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Understanding the Notion of use of Force under the Laws of Armed Conflict

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ABSTRACT

This research delves into the multifaceted realm of utilizing force under the auspices of “international humanitarian law” (IHL) that governs the behaviour of entities engaged in armed conflicts. The study meticulously explores vital concepts and legislative frameworks, offering nuanced interpretations to elucidate the complexities surrounding the use of force. Commencing with an examination of fundamental principles shaping wartime force deployment, including necessity, proportionality, and differentiation, the research establishes these as pivotal benchmarks for assessing the legality and appropriateness of force in specific scenarios.

The author further delves into the responsibility of conflict parties to diligently safeguard individuals and civilian infrastructure, emphasizing the ethical imperative inherent in armed conflict. In addition, the study scrutinizes the evolving nature of armed conflicts and the challenges posed by traditional notions of force. It highlights the imperative of ongoing reassessment of legal interpretations and the establishment of adaptive procedures to address emerging complexities. The paper underscores the importance of accountability and reparations for violations or abuses of “armed conflict rules, exploring the roles of international criminal tribunals (ICT) and national judicial systems in holding individuals and institutions accountable for their conduct.

Moreover, the research probes into the changing landscape of armed conflicts in the contemporary world, encompassing the rise of non-state actors and the integration of technology in warfare. It stresses the necessity of international cooperation and coordination to effectively confront these challenges and ensure the just dispensation of justice. Additionally, the study emphasizes the role of education and awareness-raising in fostering a culture of respect for human rights, aiming to prevent future violations. By comprehensively addressing these facets, this research contributes to a deeper understanding of the intricate dynamics surrounding the application of force in armed conflicts and advocates for a more conscientious and informed global approach to conflict resolution.

Keywords: *Armed conflict, force, international law, military, conduct.*

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I. INTRODUCTION

This study delves into the role of “International Humanitarian Law”² (IHL) in guaranteeing the judicious application of force in times of war. It underscores the significance of adhering to established norms, particularly the Law of Armed Conflict (LOAC), as a means to safeguard civilians, captives, and non-combatants, thereby regulating the methods employed in warfare. The study places emphasis on the imperative of stringent compliance to forestall undue suffering and to uphold ethical standards in military operations.

Despite the codification of fundamental principles, violations persist globally, resulting in severe consequences for individuals, organizations, and societies affected by armed conflicts. The International Committee of the Red Cross (ICRC) defines international armed conflict as instances where one State employs military force against another. Upholding these standards becomes paramount for mitigating the impact of armed conflicts on human lives and upholding the dignity and rights of all parties involved. Understanding and adhering to the rules and ethics of the “laws of armed conflict”³ emerge as critical components for mitigating human suffering and upholding people's rights during armed hostilities. The overarching concept of the restrained “use of force”⁴ under armed conflict laws underscores the imperative for states and involved parties to adhere to legal norms and standards designed to protect civilians, minimize harm, and safeguard fundamental human rights. This principle also underscores the importance of accountability for violations, necessitating effective compliance mechanisms.

Consequently, it is crucial for governments not only to comprehend but actively implement these rules in their military actions. Prioritizing the safety and well-being of individuals is imperative, ensuring that any use of force is appropriate and necessary for achieving military objectives. Failure to do so not only violates international law but also poses the risk of causing undue harm and suffering to innocent individuals caught in armed conflicts. Moreover, such lapses can erode the legitimacy of military operations and lead to a loss of public support, both of which are crucial for achieving long-term success in conflict resolution. Therefore, armed personnel must adhere to stringent ethical standards and continually assess their actions to minimize harm. This essay aims to provide readers with an in-depth understanding of the use of force in war and its subsequent legal implications.

² Michael N Schmitt, *The War in Afghanistan : A Legal Analysis*, 85 International Law Studies 157-307 (2009).

³ Id. At 4

⁴ Elizabeth Chadwick, *Self-Determination, Terrorism and the International Humanitarian Law of Armed Conflict* 129-154 (2nd ed. 1996).

II. UNDERSTANDING THE PRINCIPLE OF THE USE OF FORCE

This study scrutinizes the ongoing debate surrounding the definition of 'force' within the context of "Article 2(4) of the Charter," which stipulates, "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." The controversy centres on the absence of the term "armed" before the word "force," prompting the question of whether Article 2(4) encompasses non-military forms of force, such as economic sanctions. The prevailing viewpoint posits that Article 2(4) exclusively prohibits armed forces. Advocates of this position argue on two fundamental grounds. First, given the establishment of the United Nations in the aftermath of the extensive atrocities of World War II, the term "force" within the text pertains specifically to military force used during conflicts. Without military force or a severe threat, Article 2(4) is deemed irrelevant to "coercion"⁵ like economic or psychological tactics.

Moreover, within a historical framework, it is asserted that the prohibition imposed in 1945 exclusively targeted military forces, stipulating that abstaining from engaging in business with another state was not illegal. However, the United Nations contends that economic aggression, despite the initial focus on military action under Article 2(4), is equally unacceptable. This perspective aligns with the principles articulated in the UN Charter, which emphasize the promotion of peaceful relations, respect for state sovereignty, and the prohibition of interference in internal matters. The United Nations recognizes economic aggression, defined as the use of economic tools to influence or manipulate another government's policies, as having severe implications for the targeted country and its population. The UN consistently condemns and discourages economic aggression through various means, including General Assembly resolutions, sanctions regimes, and diplomatic initiatives. These measures, while non-binding expressions of the UN's stance, are subject to ongoing debates concerning their effectiveness, humanitarian impact, and compliance with international law.

Diplomatic initiatives, including the engagement of UN envoys and specialized agencies in mediating, facilitating, and negotiating procedures, serve the purpose of upholding international law norms, promoting peaceful relations, and discouraging the use of economic power for coercion or violence. The United Nations' stance on economic aggression highlights the significance of safeguarding sovereignty, preventing interference, and prioritizing the well-being of individuals in the domain of international relations.

⁵ Maj Dustin Kouba, *OPERATIONAL LAW HANDBOOK* 9-39 (17th ed. 2017)

(A) Political independence and territorial integrity while practising forces against a state

the nuanced discourse surrounding the interpretation of Article 2(4) of the UN Charter, sparking a profound discussion on whether it should be regarded as an absolute prohibition on the use of force or if certain exceptions, particularly self-defence, should be permissible. The contention among scholars and policymakers revolves around whether any use of force, even in self-defence, constitutes a violation of the prohibition or if self-defence should be recognized as a legitimate exemption. The implications of this debate extend to the core principles of international law and the application of force in state relations.

The crux of the matter lies in interpreting the United Nations Charter, which unequivocally prohibits using force except in cases of self-defence or with explicit authorization from the Security Council. The ongoing debate is a divergence between a narrow interpretation accentuating state sovereignty and non-interference and a broader perspective prioritizing human rights and humanitarian assistance. In contemporary discussions, a lenient approach suggests that force not resulting in a permanent alteration of territorial integrity should not be deemed a breach, underscoring the objective of categorically disallowing the threat or use of force under any circumstances, except as expressly permitted by the Charter.

This perspective is frequently invoked in instances where states employ force to protect their citizens abroad, advocate for democracy in other states, or prevent humanitarian catastrophes, often framed within the discourse of the "just war theory." The moral justifiability of a state's use of force is intricately tied to critical factors such as proportionality, discrimination, and necessity. Nevertheless, the subjective nature of applying these principles leads to ongoing disagreements and controversies, with some asserting that the concept of a "just war" is inherently flawed, advocating for the complete avoidance of all forms of violence.

The international community remains vigilant in monitoring state actions to ensure compliance with these principles and the protection of human rights. The Friendly Relations Declaration of 1970 explicitly asserts that no state has the right to intervene in another state's internal or external affairs, deeming armed interventions or other forms of interference violations of international law. The phrase "any reason whatever" encompasses diverse rationales for using force, including protecting people and intervening in humanitarian crises. However, the study underscores that using force for these purposes is incompatible with Article 2(4) unless explicitly sanctioned by the Security Council. In essence, while well-intentioned, humanitarian efforts are subject to international legal constraints and can disrupt a nation's internal processes.

(B) The use of force under international law

One of the fundamental principles of International Law (IL) is prohibiting the use of force. Article 2(4) of the United Nations (UN) Charter explicitly prohibits member states from employing or threatening to use force against another state's political independence or territorial integrity. According to some intellectuals, it is widely debated whether Article 2(4) exclusively condemns armed forces or includes other forms of coercion, such as economic sanctions or cyberattacks. The restriction on using force is generally considered applicable, with exceptions allowing sovereign states to use force within their borders to maintain integrity and manage internal affairs.

Certain theorists argue that there are circumstances under which a country may be authorized to use force beyond its borders, provided it does not jeopardize the independence or integrity of another nation, which may include using force to protect citizens of the intervening State or for humanitarian purposes. However, the UN Charter does not explicitly recognize these circumstances as exceptions to the prohibition on the use of force, leading to scepticism among many individuals who believe that countries may exploit such defences to conceal misconduct.

Article 51 of the UN Charter acknowledges self-defence as an exception to the prohibition on the use of force. States engaging in self-defence must notify the UN Security Council of any actions taken, and the “principles of necessity and proportionality”⁶, as outlined in customary international law, are essential for justifying self-defence.

Article 107 of the UN Charter allows a member state to take action against a former adversary state if that State, which opposed a UN member during the Second World War, resumes a belligerent course of action. However, this provision is now considered unnecessary as all formerly hostile nations are UN members.

Under UN Charter Articles 24 and 25, the Security Council can use collective force to defend international peace and security. While the Security Council has rarely employed military force, it has opted for non-military measures, such as financial sanctions, to address threats to peace, as seen in responses to events like the early stages of the Korean War and Iraq's invasion of Kuwait in 1990.

(C) The need for compliance of the use of force

1. Individual Responsibility: The primary challenge in emphasizing the compliance of the use of force lies in individual responsibility within armed services. Regardless of rank, each

⁶ Michael Schmitt & Jelena Pejic, *International Law and Armed Conflict: Exploring the Faultlines Essays in Honour of Yoram Dinstein* 9-39 (2007).

member must uphold “the laws of armed conflict”⁷, ensure awareness and adherence to these laws, report violations, and take corrective action. Compliance with the laws of armed conflict is crucial for maintaining the integrity and effectiveness of armed forces. Critical aspects of individual responsibility include:

- **War Crimes**: Individuals are personally “responsible for war crimes and serious violations of International Humanitarian Law”⁸ (IHL), such as targeting civilians, torture, indiscriminate attacks, and the use of illegal weapons.
- **Command Responsibility**: Those in command positions are accountable for war crimes committed by subordinates under their authority. Failure to prevent or punish such crimes may lead to legal consequences for commanders.
- **Individual Criminal Responsibility**: Individuals committing war crimes or significant IHL violations may be criminally prosecuted, whether they are military soldiers, political leaders, or other individuals personally responsible for their actions.
- **Universal Jurisdiction**: Governments can prosecute individuals for specific wrongdoings, like war crimes, under universal jurisdiction, irrespective of the location of the crime or the nationality of the accused or victims.
- **Individual Duties and Obligations**: Individuals must adhere to armed conflict regulations, respect and protect the rights of civilians, prisoners of war, and other protected individuals, and report any violations they become aware of. Individual duties contribute to discouraging and punishing major abuses of IHL.

2. State Responsibility: Signatory states to the Geneva Conventions commit to appreciating and enforcing the Conventions universally. Compliance with armed conflict laws by warring states is essential, as failure to do so results in state responsibility. Critical considerations for understanding and adhering to the laws of armed conflict include:

- **Competence of Military Personnel**: Compliance enhances the competence of military personnel, fostering discipline, enthusiasm, and public support in residence and operational zones.
- **Military Experience Influence**: The laws of armed conflict are influenced and shaped by military experience, embedded in traditions and customs, and aligned with applicable regulations and norms of behaviour during armed conflict.

⁷ Matthias Vanhullebusch, *War and Law in the Islamic World* 9-39 (4574th ed. 2015).

⁸ *Twenty-Ninth Regular Session*, http://www.oas.org/xxxiiga/english/docs_en/resolucion_XXIXga.htm.

- Limiting Violence: The legislation limits violence to achieve military goals and governs conflict resolution, emphasizing international law for intra-state and interstate conflicts.

State Accountability Features:

- Fundamental Duty: States have a fundamental duty to uphold and ensure respect for International Humanitarian Law, requiring adherence to its laws and principles by armed forces and personnel under their authority.
- Responsibility for Leaders: States are responsible for the acts of military and civilian leaders in positions of authority, holding them accountable for failing to prevent war crimes or other major IHL violations by subordinates.
- Accountability for Actions: States are responsible for their actions during armed conflicts, including targeting civilians, employing illegal weapons, or participating in other IHL breaches.
- Precautions and Punishment: States must take appropriate precautions to avoid IHL violations and punish those responsible. Failure to fulfil this obligation may lead to accountability for their actions.
- International Accountability Mechanisms: States can be held responsible for IHL violations through international accountability mechanisms, including courts or tribunals, and may face diplomatic or economic repercussions for not respecting IHL commitments.
- Promoting Accountability: State responsibility in the laws of armed conflict acts as a tool to promote accountability, maintain respect for humanitarian standards, and emphasize the importance of nations making reasonable efforts to prevent infractions, punish offenders, and compensate victims.

III. DEFINING THE LAWS OF ARMED CONFLICT

International humanitarian law (IHL) delineates two primary categories of armed conflicts: non-international armed conflicts and international armed conflicts. Non-international armed conflicts involve government forces and armed non-governmental groups. They are defined by “Article 3 of the 1949 Geneva Conventions and Article I of Additional Protocol II”⁹ under IHL treaty law. On the other hand, international armed conflicts (IACs) occur when two or more States engage in hostilities, regardless of the underlying intentions or severity of the conflict.

⁹ Yoram Dinstein & Fania Domb, *Guide to the 'Travaux Préparatoires' of the International Covenant on Civil and Political Rights*, 39 Israel Yearbook on Human Rights 213-238 (2009).

Even in the absence of active hostilities, IHL regulations may still apply to such conflicts.

"High Contracting Parties" refers to conflicts involving nations or States constituting IACs. The applicability of IHL in these conflicts is irrespective of the specific intentions or severity of the conflict. The determination of whether an IAC exists and if international humanitarian law is applicable depends on the actual occurrences on the ground.

"The International Criminal Tribunal for the former Yugoslavia"¹⁰ (ICTY) broadly defined international armed conflict in the Tadic case. "According to D. Schindler's theory, armed conflict arises whenever parts of the armed forces of two States engage in hostilities or when one State uses armed force against the territory of another."¹¹ This interpretation is echoed by H.-P. Gasser, who emphasizes that -

"Any use of armed force by one State against another triggers the applicability of the Geneva Conventions."¹²

Additionally, the German Joint Services Regulations (ZDv) 15/2 assert that the employment of force by one party against another signifies involvement in "an international armed conflict"¹³. The rulings and conclusions of the ICTY further contribute to the understanding of non-international armed conflicts (NIAC). Eminent authors have also addressed the concept of NIAC, which is particularly relevant for conflicts that do not meet the stringent criteria outlined in Additional Protocol II. These insights are crucial for ensuring the application of safeguards mandated by Article 3 of the 1949 Geneva Conventions. Non-international armed conflicts are characterized by hostilities between a government and armed insurgency groups within "a State's territory"¹⁴.

(A) Basic principles of the laws of armed conflict

- 1. Distinction:** The principle of distinction, integral to international humanitarian law (IHL), mandates a clear differentiation between combatants, civilians, and objects during armed conflicts. It prohibits intentional harm to "civilians and civilian objects"¹⁵, emphasizing the concept of proportionality. This doctrine also restricts the use of weapons likely to cause excessive harm to combatants, such as chemical and biological

¹⁰ Mary Ellen O, *What Is War? An Investigation in the Wake of 9/11*, 37 International Humanitarian Law Series 17-29 (2012).

¹¹ Sylvain Vité, *Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations*, 37 International Review of the Red Cross 69 - 94 (2009).

¹² Lugo Santos & José Manuel, *Just and Unjust Targeted Killings in War : A Critical Analysis of Targeted Killing Within the Just War Tradition*, 37 PONTIFICAL CATHOLIC UNIVERSITY OF CHILE 69 - 94 (2022).

¹³ Supra 8.

¹⁴ Id. At 12.

¹⁵ Supra 5.

weaponry, and underscores the protection of cultural property. Moreover, it establishes rules for the treatment of “prisoners of war”¹⁶ (POWs) and detainees.

In practice, the principle of distinction faces challenges, particularly in identifying combatants who may be intertwined with civilians. The International Court of Justice, in the *Armed Activities on Congo Territory* case, highlighted the importance of adhering to the principle of distinction. The concept is fundamental for humane and ethical conduct during armed conflicts, holding violators of international law accountable. Despite its acceptance, challenges persist in implementing and enforcing this doctrine.

Critical aspects of the principle of distinction include distinguishing between combatants and civilians, as combatants are members of armed forces or established armed organizations participating in hostilities. Deliberate attacks on civilians are strictly prohibited, although challenges arise when combatants are not easily identifiable. Additionally, the principle distinguishes between civilian and military objectives, safeguarding civilian objects from direct attacks except in exceptional circumstances. The “International Criminal Tribunal for the Former Yugoslavia”¹⁷ (ICTY) set a precedent in *Prosecutor v. Tadić*, declaring deliberate attacks on civilians or objects as war crimes.

Ensuring the differentiation of military and civilian targets and civilians is essential. Parties must take reasonable steps to confirm targets, minimizing harm to civilians. The prohibition of indiscriminate attacks is emphasized, obliging parties to focus solely on legitimate military targets and use tactics explicitly directed at those targets to minimize civilian risks.

2. Proportionality: Proportionality in the laws of armed conflict dictates that unintentional or collateral damage to civilians and objects must be minimized to the maximum extent feasible under international law. Adequate planning and regulation of engagement are necessary to operate within legal boundaries, ensuring that military actions are proportionate to the expected military gain. Military leaders bear the responsibility of ensuring their personnel are well-trained in and informed about the rules of armed conflict.

The concept of proportionality aims to prevent attacks causing excessive harm to civilians or civilian objects compared to the anticipated military gain. The ICTY emphasized that an attack is disproportionate if it is likely to cause civilian death, harm, or destruction that is excessive

¹⁶ *Supra* 4.

¹⁷ Michael N Schmitt, *The War in Afghanistan : A Legal Analysis*, 85 *International Law Studies* 157-307 (2009).

considering the expected military advantage. This principle is crucial for protecting human life and dignity during conflicts.

During the Shelling of Al-Majdal case in Israel's 2009 military incursion in Gaza, proportionality was addressed, emphasizing the need for a case-by-case evaluation of each attack's specific circumstances. Parties must assess the military advantage anticipated from an attack, ensuring that any harm to civilians is not excessive for the expected gain.

- 3. Military Necessity:** The concept of military necessity, rooted in the St. Petersburg Declaration of 1868, asserts that the legitimate purpose of warfare is to degrade the adversary's forces. It acknowledges that the use of force may be necessary but emphasizes the importance of minimizing force to the absolute minimum required and commensurate with the strategic aim. Military necessity is a fundamental principle of humanitarian law, expressed in various conventions and agreements regulating armed conflict.

In the laws of armed conflict, military necessity is based on legitimate military objectives, proportional use of force, limitations on methods and means of warfare, precautions, and the distinction between combatants and civilians. The application of force must be proportionate to the expected military benefit. The Tokyo Trials after World War II addressed the misuse of military necessity, emphasizing that it cannot justify activities contrary to human rights norms or the use of illegal weapons.

- 4. Limitation:** IHL restricts the authority of nations in choosing the methods and procedures of waging war, prohibiting the use of weaponry and tactics that lead to unnecessary harm to combatants and civilians. All armed conflicts, whether international or domestic, must adhere to IHL norms to protect the lives and dignity of those affected. The treatment of ill and injured military members, civilian non-combatants, and prisoners of war is governed by IHL norms.

The concept of limitation in armed conflict law emphasizes the observance of legal and ethical boundaries during conflicts. This includes civilian protection, safeguarding protected persons, avoiding indiscriminate assaults, preserving cultural and religious property, constraints on weapons and tactics, and environmental protection. Despite these regulations, breaches continue to occur, necessitating the enforcement of rules and accountability for war crimes.

In the Prosecutor v. Jean-Paul Akayesu (ICTR) case, limitations on acts of genocide and sexual violence were highlighted, emphasizing the prohibition of genocide and the responsibility to prevent and punish acts of sexual violence during armed conflicts.

- 5. Good Faith:** Good faith is a fundamental precept of armed conflict, requiring adversaries to act honestly and with integrity in interpreting international humanitarian law and negotiating with opponents and humanitarian agencies. It is crucial for effectively applying and enforcing IHL, promoting trust and respect between opposing forces. Good faith involves a willingness to comply with IHL rules, even when inconvenient, and requires parties to uphold legal obligations, cooperate, prevent and punish infringements of IHL, and review military policies for compliance.

The case brought by Nicaragua against the United States highlighted the importance of good faith in conflict resolution. Adherence to principles of good faith contributes to forces' moral and ethical conduct during conflicts, emphasizing the significance of sustaining humanitarian values.

Humane Treatment and Non-discrimination: The principles of humane treatment and non-discrimination require all parties to a conflict to treat individuals with dignity and respect, prohibiting violence, torture, and cruel treatment. These principles extend to combatants' rights, fair trials, and medical care. Non-discrimination ensures equal protection and rights for all individuals, regardless of birth, property, gender, race, ethnicity, language, religion, or other factors.

Special protection for vulnerable groups, such as children, women, the elderly, individuals with disabilities, and refugees, is emphasized. The Geneva Conventions and Protocols contain provisions protecting these groups. Upholding these values is essential for improving the safety and well-being of those impacted by armed conflict.

In the Prosecutor v. Furundija (ICTY) case, humane treatment with the prohibition of torture and harsh treatment was examined, highlighting the entitlement of all individuals, including prisoners, to decent treatment. The case underscored the importance of maintaining these principles to ensure a more peaceful and just society.

(B) Understanding the application of use of force in cases of armed conflict

Let us understand this by taking into consideration the following cases –

1. when the application of force is used towards any legitimate target.

According to the paradigm governing the cessation of hostilities, any party involved in either an international or non-international conflict, encompassing members of a party's military or subjects in mass levies during international conflicts, as well as soldiers from another country or combatants in a non-international conflict, all qualify as legitimate targets. Nonetheless,

specific human rights organizations advocate for a law enforcement approach, irrespective of whether they contemplate using force against targets permitted under International Humanitarian Law (IHL). Various instances illustrate how these organizations have adopted a law enforcement perspective on the justified application of force:

In the case of Guerrero, the UN Human Rights Committee condemned the use of force by police officers capturing unarmed individuals claimed to be "guerrilleros" at their homes in Bogota's Contador area. The Human Rights Committee recommended exhausting all non-lethal arrest options for terrorism suspects before resorting to lethal force, a strategy contrary to Israel's Supreme Court, which adopted a "mixed-model" approach emphasizing capturing, questioning, and punishing terrorists engaged in hostilities when feasible. "The European Court of Human Rights also frequently applied the law enforcement paradigm in evaluating force used against PKK members during the conflict between the Turkish government and the Kurdistan Workers' Party in the late 1990s."¹⁸ Given Turkey's denial of war, legal scholars dispute which paradigm should address permissible aims in non-international combat, as the outcomes of one paradigm could align with the other.

The International Committee of the Red Cross (ICRC) suggests that IHL regulations on military necessity and humanity may influence decisions to shoot a fighter on sight in certain situations. The paradigm of hostilities allows killing a legitimate target until it is evident they can be captured or disabled without endangering operational forces. In contrast, the law enforcement paradigm mandates arrests over shootings by state agents. Experts consider several factors when determining the appropriate paradigm, including the potential target's location, the clarity of geographic scope in hostilities paradigm protocol, and the undefined term "conflict zone" in IHL accords. The Tadic decision by the International Criminal Tribunal for the former Yugoslavia establishes IHL protection even in areas without active wars.

The prevailing view, supported by most experts, is that the hostilities paradigm applies in situations with widespread violence but limited control over the territory and challenging conditions. Some experts argue for the permissibility of firing on military personnel regardless of danger, but the consensus favours prioritizing the law enforcement paradigm. The individual's identity as a fighter validates hostilities paradigm actions, while additional empirical components, such as the battle region, oversight, and intensity of aggression, supplement the law enforcement paradigm.

¹⁸ Vincent Bernard, *Understanding Armed Groups and the Applicable Law*, 93 *International review of the red cross* 333-353 (2011).

Despite the ICRC's efforts with its "Interpretive Guidance on Active Participation in Hostilities" under IHL, determining when active participation can be pursued in non-international warfare remains unresolved. The variables of control and aggression are considered context-dependent and challenging to define, making accurate and unambiguous target requirements crucial for equitable decision-making in warfare. Some experts argue that military necessity and compassion are not distinct legal notions in warfare.

2. When citizens are involved in riots, near or amalgamated with fighters;

The second argument posits that it should be permissible to target active military members and combatants whenever necessary, irrespective of their threat level. Some experts dissent, asserting that the law enforcement paradigm should take precedence. The ambiguity surrounding the identification of legitimate targets in non-international armed conflicts under International Humanitarian Law (IHL) persists. A prevailing view among experts suggests that combatants in such instances should be apprehended under the law enforcement paradigm, drawing on human rights legislation and the conduct of hostilities paradigm.

The central point in this discourse is the consensus among experts that both hostilities and law enforcement paradigms coexist. The hostilities paradigm guides the application of force against combatants, while the law enforcement paradigm governs the use of force against civilians engaged in rioting. Combatants within the crowd may be targeted if IHL prohibits indiscriminate attacks and breaches of proportionality and precautionary principles are observed. However, rioting civilians, not directly participating in hostilities, are excluded from the conduct of hostilities paradigm protection. IHL mandates the protection of non-participants in hostilities, precluding the declaration of any location exempt from hostilities due to the presence or behaviour of the general public. In response to violent acts by rioting civilians, police may use force, following a prescribed use-of-force process. Despite the legal advantages of the dual approach, experts note significant practical challenges.

In the context of military conflict, civil unrest may escalate into violent clashes constituting hostilities. Some analysts propose a single approach, favouring the law enforcement paradigm, citing challenges in discerning lawful targets and violent civilians. Others argue for the consideration of acceptable processes beyond the legal framework.

Experts highlight the enforcement of Rules of Engagement (RoE) self-defence regulations as policy. The majority endorse an escalation of force strategy for situations involving both combatants and civilians, even under the law enforcement paradigm, provided immediate danger is present and necessary precautions are taken. While enforcement paradigms may not

be as critical as anticipated, clarity on their application remains essential.

Examining scenarios involving criminal organizations with solid connections to armed networks in a non-international armed conflict, the law enforcement paradigm is proposed to regulate the use of force. However, when distinguishing between combatants and violent civilians is impractical, some suggest a reconsideration of independent processes outside the existing legal paradigms.

In addressing the involvement of criminal organizations with non-state armed groups, proximity to the warzone becomes a defining factor. Experts advocate a parallel strategy, applying the conduct of hostilities paradigm to combatants and the law enforcement paradigm to violent criminal group members. Differentiating between armed criminal gang members and combatants proves challenging, prompting the need for complementary approaches. The uncertainty surrounding the involvement of criminal gangs in armed conflict and the difficulty in distinguishing their activities pose challenges for experts.

Herein, the idea is that the conduct of hostilities paradigm and the law enforcement paradigm may guide the use of force when a government faces influential criminal organizations, like drug cartels, deploying armed violence. However, concerns arise when criminal gang members are not explicitly participating in combat, supporting armed organizations instead. The text proposes investigating a "third way," allowing the conduct of hostilities paradigm to apply even when the criminal group is not a party to an armed conflict, sparking disagreement among specialists.

3. When captives attempt an escape or have been engaged in a riot in detention

Governmental and military personnel are detaining fighters in a non-international armed conflict. Some inmates express dissatisfaction with their jail conditions, resulting in a disturbance where objects are thrown at guards. Simultaneously, armed fighters from outside attack the jail guards to release the prisoners. Under the law enforcement paradigm, using force against rioting inmates or those attempting to flee is deemed illegal. The hostilities paradigm, governed by whether the incident occurs within or outside a war zone, regulates force against non-combatants. Despite the military losing control of the jail and a surge in violence, the law enforcement paradigm predominantly governs the situation. This is influenced by the strict observation and investigation inherent in a detention facility. Article 42 of the Third Geneva Convention authorizes force against prisoners of war attempting to flee, aligning with the law enforcement approach. The Inter-American Court of Human Rights, in a case involving the Peruvian government and Sendero Luminoso during a non-international armed conflict, relied

on domestic human rights legislation instead of international humanitarian law.

While the strategy's legality was questioned, experts argued that considering human rights legislation, law enforcement was appropriate for rioting or fleeing prisoners in a non-international armed conflict. Article 42 of the Third Geneva Convention, applicable to international armed conflicts, lacks a counterpart in non-international armed conflicts. The law enforcement paradigm, briefly mentioned in Article 42, becomes the *lex specialis* for using force to suppress disturbances or escape captives.

Imprisoned fighters are considered civilians until released, as they no longer serve a military duty. Experts debated whether the prohibition in Article 42 for international armed circumstances could extend to rioting or fleeing convicts in non-international armed conflicts. Some experts suggested that fatal force might sometimes be justified, following local or international human rights regulations.

Experts disagreed on whether an escape is complete upon rejoining the armed organization, with some arguing for continued targeting under the conduct of hostilities paradigm. The use of "death lines" to control prisoners of war was considered, and experts generally agreed on the need for an escalation of force strategy under both the law enforcement paradigm and IHL. Deadly force might be justified to prevent escapes following human rights norms.

In conclusion, while some specialists found the law enforcement perspective more restricted, experts generally concurred that the conduct of hostilities paradigm should be applied when armed fighters from outside confront correctional authorities for the detainees' release. The external attacks did not significantly impact the preceding examination into using force against fleeing or rioting fighters. A "parallel-like" method, resembling the conduct of hostilities paradigm, was deemed applicable even by those who disagreed with the human rights law enforcement paradigm. The shift to the conduct of hostilities paradigm could occur if the rioting inmates aimed to seize control of the jail, raising questions about the impact of extensive oversight and surveillance on this change in strategy.

4. When individuals disregard military directives.

Illustratively, consider a scenario where a suspicious vehicle, upon receiving a halt command, approaches a roadblock manned by the armed forces of warring states in a non-international armed conflict. The use of force by the soldiers at the checkpoint is governed by armed conflict or legal principles. This discussion aimed to ascertain whether the application of force would differ under the two paradigms. Experts unanimously advocated implementing an escalation of force strategy as the optimal approach to address uncertainty.

In the United States, employing force against an unidentified individual appearing to pose a threat at a checkpoint is customary. However, the legality of employing more force came under scrutiny. The crux of this matter lies in establishing the legal foundation for adopting the escalation of force strategy. The prevailing belief was that citizens should actively engage in combat for the rules and principles of warfare to sanction the use of force against civilians. Moreover, the escalation of force strategy was perceived to be more aligned with the concept of self-defence or force protection in self-defence rather than conforming to the conduct of wars or legal systems. Experts agreed that employing an escalation of force technique is appropriate when using force against an individual threatening a checkpoint.

The legal justification for the practice of incrementally escalating force needs to be clarified. Some experts asserted that it evolved from the law enforcement paradigm, while others contended that it was derived from the rules of war (IHL) applicable to conflicts. The application of the IHL rule of doubt necessitated a distinct strategy. Conversely, experts opposing the incorporation of an escalation of force strategy into IHL norms governing conflicts argued that the outcome would significantly differ depending on the paradigm.

(C) The role of non-state actors in armed conflict

Various non-state actors, including armed groups, rebel factions, insurgent movements, terrorist organizations such as Al-Qaeda, ISIS, Boko Haram, and private military and security firms, play significant roles in events and conflict resolution. They engage in military confrontations with diverse agendas, such as political, ideological, ethnic, or territorial objectives. The involvement of these entities presents legal, ethical, and accountability challenges, particularly in the case of private military and security corporations (PMSCs).

Non-state entities hold considerable power in armed conflicts, exerting control over territory, conducting combat operations, recruiting combatants, generating resources, and influencing the political environment. While some non-state actors challenge state forces' authority and capabilities, their participation also offers opportunities for dialogue, mediation, and addressing the root causes of disputes to establish long-term peace.

Recognizing the importance of local players, the UN peacekeeping community has emphasized a transition towards a more "people-focused" strategy, integrating civil society players to address security risks and peacebuilding difficulties. However, involving Armed Non-State Actors (ANSAs) in peacekeeping operations remains challenging because the UN and related NGOs define civil society as nonviolent, excluding armed actors from the established standards. ANSAs pose difficulties as they often serve both as offenders and security providers. The issue

of how to deal with armed players in situations where citizens must arm themselves or rely on armed factions for security raises critical questions for pragmatic peace. To succeed, it is crucial to institutionalize the political representation of local players at the mission level, combining top-down and bottom-up approaches.

Dealing with non-state armed actors involves various approaches, including realist, institutionalist, constructivist, and socialization perspectives. Realist perspectives focus on power dynamics, while constructivist perspectives emphasize reasoning and norm dissemination to encourage armed actors to adopt and internalize norms.

Engaging with non-state armed actors in internal and non-state conflicts involves multiple players using different methods and approaches. Local actors often leverage time in their favour, as external actors cannot stay indefinitely. The choice of tactics depends on the nature and skills of the external actors, including states, international organizations, and NGOs. However, challenges arise when non-governmental organizations (NGOs) are wary of engaging in operations involving armed actors due to concerns about losing their unique advantages, particularly trust within the local community.

(D) Particular instances of force being used in armed conflict and the un's stance on it

The Second World War, also known as World War II, was a global conflict waged between the Allies and the Axis powers from 1939 to 1945. This devastating war holds the grim distinction of being the deadliest in history, claiming the lives of approximately 70 to 85 million people, with the majority being civilians. Following the surrender of the Axis powers, Germany and Japan were captured, and war crimes tribunals were conducted against German and Japanese officers. In the mid-1930s, border disputes involving Japan, the Soviet Union, and China fueled the formulation of the Hokushin-ron concept. However, this concept became untenable due to Japan's defeat at Khalkin Gol in 1939, the ongoing Second Sino-Japanese War, and Nazi Germany's pursuit of neutrality with the Soviets. In April 1941, Japan and the Soviet Union signed a Neutrality Pact. By April 1942, Japan adopted the Nanshinron doctrine, targeting the South and ultimately leading to conflict with the United States and the Western Allies.

In Europe, Germany and Italy displayed increasing aggression, annexing Austria in 1938 and pursuing claims on the Sudetenland. The Munich Agreement granted this territory to Germany, compelling Czechoslovakia to cede additional land to Hungary, while Poland annexed the Trans-Olza region. In May 1940, Germany, Japan, and the Soviet Union prepared for potential conflict in the Middle East, with the Soviets cautious of escalating tensions with Germany and Japan, both competing for resource-rich European colonies in Southeast Asia. In June 1941,

Germany launched Operation Barbarossa against the Soviet Union, aided by Italy and Romania.

The United Nations, established in the aftermath of the war, prioritizes international peace and security, conflict prevention, and the promotion of peaceful solutions. Emphasizing safeguarding human rights and fundamental freedoms for all individuals, irrespective of background, the UN encourages collaboration among member nations to address global issues such as poverty, disease, and the threat of war.

The UN has actively advocated for disarmament and non-proliferation of weapons of mass destruction, alongside the establishment of international criminal justice mechanisms to hold accountable those responsible for war crimes, crimes against humanity, and genocide. The organization underscores the importance of global cooperation and coordination among member nations to address pressing global challenges.

(E) Emerging issues and development with respect to the use of force in armed conflict

The use of force in armed conflict continues to pose significant challenges, prompting new questions within the realm of international humanitarian law (IHL). Several critical emerging challenges merit consideration:

1. **Cyber Warfare:** The proliferation of cyber warfare has added complexity to assessing the legality of using force. Cyberattacks can cause disruptions, damage essential infrastructure, and impact civilian populations. Concerns include classifying cyber activities as acts of war and navigating current legal frameworks for managing cyber warfare. The conduct related to cyber attacks has raised legal issues. Using force against another state, as per the International Court of Justice, extends beyond direct weapon use to include providing permission to others. This prohibition applies even when arming and training armed groups, including cyber operations equivalent to physical force.
2. **Autonomous Weapons Systems:** Questions arise about the compatibility of autonomous weapons systems with principles such as distinction, proportionality, and prudent use of force. The ability of these systems to operate independently raises moral and legal concerns regarding accountability and judgment in the use of force.
3. **Urban Warfare:** Armed conflicts increasingly occur in densely populated urban areas, making distinguishing between fighters and civilians challenging. The deployment of wide-area impact explosive weapons in urban contexts raises concerns about disproportionate harm to civilians and infrastructure.

4. **Misinformation and Information Warfare:** The use of misinformation, propaganda, and information warfare techniques in armed conflicts can influence public opinion, impact military actions, and blur the lines between soldiers and civilians. This may breach differentiation principles.
5. **Private Military and Security Businesses:** Engaging private military and security businesses in armed situations raises issues of responsibility, oversight, and compliance with international humanitarian law. Ensuring these actors adhere to distinction, proportionality, and humane treatment is challenging.
6. **Climate Change and Armed Conflict:** Climate change contributes to resource conflicts, population displacement, and changing combat patterns. The humanitarian impact of armed conflicts is intensified by climate change, posing legal and ethical concerns about the use of force in such scenarios.

(D) Recent development in the use of force

1. **Greater Focus on Compliance and Accountability:** Increased importance is placed on adhering to international humanitarian law, leading to the prosecution of war criminals by international criminal courts. Command responsibility has emerged as a concept, holding leaders accountable for crimes committed by subordinates.
2. **Application of IHL to Non-International Armed Conflicts (NIACs):** IHL, initially assumed to apply only to international armed conflicts, has expanded to cover NIACs. Fundamental IHL-inspired norms now govern internal conflicts, ensuring the protection of both fighters and civilians.
3. **Technological and Warfare Improvements:** Technological advancements, including self-driving cars, drones, and cyber capabilities, present new challenges related to responsibility, law, and ethics in using force.
4. **Civilian Protection:** A heightened emphasis on civilian protection is evident, with the acceptance of the Responsibility to Protect (R2P) notion. Legal frameworks, such as the Safe Schools Declaration, aim to enhance protection for civilians in armed conflicts.
5. **Strengthening the Prohibition on Chemical Weapons:** International efforts denounce chemical weapons, leading to the Chemical Weapons Convention (CWC) prohibiting their use, development, and stockpiling—incidents like the Syrian civil war prompt increased scrutiny and accountability.

6. **Increased Scrutiny and Documentation:** Digital technology and social media enable the documentation and sharing of information about armed conflicts and human rights violations. Civil society, journalists, and individuals contribute crucial evidence for investigations and advocacy.

IV. CONCLUSION

In conclusion, the application of force within the parameters of armed conflict constitutes a nuanced and evolving concept, demanding a profound understanding to ensure compliance and safeguard "human rights" amidst the complexities of wartime. A meticulous examination of international humanitarian law, treaty provisions, customary practices, and legal interpretations underscores the stringent limitations imposed on the use of force, necessitating adherence to criteria such as necessity, proportionality, and distinction. This scrutiny underscores the imperative for precise and clear delineations of acceptable force deployment. It underscores the ongoing necessity to address emerging challenges in contemporary warfare, including asymmetric conflicts and the utilization of advanced technology.

The study accentuates the crucial need for nations, armed forces, and non-state entities to uphold their legal obligations, particularly the responsibility to conduct military operations in a manner that prevents harm to individuals and civilian objects. In essence, a holistic comprehension of the use of force within the framework of armed conflict legislation becomes paramount for the preservation of human life, dignity, and fundamental rights in times of war. Ongoing scholarly inquiry and dialogue on this subject are indispensable in shaping and implementing legal standards that protect civilians, alleviate suffering, and contribute to realizing a more peaceful and just global order.
