [1949 Geneva Conventions](#)—international treaties that States signed following World War II. IHL protects people who do not take part, and people who are no longer taking part, in the armed conflict. It does this by, amongst other things, regulating how civilians and prisoners of war are treated, protections of civilian objects like hospitals and museums, and what types of weapons can be used.

In its simplest terms, IHL requires the parties that are fighting in the armed conflict to:

- (1) **Distinguish** between civilians and those fighting (the principle of **distinction**);
- (2) Only use force (which may result in violence) when it is **necessary** (the principle of **necessity**); and
- (3) Make sure the force used is **proportional** to the necessary cause for which it is used (the principle of **proportionality**).

When there is a violation of IHL, this act may amount to a ‘war crime’. A war crime can be prosecuted under domestic or international criminal law. The [Rome Statute of the International Criminal Court](#) (or ‘Rome Statute’) defines ‘war crimes’ as “grave breaches” of the Geneva Conventions and “other serious violations of the laws and customs” of armed conflict. Many States have criminalized violations of IHL under their domestic legislation as well. For example, this is the case in [Bangladesh](#), [Cambodia](#), and [South Korea](#), although States differ in the number and types of crimes recognized.

### What Are The Types Of Armed Conflict?

Under IHL, there are broadly two types of armed conflict: international armed conflict and non-international armed conflict. IHL applies regardless of the type of conflict.

**International armed conflict** (IAC) occurs when the conflict itself is between [two or more States](#). There does not need to be a declaration of war. Further, there does not need to be formal recognition of the IAC by either side. Where one State uses violence against another State, an IAC exists.

A **non-international armed conflict** (NIAC) is [defined by what it is not](#): it is *not* ‘international’. However, this is not completely straightforward; violence outside of IACs is not automatically a NIAC. For example, sporadic acts of terrorism and riots will not be classified as a NIAC—these constitute ‘[internal disturbances](#)’. Domestic criminal law applies in internal disturbances.

To be classified as a NIAC, the violence must meet [two criteria](#):

- (1) The violence must reach a certain **intensity**; and

(2) The parties to this violence must show a certain **degree of organization**.

In international criminal law, the [factors](#) to decide whether violence is sufficiently **'intense'** include, amongst others:

- the number of attacks;
- the number of people involved in the fighting;
- the frequency of fighting and the time over which the fighting has taken place;
- the number of casualties;
- the amount of destruction and type of destruction taking place;
- the number of civilians displaced; and
- whether a relevant State has mobilized its armed forces.

Identifying a NIAC by **'intensity'** means it is irrelevant how the parties may categorize the conflict (for example, if one side labels the other side 'terrorists'). Instead, **'intensity'** requires looking at how the above factors come together—not how they are described—to identify an armed conflict.

On **degree of organization** of parties, it is [assumed](#) that if a State's military is taking part, the military is sufficiently 'organized' to meet this criteria. 'Non-state armed groups'—or, groups that are not a part of the military, for example militia or rebel groups—[may be considered 'organized'](#) if they have, amongst other factors:

- a hierarchical structure;
- internal rules; and
- the ability to recruit and train new members.

In comparing IACs and NIACs, IACs will involve sovereign States; NIACs will involve one or no State as parties to the conflict. Further, the amount of armed force to constitute an IAC is lower than what is necessary to constitute a NIAC.

## Why Does It Matter If Violence Is A Type Of 'Armed Conflict'?

The existence of any armed conflict—IAC or NIAC—triggers the application of IHL. IHL includes special obligations that are otherwise not available. An [example of such an obligation](#) is making sure that medical and humanitarian aid is able to reach civilian populations.

Because its principles are considered [customary international law](#), IHL applies regardless of whether a fighting State has recognized the Geneva Conventions or not. Likewise, IHL applies to non-State armed groups as well, including when they are fighting for self-determination and a new State has yet to be formed. In recognition of this, some non-state armed groups have taken the additional step of [publicly agreeing](#) to uphold IHL.

**Regardless of public declarations, all parties involved in a conflict must abide by the aforementioned principles of distinction, necessity, and proportionality to minimize damage done to civilians—even if the other party (or parties) do not.**

## How Do You Know When An 'Armed Conflict' Ends?

There is no broad treaty guidance regarding how to recognize when a specific armed conflict has come to an end. However, parties [may recognize the end of an armed conflict](#) either by reaching a peaceful settlement (for example, signing a peace agreement) or when the conflict no longer meets the criteria listed above.

Even if there is confusion about when an armed conflict begins and ends, all parties must continue to consider and observe the principles of IHL in their operations.