



**Unravelling Conventional Boundaries  
in International Humanitarian Law:  
The Classification and Regulation  
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**August 2015**

# **Unravelling Conventional Boundaries in International Humanitarian Law: The Classification and Regulation of Non-International Armed Conflicts in the Modern World**

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## **Abstract**

International Humanitarian Law is predicated on a dichotomous system which deems wars to be either ‘International Armed Conflicts’ or ‘Non-International Armed Conflicts’. Non-International Armed Conflicts are considered to be an internal state issue rather than an issue for the international community and are thus regulated by a far less comprehensive legal regime.

However, the conventional boundary between International Armed Conflicts and Non-International Armed Conflicts appears to be unravelling. Non-International Armed Conflicts are now the most common form of conflict. They can be highly damaging for the civilian population, are potentially just as threatening to world peace as ‘conventional’ interstate wars, and paradoxically, frequently involve multiple states.

This essay examines the conventional boundary in IHL between International Armed Conflicts and Non-International Armed Conflicts. It argues that in order for IHL to remain relevant to contemporary conflicts, this boundary must be reconsidered and significant reforms must be made.

**Keywords:** *Armed Non-State Actors, Common Article 2, Common Article 3, Conventional Boundaries, Geneva Conventions, Internationalization, International Armed Conflicts, International Humanitarian Law, Jus in Bello, Non-International Armed Conflict.*

## **Introduction**

International Humanitarian Law (‘IHL’), the body of law that seeks to regulate conduct in armed conflicts (‘*jus in bello*’), is predicated on the principle that states are the defining characteristic of the international system and the belief that a war between states is the most serious of conflicts and the greatest possible threat to the international community.

This is reflected in the dichotomous framework of IHL, which distinguishes between armed conflicts between states - ‘International Armed Conflicts’ – and armed conflicts involving non-state actors – armed conflicts ‘not of an international character’ or so-called ‘Non-International Armed Conflicts’.

Under international law, combatants and civilians caught in International Armed Conflicts are afforded the full protections of IHL. Wars which fall into the ‘lesser’ category – Non-International Armed Conflicts - are regulated by a less comprehensive legal regime, as these conflicts have traditionally been considered an internal state issue rather than an issue for the international law.

However, in the modern world the conventional boundary between International and Non-International Armed Conflicts appears to be unravelling. Contemporary conflicts – such as those in Syria, Iraq, Yemen and Ukraine – demonstrate that the reasoning behind the conventional boundary dividing International and Non-International Armed Conflicts no longer reflects reality. Non-International Armed Conflicts are now the most common form of conflict. They can be highly damaging for the civilian population, paradoxically can often involve multiple states, and are potentially just as threatening to world peace as ‘conventional’ interstate wars.

This essay will examine the conventional boundary in IHL between International Armed Conflicts and Non-International Armed Conflicts. It will argue that in order for IHL to remain relevant to contemporary conflicts, this boundary must be reconsidered and significant reforms must be made in regard to the laws governing Non-International Armed Conflicts. Part I of this essay will provide a brief overview of the taxonomy of armed conflict in IHL and will explain the significance of the difference between International Armed Conflicts and Non-International Armed Conflicts in terms of the laws of war which apply. In Part II the key issues caused by the dichotomous approach adopted by IHL to categorize conflicts will be explored. Part III will discuss how IHL has evolved to overcome some of these issues, in particular focusing on the doctrine of ‘internationalization’. Finally, Part IV will analyse the possibility of any further reform and the key obstacles such reform will face.

It is important to note that this essay does not aim to provide a comprehensive analysis of the laws applicable to Non-International Armed Conflicts nor to propose any kind of alternative legal regime for adoption by the international community. Such tasks are well beyond the scope of this paper. Rather this essay seeks to highlight the significance of the distinction made between International Armed Conflicts and Non-International Armed Conflicts in IHL, the clear need for reform in this area, and the key obstacles that will need to be overcome for reform to take place.

## **I. The Taxonomy of Armed Conflict in International Humanitarian Law**

### *A. The IAC/NIAC Dichotomy in IHL*

As a body of international law, IHL is derived from two types of sources: international treaties and state custom (‘customary international law’). The most important single source is undoubtedly the Geneva Conventions. The four Geneva Conventions, finalised in 1949 in the aftermath of World War II, established minimum basic rights to be afforded to captured combatants as well as protections for civilians and non-combatants. The Geneva Conventions have been ratified by every UN member state and are thus binding on all.

In order to determine the applicability of their various provisions, two theoretically distinct forms of conflict are defined by the Conventions: ‘International Armed Conflicts’ and ‘Non-International Armed Conflicts’. These are the only recognized forms of armed conflict in IHL.

International Armed Conflicts (‘IACs’) are defined by Common Article 2 of the Geneva Conventions as being ‘cases of declared war or of any other armed conflict which may arise between

two or more of the High Contracting Parties’. Thus, for the purposes of IHL, for an armed conflict to be considered an IAC two or more states must be in conflict with each other. In contrast to this, Non-International Armed Conflicts (‘NIACs’) are defined by Common Article 3 of the Geneva Conventions as being any ‘armed conflict *not of an international character* [emphasis added]’. Additionally, for a conflict to be deemed a NIAC for the purposes of IHL, customary IHL dictates that it must also reach a minimum level of intensity and involve organized armed forces with the capacity to conduct military operations (ICRC 2008, 3).

*Table 1: The Classification of Armed Conflicts*

COMBATTANT/S	State/s	Armed Non-State Actor/s
State/s	IAC	NIAC
Armed Non-State Actor/s	NIAC	NIAC

### *B. Exceptions to the IAC/NIAC Dichotomy*

Although ‘[l]egally speaking, no other type of armed conflict exists’ (ICRC, 2008, 1), it is important to note there are two exceptions to the classification of conflict that must also be taken in to consideration.

The first of these exceptions is situations of occupation. Common Article 2 of the Geneva Conventions extends the definition of an IAC to ‘all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.’ This provides some certainty as to which laws apply in situations where it may otherwise be difficult to determine if there is an IAC occurring in the traditional sense. For example, in *Situation on Registered Vessels of Comoros, Greece and Cambodia* (2014, 14-16), the prosecutor of the International Criminal Court (‘ICC’) noted that Israel’s occupation of Gaza meant the laws of international armed conflict applied even though:

The hostilities between Israel and Hamas at the relevant time [did] not appear to meet the threshold of an international armed conflict in terms of a conflict taking place “between two or more States”, either directly or by proxy.

The second exception applies to conflicts involving struggles against colonial or racist regimes. Such conflicts have been deemed to be ‘international’ whether or not they would otherwise satisfy the criteria of Common Article 2 of the Geneva Conventions. This is because Article 1 of Additional Protocol I to the Geneva Conventions extends the protections afforded to combatants and civilians in IACs to NIACs ‘in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination’. Although not universally ratified, Additional Protocol I has been ratified by some 174 states, and many of its provisions have now been accepted as international customary law (Sommaruga, 1997).

These exceptions aside, the defining feature of armed conflicts for the purposes of IHL nevertheless remains whether or not the conflict involves states fighting against each other, as established by Common Articles 2 and 3.

### *C. The Significance of Classification*

Although these categories of armed conflict may seem relatively straightforward, their significance in IHL cannot be understated. Determining which laws of IHL are applicable to any given conflict depends almost entirely on whether that conflict is classified as an IAC or a NIAC. Though IHL does provide a relatively comprehensive legal regime to govern the conduct of combatants involved in armed conflicts, the bulk of this regime is only applicable in situations deemed to be IACs. In comparison, NIACs remain relatively unregulated. For instance, of the roughly 600 articles contained in the Geneva Conventions and their Additional Protocols, Common Article 3 and the 28 articles of Additional Protocol II are the only articles that apply in NIACs. It is also worth noting that the articles applicable to NIACs contained in Additional Protocol II only apply to conflicts between States and Armed Non-State Actors ('ANSAs', see Part III below), and not conflicts exclusively involving ANSAs (Stewart 2003, 319-320).

That said, the evolution of customary international law has led to some convergence between the laws applicable to IACs and those applicable to NIACs, and some additional protections have been afforded to combatants in NIAC in this way (Odermatt 2013, 23-24). In *Prosecutor v Tadić* (at ¶ 69), the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia ('ICTY') noted that 'a number of rules and principles governing international armed conflicts have gradually been extended to apply to internal conflicts'. The Court stated (at ¶ 127) that these rules included:

[the] protection of civilians from hostilities, in particular from indiscriminate attacks, protection of civilian objects, in particular cultural property, the protection of all those who do not (or no longer) take active part in hostilities, as well as prohibition of means of warfare proscribed in international armed conflicts and a ban of certain methods of conducting hostilities.

Additionally, the Rome Statute of the International Criminal Court recognizes that many crimes that once only applied to IACs now apply to all conflicts (Odermatt 2013, 23). As Odermatt (2013, 24) notes, 'some examples of crimes that are now included to apply to *all* armed conflict include: Rape and Sexual Violence 8(2)(d)(vi); Pillaging a town or place 8(2)(d)(v); and Declaring that no quarter will be given 8(2)(d)(x)'.

Thus, as a result of both customary international law and treaty law, it can now be said that '[a]s a practical matter, international humanitarian law on the *means and methods* [emphasis added] of warfare is largely the same whether an international or non-international armed conflict' (Human Rights Watch, 2015).

Nevertheless, despite the increasing merger of the two legal regimes, significant differences still remain between the laws of IHL applicable to IACs and NIACs. Arguably the most significant remaining difference is that while ‘during an international armed conflict, captured soldiers from national armed forces and associated militias must be given the full protections afforded prisoners-of-war’ (Human Rights Watch, 2015), captured combatants of a NIAC are still not entitled to any such Prisoner of War (‘*POW*’) status. Similarly, combatants captured during a NIAC are not afforded the combatant immunity they would be entitled to if they had been fighting in an IAC. This means that if captured, combatants in a NIAC can be tried for murder even if any killing they committed only took place in the context of war with enemy combatants. As will be discussed further below, the lack of basic protections such as POW status and combatant immunity for combatants in NIACs has a significant flow on effect in terms of the behaviour of combatants in NIACs and their respect for the laws of war which do apply.

## **II. Key Issues with the IAC/NIAC Dichotomy**

The dichotomous division of armed conflicts in IHL reflects a dangerously outdated and inaccurate understanding of contemporary international affairs and underestimates the severity and complexity of modern non-international armed conflicts.

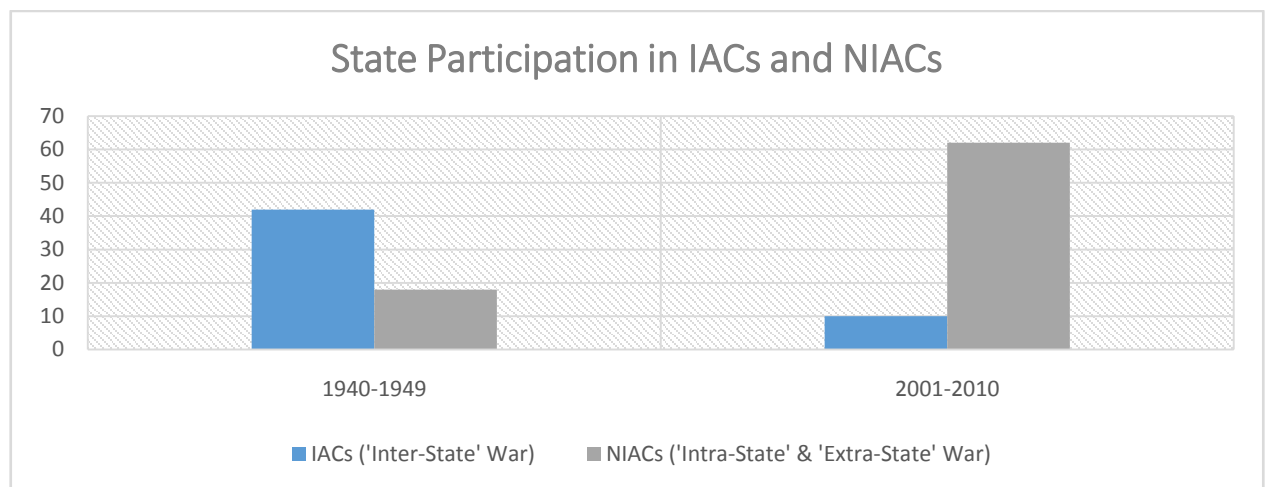
### *A. The Relative Increase in the Prevalence of NIACs*

The vast majority of conflicts currently being fought in the world today – for instance those in Syria, Iraq, Ukraine, Yemen and Nigeria - are *prima facie* non-international armed conflicts. Indeed, there is a clear trend showing the decline of IACs and the emergence of NIACs as the predominate form of conflict in the modern world. This is not to say that IACs no longer of concern for the international community, but simply that they have become relatively uncommon in the ‘conventional’ form.

The prevalence of NIACs relative to IACs can be seen in the data on warfare collected by the Correlates of War (‘*COW*’) project (Sarkees and Wayman, 2010). The COW project records information on all state-related wars between 1816 and 2010. It classifies these wars as being ‘inter-state’ (wars between states), ‘intra-state’ (wars within a state) or ‘extra-state’ (wars between a state and non-state actor). The COW projects definition of inter-state war roughly corresponds with the IHL definition of IAC, while combining the intra-state and extra-state categories provides a rough picture of all NIACs that have involved a state. Significantly this data does not include wars between non-state actors that do not directly involve any states.

In the ten year period between 2001 and 2010, the COW data shows only ten instances of states participating in what could be considered an IAC (inter-state wars). Significantly, these ten instances of states going to war with each other come from just two conflicts: the War in Afghanistan (involving 6 states) and the Iraq War (involving 4 states). In the same period states have participated in 62 wars which could be described as NIACs (extra-state and intra-state wars). For comparison, in

the ten year period prior to the drafting of the Geneva Conventions (1940-1949), the COW project records 42 instances of state participation in IACs (inter-state wars) and only 18 instances of state participation in NIACs (extra-state and intra-state wars).



Data: (Sarkees and Wayman, 2010)

This data clearly demonstrates that, compared to the period immediately prior to the drafting of the Geneva Conventions, ‘[i]nterstate wars have become very infrequent and relatively small’ (Goldstein, 2011, 5), while on the other hand the prevalence of NIACs has dramatically increased.

Since the bulk of IHL only applies to IACs, the majority of the world’s conflicts are now substantially unregulated. Subsequently, IHL fails to protect the majority of people who today find themselves caught in conflict zones – which is, after all, the very *raison d’être* of humanitarian law.

#### *B. The Increase in the Severity and Significance of NIACs*

The distinction between IACs and NIACs in IHL is largely a product of the traditional argument that the ‘domestic issues’ of states are not a concern for the international community. One of the core tenets of this argument is that the ‘scattered outbreaks of violence in intra-state conflicts do not endanger world peace’ (Werle 2005, 290) and thus ‘international armed violence raises questions of sovereign governance and not international regulation’ (Stewart 2003, 317).

However, NIACs have not only become more numerous than IACs, but also ‘more... brutal and damaging than their international counterparts’ (Stewart 2003, 316). Furthermore, contemporary NIACs have consistently proven to be capable of endangering peace and stability on a massive scale. For example, there is little doubt the recent conflict in Ukraine, which began as series of protests in 2013 and arguably never escalated from a NIAC to an IAC, posed a serious risk to peace in Europe. Indeed, as Andrew Monaghan (2014) notes, the conflict ‘appears to be a potential turning point in Euro-Atlantic security’ and is considered by many to have resulted in a ‘changed European security landscape’.

Similarly the ongoing NIACs in Syria, Iraq and Yemen have engulfed the Middle East in conflict and have drawn in states from well beyond the immediate region, including the United States, United Kingdom, and Australia.

The old argument that NIACs do not pose a threat to world peace and therefore do not require the same level of regulation by IHL as IACs simply no longer holds up.

### *C. The Rise of Armed Non-State Actors*

Concomitant with the increase in NIACs is the proliferation of Armed Non-State Actors (ANSAs). ANSAs are incredibly diverse in their structure, behaviour, and motivations (see Schneekener, 2006). They include major, powerful actors in international conflicts, such as Islamic State, Boko Haram and al-Qaeda, as well as smaller, lesser-known groups that may wield little influence. Significantly, ANSAs are often also ‘*de facto* governing authorities and non- or partially internationally recognized States’ (Geneva Call, ‘*Armed Non-State Actors*’, *n.d.*), such as the Houthis in Yemen and the PKK in Iraq.

There is little doubt that these groups are playing an increasingly complex and active role in contemporary conflicts and international affairs. Thus, engaging ANSAs with international law and encouraging their compliance with IHL is of utmost importance. Indeed, the United Nations Secretary-General has identified ANSAs’ lack of compliance with IHL as one of the five most critical challenges to the protection of civilians in conflict (Geneva Call, ‘*Humanitarian Norms*’, *n.d.*).

Despite this recognition, ‘[f]rom a legal perspective... international law remains largely state-centric, existing treaties and their enforcement mechanisms remain primarily focused on states and [ANSAs] cannot negotiate or become parties to relevant international treaties’ (DCAF and Geneva Call 2015). The clear distinction drawn between IACs and NIACs is perhaps the starkest example of this. This has significant consequences for the humanitarian aims of IHL as there is little incentive for ANSAs to comply with the law since the law provides few protections to ANSAs participating in NIACs (Stewart 2003, 346-7).

As Geneva Call (‘*Humanitarian Norms*’, *n.d.*) notes:

Even though [ANSAs] have obligations under IHL, ANSAs cannot become parties to relevant international treaties, and are generally precluded from participating in norm-making processes. Consequently, ANSAs may not feel bound to abide by rules that they have neither put forward nor formally adhered to.

It is clear that ‘for IHL to be effective, the belligerents must feel that they are legally bound by a shared set of rules’ (Odermatt 2013, 27). Updating or removing the distinction between the legal regimes governing IACs and NIACs so that ANSAs are indeed covered by IHL when fighting in NIACs would go some way to achieving this.



Furthermore, the relationship between States and ANSAs is also becoming increasingly complex. Contemporary conflicts often involve both States and ANSAs fighting both against and alongside each other. As a result of this complexity, the traditional boundary between IACs and NIACs is becoming increasingly blurred. This can be seen in contemporary conflicts such as those in Syria and Iraq, in which multiple States and multiple ANSAs are involved. The IHL doctrine of ‘internationalization’ goes some way to address this but, as discussed below, is not on its own sufficient.

Finally, and most importantly, the human consequence of such an arbitrary differentiation between the legal standards applied to conflicts cannot be ignored. The huge shortfall in protections afforded to those who find themselves in a NIAC, rather than an IAC, may be the difference between life and death for both combatants and civilians. Although international law may seek to differentiate between conflicts, in reality ‘it makes little difference to the victims whether they are involved in a non-international or an international armed conflict’ (Odermatt 2013, 25).

### **III. Overcoming the Gap: The ‘Internationalization’ of Non-International Armed Conflicts.**

There are two key ways in which IHL has developed in order to overcome the sharp distinction between IACs and NIACs and the consequences of this distinction discussed above. The first is through the extension of many of the principles of IACs to NIACs through the development of customary IHL. However, as noted above, significant differences between the two bodies of law still remain. The second is through the development of the doctrine of ‘internationalization’.

Internationalization can be defined as the ‘transformation of a *prima facie* NIAC into an IAC, thereby applying to this conflict the more comprehensive IAC legal regime’ (Milanovic and Hadzi-Vidanovic 2013, 292). Thus, internationalization does provide some recognition of the complex and fluid nature of armed conflict and the fact that conflicts often change from being ‘non-international’ to ‘international’ in character, and vice versa.

The primary test for internationalization comes from *Prosecutor v Tadić*. In this case the Appeals Chamber of the ICTY stated (at ¶ 84) that:

[I]n case of an internal armed conflict breaking out on the territory of a State, it may become international (or, depending upon the circumstances, be international in character alongside an internal armed conflict) if (i) another State intervenes in that conflict through its troops, or alternatively if (ii) some of the participants in the internal armed conflict act on behalf of that other State.

Though this may seem relatively straightforward, in practice this test can be extremely challenging to apply. In particular, determining either when a state has sufficiently ‘intervened’ in a conflict to internationalize it or when non-state participants in a conflict have been acting on behalf of

a state has proven particularly difficult (Stewart 2003, 323-333). The jurisprudence that has been developed by the major international courts and tribunals, most notably the ICTY, has led to a legal doctrine which is ‘complex, convoluted and the subject of considerable confusion’ (Stewart 2003, 326) and ‘notoriously difficult to apply’ (Odermatt 2013, 22).

Furthermore, even when a conflict satisfies the test of internationalization, the effect of internationalization is unclear as the laws applicable to an IAC are not necessarily applied to the entire conflict in question. For example, in the statement on internationalization given in the *Prosecutor v Tadić* judgment it was noted (at ¶ 84) that a conflict may be ‘be international in character *alongside* [emphasis added] an internal armed conflict’. Based on this statement, the predominant understanding of the effect of internationalization is that ‘an act of internationalization only renders international the conflict between the parties *belonging* to States rather than all conflicts in the territory’ (Stewart 2003, 333). As Stewart (2003, 333) notes, in practice this ‘often involves artificially differentiating internal aspects of armed conflicts from international, a process that has proved impractical, convoluted and imprecise’.

The consequence of the complexity of this doctrine is that determining whether or not a NIAC has become internationalized, and if so at what point this occurred and to what extent, has become incredibly challenging. For example, in 2014, the prominent international affairs think-tank Chatham House hosted a two-day workshop involving six eminent international legal experts and three country experts to discuss the legal classification of armed conflicts in Syria, Yemen and Libya. The resulting 42-page report (Arimatsou and Choudhury, 2014) arguably raised more questions than answers, with the experts frequently divided on the application of key legal principles.

Academics and experts have not been alone in finding such determinations challenging. For instance, Judge Shahabuddeen’s confusion over the doctrine of internationalization was evident in *Prosecutor v Tadić*, when he remarked (at ¶ 17):

I am unclear about the need to challenge *Nicaragua* [the leading International Court of Justice decision on state control of non-state actors]. I am not certain whether it is being said that that much debated case does not show that there was an international armed conflict in this case. I think it does, and that on this point it was both right and adequate.

This lack of certainty regarding internationalization has even led to delays in the proceedings of international criminal tribunals, including both the ICTY and the International Criminal Tribunal for Rwanda (ICTR), as it can be challenging to determine which crimes can actually be prosecuted (Stewart 2003, 327).

Perhaps most problematically though, the lack of clarity surrounding the principle of internationalization may detrimentally effect the application and enforcement of IHL norms *during* conflict, as it is frequently unclear in any given conflict which laws military commanders are obliged to apply. As Stewart (2003, 326) notes, ‘if the complexity of the various tests has proved difficult to

apply in the context of criminal prosecutions where the full extent of hostilities can be viewed in hindsight, it must be debilitating for forces involved in hostilities on the ground’.

#### **IV. Removing Conventional Boundaries: Reforming IHL**

The serious issues caused by the dichotomous classification of armed conflicts in IHL, and the failure of both customary IHL and the doctrine of ‘internationalization’ to address these issues, highlights a clear need for reform.

##### *A. Possible Reforms*

Arguably the most straightforward proposal for reform is the merger of the IAC and NIAC categories into a single legal regime. In theory, this would provide equal protection across all conflicts. Though, as noted above, a merger of the legal regimes governing IACs and NIACs has already occurred to some limited extent, the complete abolishment of the distinction between IACs and NIACs is extremely unlikely to be accepted by states. If it were to be accepted, it is also reasonably likely that any unified legal regime would be less protective than the current regime regulating IACs (Holland, 2011, 176-7).

Perhaps a more useful proposal for reform is not the merger of the legal categories of IACs and NIACs, but the creation of additional categories of conflict that more accurately reflect the realities of contemporary wars. Two frequently suggested categories are ‘Extra-State Armed Conflict’ and ‘Transnational Armed Conflict’ (see, for example, Schondorf, 2004; Corn, 2009; Holland, 2011, 174-6; von der Groeben, 2013). The category of ‘Extra-State Armed Conflict’ has been defined as including all ‘ongoing hostilities between a state and a non-state actor that take place, at least in part, outside the territory of the state’ (Schondorf, 2004, 3). Such a category would arguably fill the gap between NIACs and internationalized NIACs which exists in cases where an ANSA is fighting from the territory of a third state, but that third state is not actively involved in the conflict. The category of ‘Transnational Armed Conflict’ is a similar but arguably broader concept, which allows for ‘a de-linking of conflict and geographic borders’ (Holland, 2011, 175). Such a category could be used to regulate ‘global’ conflicts such as the so-called ‘War on Terror’.

##### *B. Impediments to Reform*

Any changes to the application of IHL, whether through customary international law or treaty law, requires at the very minimum the acquiescence of states. Unfortunately, this makes any attempt at reform extremely challenging.

One reason for this is the near sacrosanct status of the Geneva Conventions in international law. The Geneva Conventions have obtained a universal acceptance unlike any other treaty or convention before them. On the one hand this is a good thing and, indeed, precisely what advocates of IHL desire. The near total acceptance of the Geneva Conventions indicates that the fundamentals of IHL have become norms in international law. Practically, this means they are both less likely to be breached and easier to enforce. However, on the other hand, this status has undoubtedly made it more challenging

to update or modify the Conventions in any way whatsoever, even when it is clearly needed. As Rose (2007, 21) explains, '[t]he current treaty instruments have themselves become a holy canon. The suggestion that aspects of them might be inappropriate or ill-adapted to 21<sup>st</sup> Century asymmetrical conflict, and that they need rethinking, attract consternation and opprobrium among many expert practitioners'.

Of course, to suggest that the difficulty updating the Geneva Conventions is simply due to their revered status in international law would be naïve, and the practical, political and strategic motivations of states must also be considered. The most obvious of these considerations is that if IHL is reformed so that NIACs attract the same legal obligations as IACs, states would then be obliged to extend additional protections to ANSAs. In order to ensure compliance with the increased requirements of a reformed IHL, states in conflict with ANSAs would be saddled with a higher a burden on state resources and legal limits on their use of force.

The issue of state sovereignty also remains a significant hurdle to reform. As noted earlier, this has always been one of the main reasons for the distinction between IACs and NIACs. In fact, the eradication of the distinction between IACs and NIACs was proposed by Norwegian experts during the deliberations of the 1977 Additional Protocols. However, 'too great a divergence existed between the regulation that states are prepared to accept for a conflict between states and the regulation that states consider acceptable for an internal armed conflict involving their sovereignty' (Gasser, 1983, 146).

A related concern is that changing IHL to increase the regulation of NIACs may be seen as elevating the status of ANSAs to that of states under international law. This could legitimize ANSAs in a way which may be detrimental to the interests of any states currently in conflict with ANSAs. As Odermatt (2013, 28) argues, '[t]he concern [of states]... is not so much about the restriction on the state's use of force, but the message that the application of international humanitarian law sends about the nature of parties to the conflict.' After all, 'to apply humanitarian law [to NIACs] is to tacitly concede that there is another 'party' wielding power in the putatively sovereign state' (Abresch 2005, 756).

That said, it must be remembered that although any reform will be challenging to implement, it is not impossible. After all, IHL is not a stagnant body of law and has periodically been updated to reflect lessons learned from past conflicts. Just as the Geneva Conventions reflect the lessons of World War II, and the Additional Protocols of 1977 reflect the lessons of decolonization and apartheid (Rose 2007, 21), a new Convention or Additional Protocol could be drafted to reflect the lessons already learned from contemporary NIACs. Furthermore, there is no reason why such reform could not pre-empt foreseeable problems which may be caused by NIACs in the future. As with so many of the problems facing the international community, it is simply a matter of political will.

## **V. Conclusion**

It is clear that the conventional boundary drawn by IHL between IACs and NIACs no longer accurately reflects the nature of contemporary conflicts and is in serious need of reform. As a result of the relative increase of NIACs and decrease of the occurrence of IACs, significant changes to the nature of armed conflicts, and the increasingly active role played by ANSAs, IHL currently fails to adequately regulate the conduct of combatants in the majority of the world's armed conflicts.

Some effort has been made to increase the protections afforded to those caught in NIACs through the evolution of customary IHL and the emergence of the doctrine of 'internationalization', though these steps have not gone far enough. If IHL is to be successful in its aim of reducing the damage caused by armed conflicts, further reform must take place. Of course any reform will inevitably face some resistance, most notably from states reluctant to allow what they view as an impingement on their sovereignty. However, given the serious consequences of allowing non-international armed conflicts to remain relatively unregulated by international law, a concerted effort should be made to engender the reform of IHL in this area.

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