The more vigorously wars are pursued the better it is for humanity. Sharp wars are brief.

Article 29, Instructions for the Government of Armies of the United States in the Field (the Lieber Code of 1863)

Prior to the adoption of the Geneva Conventions, international law distinguished between two types of armed conflict.

The first type – the conventional conception of ‘war’ – was understood as an armed conflict between two States. If such conflict occurred, the laws of war automatically applied. The second type of war was ‘civil war’, which was a condition of armed conflict between a State and an internally-located insurgent movement that had taken up arms. This was traditionally considered as a domestic concern, and did not usually involve any international legal regulation at all. Only if the ‘host’ State or a third State recognised the insurgents as belligerents did the laws of war come into effect between the parties.

This difference in treatment was a reflection of the international law system as it stood at that time. Civil wars had traditionally been seen as matters solely for domestic consideration. States were unwilling to allow international regulation of what they considered internal political issues. However, the scope, intensity and brutality of the Spanish Civil War and World War II demonstrated to States that they needed to update the laws of war, and to introduce international law regarding non-international armed conflicts as well.

**International Armed Conflict**

International armed conflict as defined in the Geneva Conventions is essentially similar to traditional legal notions of the concept of ‘war’ – an armed conflict between two or more states. Article 2, common to the Four Conventions, provides that:

…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.

With the adoption of the Additional Protocols in 1977, a new category of international armed conflict was added. Under Additional Protocol I, an international armed conflict will exist in situations:

… in which peoples are fighting against colonial domination and alien occupation and against racist regimes 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.

**Non-International Armed Conflicts**

The Geneva Conventions also cover non-international armed conflicts, which are defined in Common Article 3 as ‘armed conflict not of an international character occurring in the territory of one of the High Contracting Parties’. When the laws of war were revisited in the 1970s, it was determined that there should be more laws regulating non-international armed conflicts. Additional Protocol II therefore, applies to:

… all armed conflicts not covered by Article 1 … of 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.

However, Additional Protocol II is limited by a number of qualifiers. Before the Protocol can be triggered, dissident
forces have to exercise control over part of their host State’s territory. The fighting must be sustained or protracted, and rise above mere ‘internal tensions’, ‘riots’, and other ‘isolated and sporadic acts of violence.’ Whether or not the Protocol applies is also dependent on the dissident forces being able to ‘implement’ the Protocol. So, where an armed group does not retain some measure of territorial control, or is unable to implement the Protocol, the Protocol does not apply. In addition, the issue of multiple non-State parties to the conflict is not addressed. Unlike Common Article 3, which foresees the possibility of multiple dissident groups engaging in a non-international armed conflict, Protocol II applies only in situations of armed conflict between a dissident armed group and the armed forces of a High Contracting Party and not as between different armed groups. Also, any situation where there is no recognised government – only insurgent or opposition groups fighting one another for control – results in the inapplicability of Protocol II. The cumulative effect of these restrictions is that Protocol II remains significantly more limited than Common Article 3.

International armed conflicts are by far the most highly regulated, with a raft of treaties and comprehensive customary international law regulating permissible State conduct. By comparison, non-international armed conflicts have few laws regulating their conduct. The Geneva Conventions of 1949 and the 1977 Additional Protocols have over 550 articles combined, but only 29 of those regulate non-international armed conflict; The Hague Regulations of 1907 do not contain any provisions regarding non-international armed conflict.


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