THE INTRODUCTION OF TRANSNATIONAL ARMED CONFLICTS INTO INTERNATIONAL HUMANITARIAN LAW*

*Gabriel Stephen R. Calleja***

ABSTRACT

Under international humanitarian law ("IHL"), which limits the effects of armed conflicts, common classifications of armed conflicts have long been in use. Today, however, an improvement to the existing framework is called for because there are now cases of armed conflicts that are not classifiable as either international armed conflicts or non-international armed conflicts under IHL. This Article seeks to introduce a new type of armed conflict termed "transnational armed conflict," which comprises armed conflicts that do not fall under either category and which have the following characteristics: (1) the parties involved are not all States; (2) the armed conflict does not fall under a war of national liberation; and (3) the armed conflict is not limited to the territory of any one State. Not recognizing such armed conflicts under IHL means that there will be no regulation of the fighting and no special protections given to the people caught up in these armed conflicts. This Article recommends that a new Convention be agreed upon recognizing and applying to transnational armed conflicts, (1) recognizing all of the basic principles applicable under IHL, (2) relating to prohibitions or restrictions of use of certain types of weapons, and (3) reaffirming the Martens clause.

---

* *Cite as* Gabriel Stephen R. Calleja, *The Introduction of Transnational Armed Conflicts into International Humanitarian Law*, 91 PHIL. L.J. 805, (2018).

** Attorney IV, Commission on Human Rights; Former Attorney II, Office of the Solicitor General; Former Legal Intern, International Committee of the Red Cross; J.D., University of the Philippines College of Law; B.S. Management, Major in Legal Management, Minor in Global Politics, Ateneo de Manila University (*Magna cum laude*); Researcher, UP College of Law 13th Red Cross International Humanitarian Law Moot Team; and Researcher, UP College of Law 2014 National Moot Court Competition on International Humanitarian Law Team.

I. CURRENT SITUATION IN INTERNATIONAL HUMANITARIAN LAW

International humanitarian law, a field of public international law, is "a set of rules that seeks, for humanitarian reasons, to limit the effects of armed conflict."1 It dictates how armed personnel should act in armed conflicts, such as what types of weapons and tactics they may use. For all individuals involved in armed conflicts, international humanitarian law also provides for their protection by establishing certain minimum standards that must be met in treating other people, even soldiers of an opposing side, during armed conflicts. In totality, it comprises "the whole of established law serving the protection of man in [an] armed conflict."[2]

What is the definition of an armed conflict, though? Admittedly, "there is no settled definition of the term 'armed conflict.'"[3] However, as noted by the Use of Force Committee of the International Law Association, all armed conflicts have two common characteristics: (1) the existence of armed groups and (2) the armed groups being engaged in fighting of some intensity.[4]

There are two types of armed conflicts: international and non-international armed conflicts. International armed conflicts refer to either military confrontations between multiple States or wars of national liberation. Non-international armed conflicts, on the other hand, refer to all other types of military confrontations, provided that they meet additional requirements. What these additional requirements are will depend on whether one seeks to apply Common Article 3 of the Geneva Conventions of 1949 or Additional Protocol II to the Geneva Conventions of 1949. This is the framework of international humanitarian law at present.

However, this framework appears to be inadequate in this day and age. To begin with, Yoram Dinstein gave two situations wherein a differentiation between international and non-international armed conflicts

---

[1] International Committee of the Red Cross ("ICRC"), *What is international humanitarian law?*, at 1, ¶ 1 (2014), *at* https://www.icrc.org/en/download/file/4541/what-is-ihl-factsheet.pdf.

[2] Cristopher Greenwood, *Historical Development and Legal Basis*, *in* THE HANDBOOK OF HUMANITARIAN LAW IN ARMED CONFLICTS 1 (Dieter Fleck ed., 1995).

[3] Natasha Balendra, *Defining Armed Conflict*, 29 CARDOZO L. REV. 2461, 2468 (2007-2008).

[4] Mary Ellen O'Connell, *Defining Armed Conflict*, 13 J. CONFLICT & SEC. L. 393, 398 (2008).

is difficult because the characteristics of both types of armed conflicts are present in the same situation. First,

> [a]rmed conflicts may be mixed horizontally in the sense that they incorporate elements of both inter-State hostilities (between two or more belligerent States) and intra-State hostilities (between two or more clashing groups within the territory of one of the belligerent States were a civil war is raging). The dual conflicts, internal and international, may commence simultaneously or consecutively (the international armed conflict preceded by the internal armed conflict or vice versa).[5]

The example that Dinstein provided for this horizontal mixture was the situation of Afghanistan back in 2001: "[T]he Taliban regime, having fought a long-standing civil war with the Northern Alliance, got itself embroiled in an inter-State war with an American-led Coalition."[6] Second,

> [a]rmed conflicts may [...] be mixed vertically in the sense that what has started as an intra-State armed conflict evolves into an inter-State armed conflict. One potential development is that the intra-State armed conflict would spawn an inter-State armed conflict through the military intervention of a foreign State on the side of rebels against the central Government. Another possibility is the implosion of a State which has plunged into a civil war, and has then fragmented into two or more independent States.[7]

Dinstein referred to the state of affairs in Yugoslavia in the 1990s as an example of a vertical mixture.[8]

This Article seeks to address another situation to which none of the present treaties in international humanitarian law or doctrines in customary international humanitarian law can be applied: an armed conflict akin to what was the case from 2014 to 2016 in Iraq, Syria, and Libya due to the occupation by the Islamic State in Iraq and Syria ("ISIS") of certain territories in these three countries.[9] ISIS is neither a State nor a group

---

[5] YORAM DINSTEIN, THE CONDUCT OF HOSTILITIES UNDER THE LAW OF INTERNATIONAL ARMED CONFLICT 14 (2004).

[6] *Id.*

[7] *Id.* at 15.

[8] *Id.*

[9] Paul Cruickshank, Nic Robertson, Tim Lister & Jomana Karadsheh, *ISIS comes to Libya*, CABLE NEWS NETWORK ("CNN") WEBSITE, *at* http://edition.cnn.com/2014/11/18/world/isis-libya/ (last visited June 30, 2018); Richard Allan Greene & Nick Thompson, *ISIS: Everything you need to know about the group*, CNN WEBSITE, *at* http://edition.cnn.com/2015/01/14/world/isis-everything-you-need-to-know/ (last updated Aug. 11, 2016); Tim Lister,

fighting a war of national liberation, so such an armed conflict does not fall under the category of an international armed conflict. Furthermore, the territory that ISIS controlled during that period was not limited to the national territory of any one State. Thus, the armed conflict that ISIS was involved in also did not meet the requisites of a non-international armed conflict as defined under either Common Article 3 the Geneva Conventions of 1949 or Protocol II Additional to the Geneva Conventions of 1949. The situation it presents is an exceptional one which is not addressed by any of the types of armed conflict currently recognized by international humanitarian law. Though the analogy is not perfect because ISIS is a terrorist regime, it must still be recognized that situations with similar characteristics may arise in the future, which means that there is a need to develop a means to address such situations.

To explain it further,

> [w]hile IHL recognizes two categories of armed conflicts (international and non-international), there are three possibilities for the combination of actors and territory: a conflict may be an international armed conflict between states, a non[-]international conflict between a state and one or more non-state actors (or several non-state actors), and [...] a 'transnational' conflict between a state and a non-state group (or between two non-state groups) on more than one state territory.[10]

This Article seeks to address this deficiency in the field of international humanitarian law by proposing to introduce a third type of armed conflict to cover the third possibility in the combination of actors and territory. This third type of armed conflict will be termed a "transnational armed conflict," which will stand alongside both international armed conflicts and non-international armed conflicts in international humanitarian law.

II. ANTECEDENTS IN THE FIELD OF INTERNATIONAL HUMANITARIAN LAW

ISIS: The first terror group to build an Islamic state?, CNN WEBSITE, *at* http://edition.cnn.com/2014/06/12/world/meast/who-is-the-isis/ (last updated June 13, 2014).

[10] Mindia Vashakmadze, *The Applicability of International Humanitarian Law to "Transnational" Armed Conflicts*, European University Institute Working Paper MWP 2009/34, at 3 (2009), *available at* http://cadmus.eui.eu/handle/1814/12676.

Currently, while the term "international humanitarian law" is

> generally used in connection with the Geneva Conventions and the Additional Protocols of 1977, it also applies to the rules governing methods and means of warfare and the government of occupied territory, for example, which are contained in earlier agreements such as the Hague Conventions of 1907 [...] It also includes a number of rules of customary international law. International humanitarian law thus includes most of what used to be known as the laws of war.[11]

As such, it can be seen that the main sources of law of international humanitarian law are: (1) the Hague Conventions of 1907; (2) the Geneva Conventions of 1949; and (3) the two Additional Protocols of 1977, with the two Additional Protocols being supplements to the Geneva Conventions of 1949.

From the listing of the main treaties of international humanitarian law, a conclusion can be made that there are two domains within the field of international humanitarian law: (1) the law of The Hague and (2) the law of Geneva. The goal of the law of The Hague is "to regulate hostilities."[12] It "establishes the rights and duties of belligerents in the conduct of operations and limits the choice of means to injure the enemy."[13] On the other hand, the law of Geneva gives protection to persons caught up in armed conflicts.[14] It was "developed exclusively for the benefit of war victims."[15]

This is the situation at present. To understand it, though, one must first ask: How did international humanitarian law grow to become the field of law that it is now? To begin with, international humanitarian law was born out of the idea that even though we may enter into armed conflicts with other people, we do not stop being humane in our treatment of one another.

The event that initiated the thinking behind international humanitarian law was the Battle of Solferino in June 1859. By nightfall on the day of the battle, "6,000 dead and 36,000 wounded lay on the battlefield.

---

[11] Greenwood, *supra* note 2, at 9.

[12] JEAN PICTET, DEVELOPMENT AND PRINCIPLES OF INTERNATIONAL HUMANITARIAN LAW 2 (1985).

[13] *Id.* at 49.

[14] *Id.* at 2.

[15] *Id.*

No effort was made to gather them up until the following day, and some of the wounded received no help for several days."[16]

However, it was not the Battle of Solferino on its own that influenced the growth of international humanitarian law. What was important was the impact of that battle on Henry Dunant, who had come to

> the nearby town of Castiglione shortly after the battle, was "seized by horror and pity" at the sight of the wounded, piled up in the churches, dying of infection and suffering atrocious pain – needlessly, because if they had been gathered and tended in time, many of them would have wounded. Dunant did everything he could for the wounded and organized a first aid movement with the women of the region, inspiring them to help, by word and example.[17]

Being seriously changed by what he had seen in the battle's aftermath, Henry Dunant published a book, A MEMORY OF SOLFERINO:

> In addition to his personal testimony, he made a two-fold proposal: that in every country a volunteer relief society be constituted which would train and prepare itself in peacetime […] to assist the army's medical service in the event of war; secondly, that the various states meet in a congress and adopt an inviolable international principle, guaranteed and sanctioned by a convention, to provide a legal basis for the protection of military hospitals and medical personnel. The first part of this proposal [eventually] led to the creation of the Red Cross; the second to the Geneva Convention [of 1864].[18]

The International Red Cross that resulted from this proposal later became the guardian and custodian of the Geneva Conventions.

However, that only explains what influenced the start of the Geneva portion of international humanitarian law. For the part of international humanitarian law that deals with The Hague, the kind of thinking that led to its creation began in 1864 at St. Petersburg. There, "[a]larmed by the invention of a type of bullet which exploded in impact, Czar Alexander II […] convoked a conference intended to 'attenuate as much as possible the calamities of war.'"[19]

---

[16] PICTET, *supra* note 12, at 25.
[17] *Id.*
[18] *Id.* at 26.
[19] PICTET, *supra* note 12, at 49.

During that same year, a diplomatic conference was held at Geneva. It was during this diplomatic conference that the Geneva part of international humanitarian law had its actual start upon the adoption of the Geneva Convention of August 22, 1864 for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field.[20]

The call by Czar Alexander II back in 1864 in St. Petersburg for a conference concerning the calamities of war then had its fruition with the St. Petersburg Conference on December 11, 1868, which ended with "the Declaration of St. Petersburg [...] This abolished not only explosive bullets[,] but also [...] 'any charged projectile of a weight below 400 [grams], which is either explosive or charged with fulminating or inflammable substances.'"[21]

In 1898, Czar Nicholas II of Russia then proposed the idea of the First International Peace Conference, the original goal being to "limit the evils of war and forbid new weapons."[22] The representatives of the various countries participating in this Conference met on May 18, 1899,[23] with the Conference eventually resulting in the Hague Conventions of 1899, which would govern the conduct of war during that period of time.

A portion of particular importance in the Hague Conventions of 1899 was the Martens Clause, which can be found in the Preamble of the Second Hague Convention of 1899.[24] The Martens Clause was developed by Friedrich von Martens, who was the delegate of Russian Tsar Nicholas III at the Hague Peace Conference of 1899.[25] The Martens Clause provides:

> Until a more complete code of the laws of war is issued, the High Contracting Parties [...] declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience.[26]

---

[20] *Id.* at 26.

[21] *Id.* at 49.

[22] *Id.* at 50.

[23] *Id.*

[24] IGOR BLISHCHENKO, INTERNATIONAL HUMANITARIAN LAW 33 (1989).

[25] Greenwood, *supra* note 2, at 28.

[26] Hague Convention II with Respect to the Laws and Customs of War on Land and its annex: Regulation concerning the Laws and Customs of War on Land preamble, July 29, 1899, 187 Consol. T.S. 429.

What the Martens Clause means is that means that the "mere omission of a matter in a treaty does not mean that international law should necessarily be regarded as silent on that subject [...] the adoption of the treaty in question does not preclude protection by customary international law."[27] Thus, just because what one should do in a certain situation during an armed conflict is not expressly provided for in any of the treaties governing the field of international humanitarian law does not mean that one is free to do whatever one wants in such a situation. If there is nothing written in any treaty as to a particular topic or situation occurring in an armed conflict, one should turn to customary international humanitarian law for guidance. Customary international humanitarian law serves as a supplement to the treaties governing international humanitarian law.

After these developments in the law of The Hague, attention was brought back to the Geneva Convention of August 22, 1864. It was thought that improvements could be made to such Convention for it to accomplish its goal better of protecting victims of war in armed conflict situations. Thus, the Geneva Convention of August 22, 1864 was revised and replaced by the Geneva Convention of 1906 for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field.[28]

The Second International Peace Conference was then held to complete what was started by the First International Peace Conference that led to the Hague Conventions of 1899. The Second International Peace Conference was held on 1907 at the Hague, like the First International Peace Conference.[29] This Second Conference resulted in both the revision of the Hague Conventions of 1899 and the addition of several new Conventions. "Among the new Conventions, one was devoted to the procedure for opening hostilities, and another to the rights and duties of neutrals. Seven others dealt with maritime warfare."[30] In addition, the Martens Clause was again included in the Preamble of the Fourth Hague Convention of 1907.[31] Collectively, all the Conventions made in 1907 are called the Hague Conventions of 1907, which are now the main basis of the law of The Hague in international humanitarian law.

---

[27] Greenwood, *supra* note 2, at 29.
[28] DINSTEIN, supra note 5, at 10.
[29] PICTET, *supra* note 12, at 51.
[30] *Id.*
[31] BLISHCHENKO, supra note 24.

The next major event in the development of the field of international humanitarian law occurred in 1929. In this year, the Geneva Convention of 1906 was again revised and replaced, leading to the 1929 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field.[32] In addition to this revision, a second Geneva Convention was added, this time focusing on prisoners of war. This new Geneva Convention was termed the 1929 Geneva Convention Relative to the Treatment of Prisoners of War.[33]

It was in 1949 that the Geneva Conventions of 1929 were replaced and became the Geneva Conventions of 1949. This came about after further consideration on the part of the various participating States, which, on that year, led to the two Geneva Conventions of 1929 being "superseded by four Conventions dealing with the wounded and sick in armed forces in the field [Convention (I)], wounded sick and shipwrecked members of armed forces at sea [Convention (II)], prisoners of war [Convention (III)], and the protection of civilians [Convention (IV)]."[34]

What can be seen as a common thread connecting all of the treaties in international humanitarian law is the type of situation that they apply to: international armed conflicts. International armed conflicts, or inter-State armed conflicts, at least at that point in time, were military confrontations between two or more States. This was because most, if not all, of the armed conflicts then were fought between two or more States, leading to all of the treaties dealing with international humanitarian law up to that point being applicable only to such kinds of situations. This can be seen in Common Article 2 of the 1949 Geneva Conventions:

> In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.
>
> The Convention shall also apply 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. Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be

[32] DINSTEIN, *supra* note 5, at 10.
[33] *Id.*
[34] *Id.* at 11.

> bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.[35]

As most States have now acceded to the Geneva Conventions of 1949, the term "High Contracting Party" in the Geneva Conventions of 1949 is now interchangeable with "State," which proves that the Geneva Conventions of 1949 apply to armed conflicts between States, meaning international armed conflicts.

The only exception to the rule that the Geneva Conventions of 1949 apply solely to international armed conflicts is Common Article 3 of the Geneva Conventions of 1949. Common Article 3 of the Geneva Conventions of 1949 provides for the following:

> In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:
>
> (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
>
> (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
> (b) taking of hostages;
> (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
> (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

---

[35] Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 2, Aug. 12, 1949, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, art. 2, Aug. 12, 1949, 75 U.N.T.S. 85; Geneva Convention relative to the Treatment of Prisoners of War, art. 2, Aug. 12, 1949, 75 U.N.T.S. 135; Geneva Convention relative to the Protection of Civilian Persons in Time of War, art. 2, Aug. 12, 1949, 75 U.N.T.S. 287.

> (2) The wounded and sick shall be collected and cared for.
>
> [...] The Parties to the conflict should further [endeavor] to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.
>
> The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.[36]

As can be seen from the very provisions of Common Article 3 of the Geneva Conventions of 1949, it applies to non-international armed conflicts.

> Two separate criteria exist in this provision [...] there is a positive requirement as regards the geographical location of the conflict, which must take place "in the territory of one of the High Contracting Parties" (in the sense of being *limited* to the territory of a High Contracting Party) [...] second [...] requires that there be an "armed conflict" [...] .[37]

Also, non-international armed conflicts, at least as provided for by Common Article 3, include both armed conflicts between the armed forces of a State's government, and an armed opposition group as well as armed conflicts between various armed opposition groups.[38] Thus, as long as the armed conflict is not solely fought between various States, the conflict situation falls under Common Article 3, and the parties to that armed conflict must, as a minimum, provide for the protections conferred by Common Article 3. Other protections given under the Geneva Conventions of 1949 may also be given within the said armed conflict by special agreement between the parties to that armed conflict.

Barring the exception of Common Article 3 of the Geneva Conventions of 1949 as earlier mentioned, both the Hague Conventions of 1907 and the Geneva Conventions of 1949

---

[36] Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, *supra* note 35, at art. 3; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, *supra* note 35, at art. 3; Geneva Convention relative to the Treatment of Prisoners of War, *supra* note 35, at art. 3; Geneva Convention relative to the Protection of Civilian Persons in Time of War, *supra* note 35, at art. 3.

[37] LINDSAY MOIR, THE LAW OF INTERNATIONAL ARMED CONFLICT 31-32 (2002).

[38] FRITS KALSHOVEN & LIESBETH ZEGVELD, CONSTRAINTS ON THE WAGING OF WAR: AN INTRODUCTION TO INTERNATIONAL HUMANITARIAN LAW 69 (3rd ed. 2001).

> applied exclusively to inter-State armed conflicts. Consistent with that approach[,] they limited belligerent status to the armed forces of States, with a modest extension to volunteer corps and militia, in 1907, and to organized resistence [sic] movements operating within or without occupied territory, in 1949. All such armed groups had to belong to or depend upon a Party to the conflict, namely, a State. The most extreme concession was a *levée en masse*, legally defined as "inhabitants of a non-occupied territory who[,] on the approach of the enemy[,] spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units."[39]

After the Second World War, there was an expectation that, unlike before, there would be fewer armed conflicts between various States (international armed conflicts) and more non-international armed conflicts.[40] Although Common Article 3 of the Geneva Conventions of 1949 did provide for minimum protections to people within an armed conflict, such was still not enough as it "was so embryonic and incomplete that an additional major development was called for."[41]

This belief that Common Article 3 was not yet enough to meet the new challenges that would have to be met in post-Second World War armed conflicts led to the creation of the two Protocols Additional to the Geneva Conventions of 1949, created during the diplomatic conference on international humanitarian law in Geneva from 1974 to 1977.[42]

> The Final Act of the Conference was signed on 10 June 1977 [...] This Final Act authenticated and recorded the texts of the two Protocols adopted by consensus in the final plenary session of the Conference in 1977. Both instruments are styled "Protocols Additional to the Geneva Conventions of 1949", Protocol I relating to international, and Protocol 2 to internal, armed conflicts[.][43]

Protocol I Additional to the Geneva Conventions of 1949, while still incorporating the definition of international armed conflicts as previously

---

[39] G.I.A.D. Draper, *Wars of National Liberation and War Criminality*, *in* RESTRAINTS ON WAR: STUDIES IN THE LIMITATION OF ARMED CONFLICT 140 (Michael Howard ed., 1979).

[40] PICTET, *supra* note 12, at 46.

[41] *Id.* at 47.

[42] BLISHCHENKO, *supra* note 24, at 18.

[43] Draper, *supra* note 39, at 144.

provided for in Common Article 2 of the 1949 Geneva Conventions, included new situations in its definition of international armed conflicts:

> Article 1. General principles and scope of application. [...]
>
> 3. This Protocol, which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in the situations referred to in Article 2 common to those Conventions.
>
> 4. The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.[44]

The definition of international armed conflicts in Common Article 2 of the Geneva Conventions of 1949 has been expanded. International armed conflicts under Protocol I Additional to the Geneva Conventions of 1949 included "wars of national liberation," with the definition of the term "wars of national liberation" being found in Subsection 4 of Article 1 of Protocol I Additional to the Geneva Conventions of 1949.[45] Thus, while the Geneva Conventions of 1949, except for Common Article 3 thereof, formerly applied only to armed conflicts between States, Protocol I amended the Geneva Conventions of 1949 to apply to both armed conflicts between States and wars of national liberation. The Martens clause was again reaffirmed in Additional Protocol I,[46] thus showing that such principle continued to be recognized in international humanitarian law.

On the other hand, Protocol II Additional to the Geneva Conventions of 1949 is applicable to a narrower range of situations compared to Common Article 3 of the Geneva Conventions of 1949. As expressly provided by Article 1 of Protocol II Additional to the Geneva Conventions of 1949:

> Article 1. Material field of application.—

---

[44] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 1, June 8, 1977, 1125 U.N.T.S. 3.

[45] KALSHOVEN & ZEGVELD, *supra* note 38, at 85.

[46] Greenwood, *supra* note 2, at 28-29.

> 1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.
>
> 2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.[47]

As Article 1 of Additional Protocol II expressly stated that it applies to armed conflicts not covered by Article 1 of Additional Protocol I, that meant that it did not apply to international armed conflicts as defined by Additional Protocol I, that is, inter-State armed conflicts and wars of national liberation. Furthermore, the armed conflict must

> take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.[48]

Lastly, Protocol II also does not apply to "situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts."[49]

What this means is that Protocol II has a more restrictive definition of non-international armed conflicts than that of Common Article 3 of the Geneva Conventions 1949. Thus, there may be armed conflicts which,

---

[47] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) art. 1, June 8, 1977, 1125 U.N.T.S. 609.

[48] Art. 1 (1).

[49] Art. 1 (2).

although qualifying as non-international conflicts under Common Article 3, will not meet the threshold to be counted as non-international armed conflicts under Protocol II. Following the express provisions under Article 1 of Additional Protocol II, while Additional Protocol II "applies only to a conflict between the government of a State and a rebel movement," Common Article 3 "is broad enough to cover a conflict between different rebel movements competing for power within a State where the government is not involved as such or has ceased to exist."[50] Furthermore, Protocol II requires a certain level of territorial control by the parties to the armed conflict, such territorial control requiring to "be sufficient firstly to allow the rebels to mount concerted and sustained military operations, and secondly, to allow the insurgents to implement the pro-visions of the Protocol."[51] Lastly, it can be concluded from Article 1 (2) of Additional Protocol II that such Additional Protocol only applies to armed conflicts with intensities akin to civil wars.[52]

That is the present state of international humanitarian law, at least as to the main legal bases for international humanitarian law, with a special focus on the types of armed conflicts that they apply to. Thus, it can be seen that international humanitarian law currently applies only to two types of armed conflicts: (1) international armed conflicts and (2) non-international armed conflicts. Non-international armed conflicts can then be divided into two types: (1) non-international armed conflicts under Common Article 3 of the Geneva Conventions of 1949 and (2) non-international armed conflicts under Additional Protocol II.

II. STATEMENT OF ISSUES

Recognizing the current state of international humanitarian law, this paper seeks to address the following issues:

1. What types of situations do not currently fall under either international armed conflicts or non-international armed conflicts?
2. What problems come with having certain armed conflicts not fall under the protection of international humanitarian law?
3. What will be the definition of a transnational armed conflict? What kinds of situations will it encompass?

---

[50] Art. 1 (2).

[51] MOIR, *supra* note 37, at 105.

[52] Cristopher Greenwood, *Scope of Application of Humanitarian Law*, *in* THE HANDBOOK OF HUMANITARIAN LAW IN ARMED CONFLICTS 48 (Dieter Fleck ed., 1995).

4. What kinds of provisions should be included in a Convention applicable to transnational armed conflicts?

III. ANALYSIS OF THE ISSUES

A. Armed conflicts that are: (a) not fought between States; (b) not classified as wars of national liberation; and (c) not limited to the territory of any one State do not fall under any of the recognized classes of armed conflicts (international or non-international).

To determine what kinds of armed conflicts do not fall under the current classes of armed conflicts (international or non-international), one must look at the elements of both international armed conflicts and non-international armed conflicts. If an armed conflict does not meet all of the requirements to be classified as either an international armed conflict or a non-international armed conflict, then such armed conflict does not fall under either of the two recognized types of armed conflicts under international humanitarian law.

Beginning with international armed conflicts, the original definition of such an armed conflict under the Geneva Conventions of 1949 was any conflict situation between two or more States.[53] As stated by Jean Pictet in his Commentary on the Geneva Conventions of 1949, an international armed conflict is "[a]ny difference arising between two States and leading to the intervention of armed forces [...] even if one of the Parties denies the existence of a state of war."[54] It does not matter if no actual force of arms is employed, as Common Article 2 also incorporates situations of military occupation of another State's territory regardless of whether armed resistance is met by the occupying force.[55] Furthermore, it does not matter if an opposing party in an armed conflict is not recognized as a State or as a Government.[56] As long as all the parties involved in the armed conflict meet all the requirements of statehood, then the armed conflict is an international armed conflict.

---

[53] *Id.* at 42.

[54] ICRC, COMMENTARY: I GENEVA CONVENTION FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED AND SICK IN ARMED FORCES IN THE FIELD 32 (Jean S. Pictet ed., 1952).

[55] Greenwood, *supra* note 52, at 40-41.

[56] DINSTEIN, *supra* note 5, at 16.

An international armed conflict, because of the introduction of Additional Protocol I into the field of international humanitarian law, now also includes wars of national liberation. As earlier stated, wars of national liberation are "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination."[57] In terms of intensity, it is required that "[s]uch 'peoples' or their authority [...] must have that degree of territorial control, military organization, and discipline as will enable them to carry out sustained and concerned military organizations [sic], as requisite in Protocol 2."[58]

As to non-international armed conflicts, as Additional Protocol 2 is more restrictive in application than Common Article 3 of the Geneva Conventions of 1949, one need only turn to the elements of a non-international armed conflict under Common Article 3. As long as an armed conflict meets the requirements under Common Article 3, then it meets the very minimum to be counted as a non-international armed conflict. Such would be a non-international armed conflict under international humanitarian law even if it is not a non-international armed conflict under Additional Protocol 2.

As discussed under Common Article 3, there are two elements to be met for a conflict situation to be classified as a non-international armed conflict: first, the conflict situation must occur and be limited to the territory of one State; and second, there must be an actual armed conflict occurring in such territory.[59]

For an armed conflict to not be classified as an international armed conflict under either Common Article 2 of the Geneva Conventions of 1949 or Additional Protocol I, while there should be an armed intervention between certain parties or an armed occupation of a certain territory, there must be at least one party involved which does not meet the requisites for statehood. This is because if all of the parties involved in the armed conflict are States, then the conflict is fought between States and falls under one of the definitions of an international armed conflict. Furthermore, as Additional Protocol I added wars of national liberation to the types of situations falling under Common Article 2, the armed conflict must also not be counted as a war of national liberation. This means that that armed

---

[57] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), *supra* note 44.

[58] Draper, *supra* note 39, at 150.

[59] MOIR, *supra* note 37.

conflict must not be fought by peoples against colonial domination, alien occupation, or racist regimes in the exercise of their right of self-determination. Thus, an armed conflict must neither be fought between States exclusively nor be a war of national liberation to be excluded as an international armed conflict.

Moreover, for an armed conflict to not be classified as a non-international armed conflict under Common Article 3, at the very minimum, such an armed conflict must not meet the territorial requirements under Common Article 3. As one of the elements of a non-international armed conflict under Common Article 3 is that the armed conflict must be limited to the territory of any one State, for such an armed conflict to not be classified as a non-international armed conflict, it must not be limited to any one State's territory.

Combining all that has been discussed, then, an armed conflict that does not fall under the definitions of either an international or a non-international armed conflict would be one that has the following three characteristics: (1) The parties involved are not all States; (2) the armed conflict does not fall under the definition of a war of national liberation; and (3) the armed conflict is not limited to the territory of any one State. This would be an armed conflict that does not meet the elements of either an international armed conflict or a non-international armed conflict. Such an armed conflict would be an armed conflict not recognized under international humanitarian law.

B. If there are armed conflicts that are not recognized under current international humanitarian law, the parties involved would not be limited in what courses of action and weapons they may use. Furthermore, the people involved in such armed conflicts would not have the rights and protections otherwise given in armed conflicts recognized under international humanitarian law.

To determine what would be lost if certain armed conflicts do not fall under the domain of international humanitarian law, it must first be determined what international humanitarian law requires of the parties involved in armed conflicts and what international humanitarian law gives to the people entangled in such armed conflicts.

Under the law of The Hague, international humanitarian law regulates the fighting involved in armed conflicts.[60] The Hague law also

[60] PICTET, *supra* note 12.

either prohibits or restricts the use of certain types of weapons. The Hague Conventions of 1907, for example, established certain prohibitions relating to explosive projectiles, poison, dumdum bullets, asphyxiating gases, and the like and generally prohibited weapons causing superfluous injuries or injuries out of proportion with the purpose of the conflict.[61] In fact, not only does the Hague law prohibit or regulates certain types of weapons, it also prohibits or regulates certain methods of warfare.[62]

Geneva law, on the other hand, codifies "the rules protecting the person in armed conflicts."[63] It protects civilians against the effects of armed conflicts.[64] Furthermore, it "regulates the treatment of persons who are *hors de combat*: the wounded, sick, shipwrecked, persons parachuting from a disabled aircraft, prisoners of war, and civilian internees, as well as an enemy's civilian population."[65] A person *hors de combat* would be: "(a) anyone [...] in the power of an adverse party; (b) anyone [...] defenceless because of unconsciousness, shipwreck, wounds or sickness; or (c) anyone who clearly expresses an intention to surrender; provided he or she abstains from any hostile act and does not attempt to escape."[66]

In general, international humanitarian law has had the effect of reducing the negative impact of armed conflicts, be it in damage to the environment or to various objects or in human casualties. Further, international humanitarian law has proven that it saves soldiers and civilians alike, and also reduces the pain and suffering of the sick and wounded during armed conflicts, especially in armed conflicts occurring after the Second World War.[67]

Thus, when there are armed conflicts that are not currently legally recognized by international humanitarian law, it would only mean, first, that hostilities in armed conflicts would not be regulated. The parties involved would be free to use any type of weapon and any method of warfare they wish to attain victory. They would be free to use napalm weapons, poison, and the like, regardless of the effects of that weapon, even if the soldier targeted with such weapon would sustain greater injury, or even die, when a

---

[61] *Id.* at 54.

[62] Greenwood, *supra* note 2, at 10.

[63] PICTET, *supra* note 12.

[64] *Id.* at 51.

[65] Cristopher Greenwood, *Historical Development and Legal Basis*, *in* THE HANDBOOK OF HUMANITARIAN LAW IN ARMED CONFLICTS 10 (Dieter Fleck ed., 1995).

[66] JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, I CUSTOMARY INTERNATIONAL HUMANITARIAN LAW 164 (2009).

[67] BLISHCHENKO, *supra* note 24, at 98-99.

less harmful type of weapon would accomplish the same goal. The same license would apply to methods of warfare, with the only difference being that instead of weapons being involved, it would be any scheme or strategy involved in an armed conflict, like disguising one's soldiers to look like soldiers of the enemy party.

Second, in armed conflicts not recognized by international humanitarian law, civilians and persons *hors de combat* would not be protected. The parties involved in such armed conflicts would then be free to injure or kill such civilians and persons *hors de combat*. Said parties would even be able use such people as hostages in order to get something from the opposing party if they wanted to. Even if injuring or killing such civilians and person *hors de combat* would not contribute anything to victory in the armed conflict, any party involved in such armed conflict would still be free to do so, giving them unlimited leeway as to what they may do as soon as hostilities are joined.

Without the protection of international humanitarian law, the negative effects of armed conflicts would be magnified. Casualties, whether of civilians or armed personnel, would increase. Even damage to the environment and civilian objects would be magnified. In the end, no party or person involved in such types of armed conflicts would be benefited by a lack of regulations and protections given under international humanitarian law.

C. Transnational armed conflicts would be defined as conflicts which are fought either between any State's armed forces and a non-State armed group or between non-State armed groups and which are not limited to the territory of any one State. Furthermore, such type of armed conflicts must not fall under the definition of wars of national liberation.

The term "transnational armed conflict" would cover armed conflicts that are not currently recognized under international humanitarian law. As such, any definition of transnational armed conflicts must again turn to what kinds of armed conflict are not recognized as either of the two armed conflicts under international humanitarian law.

As discussed, an armed conflict that is not recognized under international humanitarian law, that is, one which does not fall under the definitions of either an international armed conflict or a non-international armed conflict, would be one that has three characteristics: (1) the parties involved are not all States; (2) the armed conflict is not a war of national

liberation; and (3) the armed conflict is not limited to the territory of any one State.

Thus, it is important that the definition of a transnational armed conflict would include all of the elements of the type of armed conflict not legally acknowledged under international humanitarian law. To begin with, a transnational armed conflict must be a conflict "between the armed forces of a state and non-state armed groups (or between such groups) operating across borders on the territory of more than one state."[68]

However, such a definition is not enough as it incorporates only two of the three characteristics of an unrecognized armed conflict. It still does not recognize the fact that Additional Protocol I added wars of national liberation to the types of situations falling under international armed conflicts. A transnational armed conflict, then, must also not be a war of national liberation. It must not be an armed conflict wherein people are fighting against colonial domination, alien occupation, or against racist regimes in the exercise of their right of self-determination. Failing that, such type of armed conflict would be recognized as an international armed conflict.

In totality, a transnational armed conflict is defined as armed conflict fought between a State's armed forces and a non-State armed group or between non-State armed groups and which is fought in a territory encompassing that of more than one State. In addition, such type of armed conflict must not fall under the definition of a war of national liberation.

Although the following will not need to be included in the definition of a transnational armed conflict, it must still be remembered that a transnational armed conflict must still meet the two characteristics common to all armed conflicts: (1) the parties involved are armed groups and (2) such armed groups are engaged in fighting of some intensity.[69] Failing that, there will be no armed conflict to begin with.

Finally, in order to introduce the aforementioned definition of a transnational armed conflict into international humanitarian law, there must be a Convention expressly stating it. Without any Convention expressly defining what transnational armed conflicts are, such conflict situations would still not be legally recognized under international humanitarian law. Thus, a new Convention applicable to transnational armed conflicts is vital

---

[68] Vashakmadze, *supra* note 10, at 1.

[69] O'Connell, *supra* note 4.

to introduce this new type of armed conflict into the field of international humanitarian law. All efforts must be exerted into advocating for the creation of such a Convention by all States and all interested parties, especially the International Committee of the Red Cross ("ICRC"), for the improvement of the field of international humanitarian law at large and for the benefit of the people involved in such an armed conflict.

D. In any Convention recognizing, and applicable to, transnational armed conflicts, at the very least, all the basic principles under international humanitarian law must be provided for. Furthermore, prohibitions and regulations on certain types of weapons and the Martens clause must also be included in such a Convention.

Now that the definition of a transnational armed conflict has been proposed, attention must now be focused on the contents of the proposed Convention applicable to transnational armed conflicts. Other than expressly recognizing and defining transnational armed conflicts, an important question is what such a Convention's provisions would provide. After all, there are differences as to the provisions involved in the Geneva Conventions of 1949 and Additional Protocols applicable to both international armed conflicts and non-international armed conflicts. It would only be natural to note what provisions would be included in a Convention applicable to transnational armed conflicts.

As it must be recognized that most of the provisions involved in such a Convention would be up to what the delegates or State representatives involved would agree to, this Article will only limit itself to the minimum requirements that should be included in the provisions of such a Convention. As such, these minimum requirements will be sourced from what are commonly recognized by international humanitarian law, regardless of whether the armed conflict involved is an international or a non-international armed conflict.

First, all the principles applicable to international humanitarian law at large must be recognized and provided for in such a Convention. These principles would include: (1) the principle of the law of The Hague; (2) the principle of the law of Geneva; (3) the principle of neutrality; (4) the principle of normality; (5) the principle of protection; (6) the principle of *ratione personae* restriction; (7) the principle of *ratione loci* restriction; and (8) the principle of *ratione conditionis* restriction.

The principle of the law of The Hague is that "[b]elligerents do not have unlimited choice in the means of inflicting damage on the enemy."[70] This means that the parties involved in an armed conflict are restricted in what they can do in an armed conflict. They cannot use certain weapons and methods of warfare and are restricted in the use of other certain weapons and methods of warfare.

The principle of the law of Geneva, on the other hand, is that "[p]ersons placed *hors de combat* and those not directly participating in hostilities shall be respected, protected and treated humanely."[71] This would mean that people who are *hors de combat* or who are not participating in the fighting in an armed conflict would be protected in ways that are not applicable to people who are part of the said fighting. The treatment of such persons must be humane because humaneness is a vital component of Geneva law.

The principle of neutrality states that providing humanitarian assistance to people caught up in an armed conflict does not equate to interfering in that armed conflict.[72] This would allow for organizations like the ICRC to go into the territory covered by the armed conflict and give humanitarian assistance to the victims affected by such armed conflict without being branded as belligerents by either of the parties involved in the armed conflict. This would provide protection to members of such humanitarian organizations and would allow them to do their task of helping victims of armed conflicts.

The principle of normality provides that "[p]rotected persons must be able to lead as normal a life as possible."[73] Thus, even if there is an armed conflict occurring in the territory involved, for protected persons living or present in such territory, as much as possible, such armed conflict should not affect their way of life. The parties involved in such an armed conflict should allow civilians and other protected persons to live the lives they led before the armed conflict started.

The principle of protection provides for a duty on the part of the State to "ensure the protection, both national and international, of persons fallen into its power."[74] Thus, people like prisoners of war should be

---

[70] JEAN PICTET, INTERNATIONAL REVIEW OF THE RED CROSS (1966) *reprinted in* JEAN PICTET, THE PRINCIPLES OF INTERNATIONAL HUMANITARIAN LAW 32 (1967).

[71] *Id.* (Emphasis supplied.)

[72] *Id.* at 47.

[73] *Id.* at 50.

[74] PICTET, *supra* note 70, at 51.

protected by the State which captured them. These types of persons must not be abused as they are no longer participating in hostilities. Since there would be no actual contribution to victory in the armed conflict if such persons would be harmed, the State must give them protection.

The principle of *ratione personae* restriction states that "[b]elligerents will leave non-combatants outside the area of operations and will refrain from attacking them deliberately."[75] Hence, attacks or any weapons used by the parties in the armed conflict must not deliberately target such people uninvolved in the armed conflict. Accidental casualties caused by weapons or attacks may be justified by military necessity on a case-to-case basis, but deliberate attacks on civilians are absolutely prohibited.

The principle of *ratione loci* restriction provides that "[a]ttacks are only legitimate when directed against military objects, that is to say[,] whose total or partial destruction would constitute a definite military advantage."[76] This means that the targets of any attacks by the parties involved in an armed conflict must be limited to military objects, such as enemy barracks, bases, and the like. Thus, attacks on civilian objects, meaning objects whose destruction would not provide any definite military advantage, would be illegitimate. Such civilian objects would include houses of civilians that are not located in an enemy base and other objects or locations of that sort.

The principle of *ratione conditionis* restriction states that the use of "[w]eapons and methods of warfare likely to cause excessive suffering are prohibited."[77] Thus, if the effect of the weapon to be used is disproportionate to the expected advantage the use of such weapon will bring to the party who seeks to use that weapon, such weapon cannot be used. This principle would include: (1) weapons which cause unnecessary harm; (2) weapons that are indiscriminate, whether in their targeting or in some other way; and (3) methods of "total warfare."[78]

Second, provisions recognizing the prohibitions and regulations on the use of certain types of conventional weapons that are already recognized and applied to both international armed conflict and non-international armed conflicts must be included in such a Convention. An example of a principle included in such prohibitions and regulations is "(1) the principle of prohibiting or restricting the use of conventional weapons if such use

---

[75] *Id.* at 52.
[76] *Id.* at 54.
[77] *Id.* at 55.
[78] *Id.* at 56-57.

causes unnecessary suffering; (2) if such use is of a treacherous nature; and (3) if such use is indiscriminate."[79]

The basis for their inclusion is that "[c]ontemporary international law lays down both general and specific principles of prohibition and restriction of the use of conventional weapons [...] established as obligatory in any armed conflict."[80] Since these principles of prohibition and restriction on use are obligatory in any armed conflict, it is only right that such principles be included in a Convention acknowledging transnational armed conflicts as among the types of armed conflicts recognized by international humanitarian law.

Finally, the Martens Clause must again be included in such a Convention recognizing transnational armed conflicts, the Martens Clause being a principle recognized in the Hague Conventions of both 1899 and 1907[81] and in Additional Protocol I in 1977.[82]

Because of the continuous recognition given to the Martens Clause, it "is applicable to the whole of humanitarian law and it appears, in one form or another, in most of the modern treaties on humanitarian law."[83] As it is applicable to the whole of humanitarian law, it is just that such a Clause be included in any Convention recognizing transnational armed conflicts, if only for the express recognition of the applicability of customary international law in transnational armed conflicts, regardless of the silence of such Convention concerning any subject matter that might come up in a transnational armed conflict.

IV. FINDINGS & RECOMMENDATIONS

There are armed conflicts that are not recognized under international humanitarian law because although they are still armed conflicts, they do not meet all of the requirements under either of the two types of currently recognized armed conflicts: (1) international armed conflicts; and (2) non-international armed conflicts. Such armed conflicts will have the common characteristics of: (1) the parties involved will not all be States; (2) the armed conflict will not be classified as a war of national

---

[79] BLISHCHENKO, *supra* note 24, at 113.
[80] *Id.* at 112.
[81] *Id.*
[82] Greenwood, *supra* note 2, at 28-29.
[83] *Id.* at 29.

liberation; and (3) the armed conflict will not be limited to the territory of any one State.

These unrecognized armed conflicts will not have the benefit of being regulated by international humanitarian law, which means that there will be no limits on what weapons or methods of warfare can be used. There will also be no special protections given to people caught up in such armed conflicts.

Thus, the introduction of "transnational armed conflict" as a third type of armed conflict under international humanitarian law is recommended. A transnational armed conflict will have three characteristics: (1) the parties involved in such an armed conflict are not all States; (2) the armed conflict must not be classified as a war of national liberation; and (3) the armed conflict must not be limited to the territory of any one State.

For the recognition of transnational armed conflicts to take effect, there must be a Convention recognizing and applying to transnational armed conflicts. However, since it is necessary to recognize the freedom of the States involved in the making of such a Convention to agree on what provisions should be included in such Convention, there can be no absolute statement at present as to the specific kinds of regulations and protections to be provided for in a Convention applying to transnational armed conflicts. However, such a Convention must include certain minimum provisions consisting of regulations and protections that are commonly recognized under international humanitarian law. These will include all the basic principles applying to both types of armed conflicts currently recognized by international humanitarian law, all the prohibitions and regulations on certain types of weapons, and the Martens clause.

In closing, international humanitarian law does have a gap regarding armed conflicts not recognized as either international armed conflicts or non-international armed conflicts. Recognizing this problem, it is greatly urged that this gap be filled with the introduction of a new type of armed conflict proposed by this Article: the transnational armed conflict. As the world at present sees armed conflicts more complex than ever before, it can only be expected that more armed conflicts not classifiable under the simple categories of either "international armed conflict" or "non-international armed conflict" will arise. In order that these armed conflicts be regulated under international humanitarian law, it is essential that the actions recommended by this Article be taken seriously. Otherwise, those caught up in armed conflicts will sustain damage, injuries, and even deaths that could

have been avoided—a failure to fulfill the very purpose of international humanitarian law.

- o0o -