

УДК 340

DOI <https://doi.org/10.24144/2307-3322.2023.78.1.8>

CRITERIA FOR DEFINING AN ARMED CONFLICT IN INTERNATIONAL LEGAL ACTS

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The article is devoted to the analysis of international normative legal acts in the context of determining the criteria for armed conflict. In addition, the authors pay attention to the wording of this concept for the proper qualification of the form of armed violence. The authors also explore the effect of international humanitarian law in the event of an armed conflict, because participants of an international armed conflict are obliged to comply with international humanitarian law applicable in such conflicts. The main sources of international legal regulation of armed conflicts include the so-called “Geneva law” and the “Hague Law”. The category of an “armed conflict” in international relations was first used in the Geneva Conventions of 1949, where, along with the term “war”, the concepts of “international armed conflict” and “non-international armed conflict” are used.

In addition, the authors emphasize that the concept of an armed conflict should be distinguished from other related concepts such as war, internal unrest, tensions and acts of violence. The distinction between “war” and “armed conflict” is rather arbitrary. In particular, it is believed that the concept of an “armed conflict” is broader and encompasses the concept of “war”. However, not every armed conflict can be called a war, because war has the following features that are not inherent in an armed conflict: the act of declaring war; severance of diplomatic relations between the belligerent states, which is a consequence of the war declaration; the cancellation of bilateral treaties, especially political ones.

The authors think that today one of the most acute problems in the practice of an international humanitarian law application is the lack of a clear and complete definition of all situations to which its provisions should be applied. Thus, international humanitarian law only describes situations that should be regulated by its norms. At the same time, there are still no clear and unambiguous criteria by which such situations can be identified.

Key words: armed conflict, war, internal disturbances, internal unrest, international humanitarian law.

Попович Т., Топольницька М., Вашкович В. Критерії визначення збройного конфлікту у міжнародно-правових актах.

Стаття присвячена аналізу міжнародних нормативно-правових актів у контексті визначення критеріїв збройного конфлікту. Крім того, автори звертають увагу на формулювання цього поняття для правильної кваліфікації форми збройного насильства. Автори також досліджують дію міжнародного гуманітарного права у випадку збройного конфлікту, оскільки учасники міжнародного збройного конфлікту зобов'язані дотримуватись міжнародного гуманітарного права, що застосовується в таких конфліктах. До основних джерел міжнародно-правового регулювання збройних конфліктів можна віднести так зване «Женевське право» та «Гаазьке право». Категорія «збройний конфлікт» у міжнародних відносинах вперше була використана в Женевських конвенціях 1949 року, де поряд з терміном «війна» вживаються поняття «міжнародний збройний конфлікт» і «неміжнародний збройний конфлікт».

Крім того, автори підкреслюють, що поняття збройного конфлікту слід відрізняти від інших суміжних понять, таких як війна, внутрішні заворушення, напруженість і акти насильства. Розрізнення між «війною» і «збройним конфліктом» досить умовне. Зокрема, вважається, що поняття «збройний конфлікт» є ширшим і охоплює поняття «війна». Проте не кожен збройний конфлікт можна назвати війною, оскільки війна має такі ознаки, які не властиві збройному конфлікту: акт оголошення війни; розрив дипломатичних відносин між воюючими державами, що є наслідком оголошення війни; анулювання двосторонніх договорів, особливо політичних.

На думку авторів, сьогодні однією з найгостріших проблем у практиці застосування міжнародного гуманітарного права є відсутність чіткого та повного визначення всіх ситуацій, до яких мають застосовуватися його положення. Таким чином, міжнародне гуманітарне право лише описує ситуації, які повинні регулюватися його нормами. Водночас чітких і однозначних критеріїв, за якими можна ідентифікувати такі ситуації, досі немає.

Ключові слова: збройний конфлікт, міжнародний конфлікт, війна, внутрішні заворушення, внутрішні заворушення, міжнародне гуманітарне право.

The relevance of the topic. Through international organizations the world community is involved in developing basic principles and methods for avoiding and eliminating armed conflicts, and in researching these concepts, because even if they are local in their nature, they still cause damage to human civil rights and freedoms.

Modern international law prohibits the use of armed aggression against any sovereign state. Thus, paragraph 4 of Article 2 of the UN Charter states: "...all Members of the United Nations shall refrain in their international relations from the threat or force use against the territorial integrity or political independence of any State or in any other manner inconsistent with the Purposes of the United Nations..." [1].

A study of an armed conflict concept as defined in international legal acts allows us to define the criteria for an armed conflict, which is the most urgent issue now, since if there are specific criteria, it is possible to clearly state whether a situation belongs to the category of an armed conflict or not. There are many contradictions, both theoretical and practical, in defining the criteria for an armed conflict, because scientific doctrine is not always able to respond in a timely manner to the emergence of new armed conflict features that have been deformed by up-to-date factors.

Analysis of scientific publications. The following scholars have studied the impact of the armed conflict on the nature of the legal system: Batrymenko O., Vorotniuk M., Horbulin V., Gubrienko O., Zarosylo V., Kulchyskyi S., Lavnichenko O., Lutsyshyn H., Nahirnyi M., Savchyn M., Stefanchuk R., Yarmaki V., etc.

The purpose of the article is to define the criteria of an armed conflict in international legal acts, which, in turn, triggers the international humanitarian law functioning and protects the rights of persons who find themselves in the territory of an armed conflict.

Review and discussion. The judgment of the International Criminal Tribunal for the former Yugoslavia in the Tadić case states that an armed conflict occurs whenever states resort to force or when there is a protracted armed conflict between government forces and organized armed groups or between such groups within the same state [2].

The main sources of international legal regulation of armed conflicts include the so-called "Geneva law" (Geneva 1949 Conventions on the Amelioration Conditions of the Wounded and Sick in Armed Forces; on the Amelioration Conditions of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; on the Prisoners of War Treatment; on the Protection of Civilian Persons in Time of War; Additional Protocols of 1977) and the "Hague Law" (the Hague Conventions of 1899 and 1907 on the Laws and Customs of Land

War and on the Opening of Hostilities), on the Rights and Duties of Neutral States and Persons in case of Land and Sea War, the Hague Convention for the Protection of Cultural Property in the case of an Armed Conflict of 1954) [3, p. 174].

Participants of an international armed conflict are obliged to comply with international humanitarian law applicable in such conflicts, as well as customary international law, which not only contains a large set of restrictive conditions on the conduct of hostilities, but also provides for the protection of the person's rights subjected to humanitarian law norms. In particular, the organisation of starvation among the civilian population, attack or destruction of objects necessary for its survival are prohibited as a method of warfare. A State Party is obliged to respect the rights of civilians protected by the 4th Geneva Convention, namely the political and social rights and judicial guarantees of these persons treatment, their physical integrity and security; it should also ensure compliance with the principle of women, children, the elderly and disabled special protection [4].

The category of an "armed conflict" in international relations was first used in the Geneva Conventions of 1949, where, along with the term "war", the concepts of "international armed conflict" and "non-international armed conflict" are used [5, p. 8].

The distinction between "war" and "armed conflict" is rather arbitrary. In particular, it is believed that the concept of an "armed conflict" is broader and encompasses the concept of "war". However, not every armed conflict can be called a war, because war has the following features that are not inherent in an armed conflict: the act of declaring war; severance of diplomatic relations between the belligerent states, which is a consequence of the war declaration; the cancellation of bilateral treaties, especially political ones.

At the same time, the term "war" is used to refer to an armed confrontation between two or more sovereign states. Instead, the term "armed conflict" is used to refer to a civil war or a struggle for independence by a people or nation. Another feature of war is that it causes changes in the whole society, in particular, state institutions begin to perform specific functions caused by the war. At the same time, during an armed conflict, there is no reformatting of the entire state mechanism to the military system [5, p. 9].

In addition, the concept of an armed conflict should be distinguished from other related concepts such as internal unrest, tensions and acts of violence. At present, there is still no legal definition of these concepts, so, in our opinion, it is advisable to refer to the ICRC doctrine and the theory of international and national law. However, almost no real definitions are given here either. The commentary to the Additional Protocols, in particular Protocol II, actually repeating the 1971 description of internal disturbances and tensions, taking into account the experience and achievements of the organisation, suggests that such definitions are part of the ICRC doctrine, made for the purpose of their practical application. Although in the Commentary to Protocol II, ICRC lawyers give examples of internal disturbances and acts of violence, the threshold at which internal disturbances escalate into armed conflict is not defined [6, p. 133].

Despite the fact that paragraph 1 of Article 1 of Protocol II establishes certain lower and upper limits, it contains a number of criteria that define an internal armed conflict in a rather general way, the issues of qualification are still relevant, and the problem of defining internal unrest and tension situations remains unresolved [7, p. 231-232].

In order to distinguish an armed conflict within the meaning of Common Article 3 from less serious forms of violence, such as internal disturbances and tensions, riots or acts of banditry, the situation must reach a certain threshold of confrontation. It is generally accepted that the minimum level is defined in Article 1, paragraph 2, of Protocol II and Article 8, paragraph 2, of the Rome Statute of the International Criminal Court, which exclude these phenomena from the concept of non-international armed conflict. In this regard the following two criteria are usually used:

- 1) military operations should reach a minimum level of intensity;
- 2) non-governmental groups in conflict should be considered as "parties to the conflict", which indicates the presence of organized armed forces [8, p. 3].

Based on the foregoing, we conclude that there are two criteria that to some extent allow us to define a situation as an armed conflict, namely the intensity and organization of the subjects.

Due to the 1949 Geneva Convention, international armed conflicts are those conflicts in which one subject of an international law uses armed force against another subject. Thus, participants of an international armed conflict may be states and nations and peoples fighting for their independence. According to Art. 1 of Additional Protocol I, armed conflicts in which peoples are fighting against colonial domination and foreign occupation, against racist regimes, struggling for their right to self-determination, are also international [9, p. 19]. International armed conflict as a legal concept is mentioned in Article 2, which is common to all

the Geneva Conventions of 1949: “In addition to the provisions applicable in time of peace, the present Convention shall apply to all cases of declared war or to any other armed conflict which may arise between two or more of the High Contracting Parties, even if one of them does not recognise a state of war. The Convention shall also apply to all cases of partial or total occupation of a High Contracting Party, even if that occupation does not meet with any armed resistance...” [10].

We find confirmation that international legal acts have been adopted with the aim of maximising the protection of human beings and citizens from the consequences of an armed conflict that suddenly arises on their territory of residence, regardless of its duration, territory of coverage, number of wounded or prisoners. There is also another criterion here, namely, the failure to recognise or declare that an armed conflict does not affect the application of international humanitarian law.

Paragraph 4 of Article 1. of the Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977, states that the situations referred to in the preceding paragraph include armed conflicts, in which peoples are struggling against colonial domination, foreign occupation and racist regimes to exercise their right to self-determination as enshrined in the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations [11].

The authors believe that this interpretation is quite fair, as it not only includes clashes caused by political disagreements in the category of armed conflicts, but also expands this category to include religious, ethnic factors, etc. This interpretation makes it possible to apply international humanitarian law and define another criterion, namely the absence of the armed conflict causes and its influence on the situation understanding.

Nowadays, more detailed characteristics, definitions and criteria are offered by the doctrine of modern international humanitarian law, which, in our opinion, has formulated two main approaches to the study of violation cases and the emergence of internal tension. The first approach is to study these phenomena, analyze in detail their concepts, features and essence, and distinguish them from an armed conflict. The second approach, in contrast to the first, is to study “from the opposite”. It is characterized by the study of an armed conflict and its separation from these phenomena. Regarding the first approach, according to M. Bejaoui, experts speak of an internal unrest, when in the absence of an armed conflict the state uses force to maintain or restore law and order, and of internal tension, when in the absence of internal unrest it resorts to the preventive use of force to maintain peace and law [12, p. 38].

In this regard, the scholar E.E. Kuzmin expresses the opinion that today one of the most acute problems in the practice of an international humanitarian law application is the lack of a clear and complete definition of all situations to which its provisions should be applied. Thus, international humanitarian law only describes situations that should be regulated by its norms.

At the same time, there are still no clear and unambiguous criteria by which such situations can be identified. This, in our opinion, is a significant problem, because the rules of international humanitarian law do not apply in situations that do not cross a certain threshold of intensity [13, p. 203].

Conclusions. Thus, based on the above, we can summarize the following criteria for defining an armed conflict in international instruments:

- the situation must reach a certain threshold of confrontation and intensity;
- the subject’s organization ;
- subjectivity, in this case a conflict between two or more states is considered international, while armed clashes within the territory of one state are considered non-international;
- the failure to recognise or declare a conflict as armed, its duration, territory of coverage, number of wounded does not affect the international humanitarian law application;
- the absence of armed conflict causes to qualify the situation.

However, we believe that the norms of international law on defining the armed conflict criteria still need to be improved.

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