

Transnational Conflicts: Issues of Legal Classification*

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Abstract

This article aims to analyze the complex international legal aspects of transnational armed conflicts, a subject of growing significance in contemporary global security. The study presents prominent views from international legal doctrine alongside critical positions articulated in the case law of international tribunals. It thoroughly examines scientific proposals regarding military operations that involve a transnational element, while addressing the persistent inconsistency in the terminology used to define these engagements. Furthermore, the article evaluates the arguments of legal scholars regarding how these conflicts should be categorized within the existing framework of international law. Specifically, it contrasts the perspectives of those who argue that transnational armed conflicts constitute a distinct, new category of conflict against those who classify them as subcategories of either international or non-international armed conflicts. Additionally, it elucidates the "parallel model" in the application of international humanitarian law, demonstrating how multiple legal frameworks can operate simultaneously. For the approach that categorizes transnational conflicts as non-international, the article specifies the exact legal regime applicable to them, taking into full account their unique geographic and territorial scope. Ultimately, this comprehensive examination offers valuable clarity for interpreting international humanitarian law in modern combat scenarios.

Keywords: Transnational Armed Conflicts; Types of Armed Conflicts; War on Terrorism; Non-State Armed Groups.

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A. INTRODUCTION

In September 2001, following an unprecedented terrorist attack in the United States involving the hijacking and use of passenger airplanes as weapons, the American administration, for the first time in world history, treated terrorist activity as a kind of *casus belli*, declaring war on terrorists across the globe. Before the September 11 attacks, countries, including the United States, primarily relied on law enforcement agencies, the justice system, and other institutions and services responsible for ensuring public safety and order to combat terrorism (Kutsev, 2024; Naumova& Chubyr, 2025). Although military units had taken part in counterterrorism efforts, such actions were regarded as falling under the category of “low-intensity conflicts” or “military operations other than war” (Sivakumaran, 2014). As a result, the involvement of the armed forces in counterterrorist operations was viewed as military support for national and international law enforcement agencies, although, at times, these operations took the form of combat actions. For example, after the bombings of U.S. embassies in Kenya and Tanzania by Al-Qaeda in 1998, the U.S. Air Force launched simultaneous airstrikes on targets in Afghanistan and Sudan that served as training camps for members of this terrorist organization (Agwu, 2018; Sapaev et al., 2024).

Washington’s response to 9/11 and the declaration of the Global War on Terrorism (GWOT) demonstrated its intention to make maximum use of military force wherever the opportunity might arise (Alston et al., 2008). More importantly, recognizing the fight against non-state armed actors as an armed conflict establishes a legal basis for military operations. Armed conflicts are regulated by international humanitarian law (IHL), which permits the use of lethal force and allows attacks on “enemies”, as well as their preventive detention until the end of the conflict (Corn, 2013).

Unlike traditional wars, which were *de facto* fought within strictly defined geographic boundaries, the GWOT can take place virtually anywhere since the enemy is so unconventional that hostilities can be conducted even in areas with no connection to the “theater of operations” and can be located outside zones of active combat (Heinsch, 2017).

This contradictory approach to armed conflicts and wars presented within the GWOT framework has posed a serious challenge to IHL, and some conceptual categories that were previously well-defined in this body of law have lost their clarity (for example, the notion that terrorism is a tactic, not an enemy) (Ahmetshin, 2023; Reydam, 2006). Under the pretext of combating terrorism,

governments began using military force against armed opposition groups and labeling as “acts of terrorism” any military operations carried out by organized armed groups during non-international armed conflicts (Bartels, 2012). Moreover, according to the assumptions underlying the GWOT, the fight against such groups does not have to take place within the borders of a single country: if the enemy maintains bases in another state’s territory and conducts military operations from there, it can be attacked on that state’s territory. Consequently, this would constitute an armed conflict waged by a state against an armed non-state actor (which is typical of non-international conflicts) but taking place in the territory of another state (which resembles an international conflict). In other words, it would be a conflict between a state and a non-state armed group extending beyond the territorial boundaries of that state (Corn, 2009; Shkhagapsoev & Tutukov, 2024).

The idea of such a conflict has become quite popular among states participating in counterterrorist military operations, although it is difficult to accept in light of the dichotomous classification of armed conflicts used in IHL. Nevertheless, scholars have attempted to develop theories concerning such conflicts, which have come to be known as transnational armed conflicts (Bashlueva & Kartashov, 2024; Corn & Jensen, 2009; Lubell, 2017).

B. METHODS

To achieve the objective stated, the main method used in the study was document analysis. It was based on different types of materials depending on the focus of the research. The first group included materials such as scientific articles, monographs, and conference papers that explained the concepts and models of transnational armed conflicts.

The second group was based on the analysis of official international documents, legislative acts, and protocols, including the following: the Charter of the United Nations; the 1949 Geneva Conventions; and the Additional Protocols to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts (Protocol I) and to the Protection of Victims of Non-International Armed Conflicts.

C. RESULTS AND DISCUSSION

1. Transnational Armed Conflict – Terminology and Classification

Scholars studying this issue generally agree that the armed conflict under analysis takes place in the territory of more than one state, or that one of the parties to the conflict must cross a state border to conduct military operations against the other party (or parties) involved in the conflict (Kreß, 2010). However, there is no full consensus on calling such conflicts transnational, i.e., they are also referred to as extraterritorial (Radin, 2013) or non-state (Schöndorf, 2004; Smatov et al., 2024), with some emphasizing that they fall under the legal regime of non-international conflicts (Arimatsu, 2009).

According to R. Bartels, an obvious example of such a conflict is a situation in which non-state armed groups operating in two different neighboring countries cross the borders to fight each other. However, it is less clear how to classify other cases under IHL when the transnational element appears in the course of military operations. Bartels identifies four such situations:

1. Government forces of State A engage in hostilities with Non-State Armed Group Z (whose members are citizens of State B) operating from the territory of State B, with combat taking place in the territories of both State A and State B. An example of such a situation is the armed conflict between Israel and Hezbollah.

2. A foreign Non-State Armed Group Z conducts hostilities against the government forces of State A in its territory. Examples include various “foreign” Islamist extremist groups that fought in Syria against the Syrian army (Abramova & Voronin, 2024; Pshenichnov, 2023).

3. Government forces of State A engage in hostilities with Non-State Armed Group Z, which originates from State A but has taken refuge in the territory of State B and carries out armed actions against State A from there. This refers to the conflict between Turkey and the Kurdistan Workers’ Party (PKK) in northern Iraq (Degtyareva & Ben Brahim, 2024).

4. Government forces of State A use the territory of State C to fight Non-State Armed Group Z (whose members are not affiliated with any of these states) based in the territory of State B. An example is the United States’ use of Afghan territory to combat the Taliban, which had its bases in Pakistan (Bartels, 2012).

According to Bartels (2012), in situations 1, 3, and 4, it should also be assumed that State B did not consent to the use of force by State A in its territory since only in the absence of such consent does the use of force by State A acquire a transnational character.

A similar classification is proposed by J. Corn (2009), with the caveat that although the conflicts under consideration contain a transnational element, in which they resemble international conflicts, the involvement of non-state actors as parties to these conflicts makes them more similar to non-international conflicts. The author includes the following situations among transnational armed conflicts:

1. Armed actions conducted by a state in its own territory against a non-state armed group originating from that state but operating from abroad;
2. Armed actions conducted by a state in its own territory against a non-state armed group;
3. Armed actions conducted by a state against a foreign non-state armed group in the territory of another state with that state's consent;
4. Armed actions conducted by a state against a foreign non-state armed group in the territory of another state without that state's consent;
5. Hostilities involving non-state armed groups from different countries crossing the borders of those countries (Corn, 2009).

Abandoning hypothetical examples, D. Akande provides specific cases of conflicts involving a cross-border element, i.e., situations in which a state uses force in the territory of another state, not directly against that state, but against a non-state armed group based there. Akande cites as examples: Israel's use of force against Hezbollah in Lebanon; actions by Ugandan and Rwandan forces in the Democratic Republic of the Congo; attacks by Colombian forces on the Revolutionary Armed Forces of Colombia (FARC) in Ecuador; U.S.-led attacks on individuals associated with Al-Qaeda in countries such as Yemen, Somalia, and Pakistan; military operations by Turkish forces against the PKK in northern Iraq and against other Kurdish groups in Syria; and attacks by the United States, the United Kingdom, France, and other countries on the so-called Islamic State (ISIS) in Syria. In most of these cases, extraterritorial attacks on non-state armed groups located in another country represented a continuation of an existing armed conflict within that country, which the state in question was conducting against the non-state armed group (Akande, 2020; Grigoryan, 2024).

Using the term "extraterritorial armed conflicts", N. Lubell notes that such conflicts involving armed groups can take various forms:

- Military participation of a non-state armed group on the side of a state engaged in an internal conflict, if that state has agreed to such assistance;

- An internal conflict in which an armed group occasionally crosses the border and conducts hostilities from the territory of a neighboring state;
- A conflict with an armed group whose main base is located in a neighboring state;
- A conflict with an armed group whose base is located in a state that does not share a border with the state involved in the conflict;
- A conflict involving multiple armed groups that may or may not be part of a larger organization or network and are dispersed across the world (with bases in different countries) (Lubell & Cohen, 2020).

A similar classification of extraterritorial but non-international armed conflicts was proposed by S. Radin (2013), who distinguished the following types:

1. *Spill-over conflicts* are conflicts that occur within the borders of one country but spread into the territory of neighboring states.
2. *Cross-border conflicts* are conflicts between a state and a non-state armed group that has bases in a third country not directly involved in the conflict.
3. *Global armed conflicts* are conflicts between a state and a non-state armed group whose bases and cells are located in the territories of multiple states.

A transnational armed conflict is an extralegal, descriptive concept encompassing all conflicts in which a state border is crossed during hostilities and where one of the warring parties is a non-state actor. Thus, the legal issue concerning such conflicts lies in the fact that they do not fit into the traditional division of conflicts into international and non-international categories, which creates difficulties in determining which IHL regime should apply to them.

2. Transnational Conflict and the Dichotomous Classification of Armed Conflicts

a. Transnational conflict as a new type of armed conflict

Considering the inconsistencies between international law and the actual state of affairs mentioned above, R. Schöndorf (2004) proposed introducing a new category of armed conflicts that would reflect the transnational aspects of such conflicts, as well as the fact that they occur between states and non-state actors. In his opinion, the traditional, orderly dichotomies in IHL have become obsolete due to the emergence of a new and chaotic political reality. Therefore, Schöndorf

(2004) suggests establishing a new category of armed conflict in international law (a “non-state armed conflict”) since such conflicts go beyond the classical division of conflicts into international and non-international types.

Schöndorf (2004) noted that instead of attempting to fit non-state armed conflicts into the normative framework of the Geneva Conventions, which is incapable of accounting for their unique characteristics, it would be more appropriate to treat them as a distinct category of armed conflict and establish a special legal regime for them, flexible enough to respond to the specific and atypical challenges they pose. For example, when it comes to the protection of non-combatants, Schöndorf suggests applying analogies with the rules governing international armed conflicts. In turn, when determining which laws should regulate the protection of combatants, the scholar proposes referring to the provisions applicable to internal armed conflicts (Schöndorf, 2004).

However, this viewpoint regarding the creation of a new category of armed conflict has not received a positive assessment. As Bartels (2012) points out, introducing a third type of armed conflict with a separate legal regime would likely have a negative impact on the scope of protection afforded to persons affected by such conflicts, particularly those located within the territory of the state where hostilities are taking place.

In recent years, IHL governing non-international armed conflicts has moved significantly closer to the legal regime applicable to international conflicts (Svirin et al., 2024). For instance, the principle of proportionality and the obligation to take precautionary measures before and during attacks apply to both international and non-international conflicts. Similarly, the IHL rules regulating the arrest and detention of persons in connection with a non-international conflict, as *lex specialis* in relation to the more restrictive norms of international human rights law, are firmly grounded in provisions originally developed for international conflicts (Beskorovaynaya et al., 2025; Klimova et al., 2024; Krefß, 2010). At the same time, Article 75 of Additional Protocol I to the Geneva Conventions, which concerns the protection of victims of international armed conflicts and is known as the “fundamental guarantees” clause, reflects general norms of humane treatment applicable in any armed conflict, regardless of its classification.

b. Transnational Armed Conflict as an International Armed Conflict

Supporters of recognizing transnational armed conflicts as international conflicts argue that foreign military intervention in a conflict occurring in the territory of another state produces the effect of “internationalizing” a non-

international armed conflict within that state. In other words, such intervention transforms internal conflicts into international ones. This theory is based on the experience of the Cold War period, when great powers engaged in the so-called proxy wars, in which civil wars were treated as substitutes for direct conflicts between the great powers. Both parties in these wars were supported, sometimes even directly, including through the deployment of military contingents, by the great powers and their satellite states. As a result, this theory assumes that armed intervention by foreign forces inevitably leads to control over the insurgent forces, making transnational armed conflicts effectively “internationalized” conflicts, and therefore, international in character.

From the perspective of IHL treaties and international jurisprudence, this viewpoint has some contradictions. In a situation where an organized armed group can be considered as “belonging to one of the parties to the conflict” within Clause 2, Article 4 of the Third Geneva Convention relative to the Treatment of Prisoners of War (1949), and if that party is the state on whose territory the conflict is taking place, the conflict will indeed be international. Such a conflict also arises when Armed Group Z, based in State B, conducts attacks against neighboring State A, provided that the government of State B exercises full (or effective) control over Armed Group Z, since in this case the armed forces of both states are engaged in hostilities against each other. The legal qualification of the conflict does not change even if Armed Group Z, controlled by the government of State B, maintains its bases in the territory of State A by taking up arms against that state; the group does not need to cross the border. However, difficulties arise when such control is absent and the state on whose territory another state has used force has not given its consent to such actions.

As S. Verhoeven explains, an armed conflict is of a non-international character if the state on whose territory a foreign state conducts military operations against an armed non-state group has consented to such actions, for example, when Russian armed forces conducted military operations against ISIS in Syria. However, in the absence of such consent from the territorial state, it is more accurate to classify the conflict as international, even if the armed forces of that state are not directly involved in hostilities or are not the object of attacks (Shkhagapsoev & Akkaeva, 2024). According to IHL, the existence of an international armed conflict does not require violence to be directed solely against the government or its armed forces. Thus, if one state invades the territory of another state to fight a non-state armed group located there and partially occupies that territory, an international armed conflict arises even if the occupation does not encounter armed resistance since the territorial integrity of that state has been violated (Shkhagapsoev, 2024; Verhoeven, 2016).

Thus, an international armed conflict arises solely from the fact that State A uses armed force in the territory of State B without the latter's consent. It is irrelevant whether the two states are actually engaged in hostilities against each other (Kreß, 2010; Volkova et al., 2024). The legal regime of international armed conflicts also applies to situations where clashes occur between the forces of the attacking state and the so-called militia, i.e., the local population of the attacked territory that spontaneously takes up arms in the face of invasion. Although such militias are not part of the regular armed forces and do not possess statehood, their actions may be attributed to the state in whose defense they are acting (Verhoeven, 2016).

According to Verhoeven, the international nature of transnational armed conflicts is further confirmed by the fact that the use of armed force against a non-state armed group in the territory of another state constitutes the use of force against that state itself, which is precisely what defines an international armed conflict. Clause 2, Article 4 of the UN Charter explicitly prohibits the use of force against another state unless such force is exercised with that state's consent or in self-defense. For example, the International Court of Justice (ICJ) held that Uganda's use of force against the Democratic Republic of the Congo (DRC) violated Clause 2, Article 4 of the UN Charter, even though it was not aimed at overthrowing the Congolese government and Ugandan forces were primarily acting against non-state armed groups operating within the DRC. Consequently, the Court applied IHL governing international armed conflicts (International Court of Justice, 2005).

Similarly, the 2006 conflict between Israel and Hezbollah in Lebanon was regarded as an international armed conflict since Israel used force against Lebanon, i.e., the state on whose territory the hostilities took place, even though its primary target was not the Lebanese authorities. The International Criminal Court (ICC) adopted a comparable stance in the Bosco Ntaganda case, concluding that Uganda's intervention in the DRC marked the beginning of an international armed conflict (International Criminal Court, 2019). Moreover, when a state occupies the territory of another state in the course of military operations against a non-state armed group or as a result of such a conflict, its conduct falls under the law of occupation and other relevant rules of IHL. This position was reaffirmed by the ICC in the same case, where it determined that Uganda had occupied the Congolese province of Ituri.

c. Transnational Armed Conflict as a Non-International Armed Conflict

The concept that a transnational armed conflict is a form of non-international armed conflict is based on the idea that the determining factor in

the character of an armed conflict is not the territory where hostilities occur, but the parties involved. Therefore, if hostilities are conducted not by states but by non-state armed groups, or if only one of the warring parties is a state, the conflict should be considered non-international. In other words, the legal classification of a conflict is determined by the nature of the parties involved, not by its territorial scope. Of course, during hostilities, a state border may be crossed (for example, government forces of State A cross the border while pursuing members of Non-State Armed Group Z, or the training camp of Non-State Armed Group Z in State B is shelled by artillery from State A). However, if in such a situation the hostilities are still not between states, the conflict remains non-international (Lubell, 2013). Thus, the crossing of a state border is relevant from the perspective of the law of war (*ius ad bellum*) in assessing whether force is being applied between two states, but it is not significant in the case of a conflict between a state and a non-state armed group (Lubell & Cohen, 2020).

The non-state nature of the warring parties (or at least one of them) involved in a transnational armed conflict is the key argument for those who support applying the legal regime of non-international conflicts to these conflicts. However, the corresponding literature presents other arguments in favor of this concept. For example, K. Kress argues that a state conducting military operations against a hostile non-state armed group outside its own borders is acting in self-defense and performing the duties that should have been undertaken by the state on whose territory the non-state armed group is located. This concerns the international legal obligation not to allow the territory of one state to be used by a non-state armed group to carry out armed attacks against another state, and if the use of armed force is necessary to fulfill this obligation, it constitutes a non-international armed conflict (Kreß, 2010).

3. Parallel model

Since the main issue in the discussion of transnational armed conflicts concerns the selection of the appropriate legal regime for their regulation, the most appropriate approach appears to be the application of the so-called parallel model. It is worth mentioning that the border-crossing characteristic of transnational armed conflicts can create a situation in which, due to the circumstances, two armed conflicts (one international and one non-international) coexist simultaneously (Lubell, 2013; Metelkov, 2022). This parallel application of legal regimes for international and non-international conflicts is explained by the fact that, within the territory of a single state, both a non-international conflict (for example, State A conducting a military operation against Non-State Armed

Group Z) and an international conflict (for example, armed clashes occurring between the forces of State A and State B) may take place.

The concept of the simultaneous occurrence of international and non-international conflicts is recognized not only by doctrine but also by international courts and tribunals. In its 1986 judgment in the case of *Nicaragua v. United States*, the ICJ established that the conflict between the Contras (right-wing guerrillas opposing the Sandinista National Liberation Front government) and Nicaragua fell under Article 3 common to the four 1949 Geneva Conventions for the Protection of War Victims and constituted a non-international conflict, whereas the actions of the United States against Nicaragua were classified as an international conflict (International Court of Justice, 1986). In the case of *Prosecutor v. Tadić*, the International Criminal Tribunal for the former Yugoslavia ruled that if an internal armed conflict erupts within a state, it may develop into an international conflict or, depending on the circumstances, an international conflict may occur in parallel with the internal armed conflict (Heffes & Frenkel, 2017).

However, adopting the assumption that international and non-international conflicts can, in some complex situations, occur in parallel creates difficulties in determining when the armed intervention of a foreign state results in the “internationalization” of the entire conflict, and when individual military operations should be separated and considered as occurring within distinct conflicts. An example of this is NATO’s Allied Force operation conducted in 1999 against Yugoslavia, alongside military operations carried out at the same time by the Kosovo Liberation Army (KLA) against Yugoslav forces. At least until the end of May 1999, NATO had maintained a distance from the KLA, and even after that period, it remains unclear whether the relationship between NATO and the KLA was close enough to consider the conflict between the KLA and the Yugoslav army as part of an international armed conflict, rather than as a separate internal conflict subject to a different legal regime (Heffes & Frenkel, 2017; Sosnitskaia, 2023).

It should also be emphasized that the parallel application of IHL norms to both international and non-international armed conflicts requires their adaptation to the specific situation since these norms confer different rights and obligations depending on the status of the parties involved (Kulubekova et al., 2024; Tarasov & Stupachenko, 2024). For example, members of the armed forces of State A fighting against members of the armed forces of State B enjoy combatant status and, if captured by the enemy, are entitled to prisoner-of-war protections (and vice versa). In contrast, members of Non-State Armed Group Z

conducting hostilities against State A's soldiers do not have combatant status and, if captured, are not entitled to the protections afforded to prisoners of war.

D. CONCLUSIONS

The concept of a transnational armed conflict will continue to appear in academic research on broadly defined security issues and will also be used by international lawyers, even though this concept is not defined in law, and no changes to the current dichotomous classification of armed conflicts into international and non-international ones should be expected. From a political standpoint, transnational armed conflicts represent a sensitive issue, and there is no inclination among members of the international community to seek the compromises necessary to regulate transnational armed conflicts through the adoption of a dedicated international convention. There is also a risk that such regulatory attempts could undermine the existing treaty regime of IHL. Indeed, the formulation of concepts concerning transnational armed conflicts reflects a certain evolution of armed violence and demonstrates the growing activity of non-state armed actors seeking to destabilize global peace and security. However, the recognition of a new type of armed conflict in international law should not be expected.

Thus, the transnational armed conflict will remain a non-legal concept used to describe conflicts in which state borders are crossed during hostilities and where one of the warring parties is a non-state actor. Depending on the circumstances, such situations may fall under the regime of international armed conflicts (in cases where there is no consent from the state on whose territory the conflict takes place for the intervention of foreign armed forces, or when the intervening state begins an occupation of foreign territory) or under the regime of non-international armed conflicts (which is more likely, given that a defining feature of non-international conflicts is the non-state nature of at least one of the parties). Regardless of the legal classification, in the case of transnational armed conflicts, the minimum standards of humanitarian treatment contained in Article 3 of the Geneva Conventions, as well as customary IHL, will always apply. The principles and norms of this law are capable of regulating transnational armed conflicts without the need to develop new legal categories. Although this requires intellectual effort, it is possible to adapt and refine existing concepts and norms to create a coherent legal framework that ensures a consistent and reasonably balanced response to the challenges posed by transnational armed conflicts.

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