

Received: 01/06/2025; Accepted: 19/07/2025

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Abstract

The legal qualification of armed conflicts is a complex and challenging issue due to its connection with several factors, such as the principle of sovereignty, the use of lethal weapons, the involvement of external parties, and the emergence of new types of conflicts where it is difficult to distinguish combatants from non-combatants. Considering the link between the protection afforded to victims and the legal classification of the conflict, which aims at the optimal implementation of the rules of international humanitarian law, and given the complex and evolving nature of the Syrian conflict, this paper examines the legal qualification of the armed conflict in Syria: Is it a non-international armed conflict, thus requiring the application of the standards stipulated in Common Article 3 of the 1949 Geneva Conventions and Additional Protocol II of 1977? Or is it an internationalized armed conflict, exhibiting elements characteristic of both international and non-international armed conflicts?

This study adopts a descriptive analytical methodology that examines international conventions and resolutions, analyzes their content, and elucidates the position of legal scholars and international practice regarding the qualification of the conflict in Syria.

Keywords

International Armed Conflict; Non-International Armed Conflict; Classification; Syria, Common Article 3.

الكلمات المفتاحية

النزاع المسلح الدولي؛
النزاع المسلح غير الدولي؛
التصنيف؛
سوريا؛
المادة الثالثة المشتركة.

التكيف القانوني للنزاع المسلح في سوريا

ملخص

تعد مسألة التكيف القانوني للنزاعات المسلحة من المسائل الصعبة والمعقدة، وذلك لارتباطها بعدها عوامل: كبمبدأ السيادة، واستعمال الأسلحة الفتاك، وتدخل أطراف خارجية في النزاع، بل وظهور أنواع جديدة من النزاعات يصعب فيها تمييز المقاتلين عن غيرهم. ونظراً لارتباط مسألة الحماية المكفولة للضحايا بمسألة التصنيف القانوني للنزاع سعياً للتطبيق الأمثل لقواعد القانون الدولي الإنساني، وبما أن النزاع السوري نزاع معقد ومتطور تبحث هذه الورقة مسألة التكيف القانوني للنزاع المسلح بسوريا، هل هو نزاع مسلح غير دولي؟ وبالتالي يحتج إلى تطبيق المعايير المطلوبة في كل من المادة الثالثة المشتركة لاتفاقيات جنيف لعام 1949، والبروتوكول الإضافي الثاني لعام 1977، أو أنه نزاع مسلح دول تتدخل فيه عناصر مكونة للنزاعات المسلحة الدولية مع العناصر المكونة للنزاعات المسلحة غير الدولية؟

وتقع دراسة الموضوع باعتماد المنهج التحليلي الوصفي الذي يبحث في الاتفاقيات والقرارات الدولية، وتحليل مضمونها وبيان موقف الفقه والعمل الدوليين بشأن تكيف النزاع بسوريا.

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Introduction:

The classification of armed conflicts is a matter of paramount importance, linked both to the protection of the rights of victims and to the determination of criminal responsibility arising from serious violations of human rights.

The Syrian conflict is a conflict of a unique nature. It began as an internal conflict, with a group of young people taking to the streets in popular demonstrations, before evolving into a revolution calling for the removal of the ruling regime. The conflict soon involved various parties, such as mercenaries, civilians, and armed terrorist groups, in addition to the intervention of states through proxy warfare. In light of the weapons used, the number of victims, and the scale of the losses, the issue of protecting civilian and child victims, as well as women, and determining the criminal responsibility for serious human rights violations arises.

This study aims to formulate a unified and clear approach to protecting victims of the armed conflict in Syria, through the legal qualification of the conflict as either an international armed conflict or a non-international armed conflict, and to apply the standards set forth in Common Article 3 of the 1949 Geneva Conventions, Additional Protocol II of 1977, and the standards of the International Criminal Tribunal for the former Yugoslavia (ICTY).

This leads us to pose the following question: What is the legal qualification of the armed conflict in Syria? Is it an international armed conflict, or a non-international armed conflict?

To answer these questions, the researcher has adopted the following plan:

- Section 1: The Nature of Armed Conflict
- Section 2: The Armed Conflict in Syria as a Non-International Armed Conflict
- Section 3: The Internationalization of the Armed Conflict in Syria
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Section 1: The Nature of Armed Conflict

The term "international armed conflict" is relatively recent compared to other terms, having emerged in the mid-twentieth century. It first appeared in Common Article 3 of the four 1949 Geneva Conventions after international law abandoned the term "war." To study international armed conflicts, it is necessary to first clarify the meaning of international conflicts, then to discuss armed conflicts, and to distinguish them from other similar terms, according to the following subsections:

- Subsection 1: Definition of Conflicts
- Subsection 2: Types of International Conflicts

Subsection 1: Definition of Conflicts

To clarify the meaning of armed conflicts, it is necessary to explain their linguistic meaning before turning to the technical meaning, according to the following arrangement:

- Branch 1: Definition of Conflicts in Linguistics
- Branch 2: Definition of International Conflicts in Terminology
- Branch 3: Definition of International Conflict in Jurisprudence
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Branch 1: Definition of Conflicts in Linguistics

The word "conflicts" is the plural of "conflict," which linguistically means removing something from its place, meaning uprooting it. For example, saying "so-and-so is in conflict" means cutting off life, and "he disputed with him in a contest" means attracting him in a dispute. "A dispute" means a dispute over the right to contest and quarrel, and "the soul disputed to so-and-so" means yearned and snatched the thing, so he snatched it, meaning killing him. The people quarreled and disputed.⁽¹⁾

From this comes the verse: "O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best [way] and best in result."⁽²⁾

And it came in the Hadith Sharif narrated by Ma'n, who said: Malik told us, from Shihab, from Ibn Akima al-Laythi, from Abu Hurairah: that the Messenger, Muhammad, peace and blessings be upon him, left a prayer in which he recited aloud, and said: Did anyone of you read with me just now? A man said: Yes, O Messenger of Allah. He said: I say why I am being contested with the Qur'an? He said: So, the people stopped reading with the Messenger of Allah, peace and blessings be upon him, in what the Messenger of Allah, peace and blessings be upon him, recited aloud from the prayers when they heard that from the Messenger of Allah, peace and blessings be upon him.⁽³⁾

Branch 2: Definition of International Conflicts in Terminology

International law jurists have used several terms to express the "conflict," which is the difference and disagreement between states on a factual or legal issue, such as "dispute" and "controversy."⁽⁴⁾

There are disagreements in defining conflicts. Some jurists consider it the situation arising from the clash of viewpoints between two or more states, or the conflict of their interests over a subject or issue. These matters may appear contradictory between them, but if there is rapprochement between the parties, this dispute can be addressed peacefully and through diplomatic means. Those who hold this view believe that conflicts can be resolved peacefully, thus avoiding war.

Alan Ferguson acknowledged that international conflict begins when a state takes an action that is costly to another state, and at the same time, the other state believes that it can reduce its loss by taking retaliatory action against the first state, which initiated the action.

While some do not include the use of violence in their definition of conflict, for example, international conflict is "a dispute between two states over a legal issue, a specific incident, or due to conflicting legal viewpoints or interests."⁽⁵⁾ This definition is not much different from the definition of legal conflict.

Branch 3: Definition of International Conflict in Jurisprudence

The judiciary has taken an interest in international conflicts due to the connection between the concept of international conflicts and the cases brought before it. From here came the definition of the Permanent Court of International Justice of international conflict in its decision issued on August 30, 1924, regarding the MAYROMATIS case - preliminary objections - which stated that international conflict is "a disagreement over a legal point or fact, or a contradiction and conflict of legal viewpoints or interests between two persons.

The definition presented does not differ much from its predecessor, as it made the conflict a disagreement over a political or legal issue based on interests, and this difference may be over international or personal interests, in which case the conflict is non-international.

The same court confirmed this definition in the Polish Upper Silesia case and the Chewoue Factory case. This is evident in the cases presented to it concerning peace agreements between Bulgaria, Hungary, and Romania, the North Cameroon case, and the Headquarters case.⁽⁶⁾

Subsection 2: Types of International Conflicts

There are many types of international conflicts, divided into legal conflicts, political conflicts, and technical conflicts, and divided into bilateral conflicts and group conflicts, considering the parties, as well as divided by other considerations: in terms of nature, political, economic, and ideological conflicts. In terms of geographical scope: regional or intra-state or international. In terms of seriousness: armed conflict, conflict dialogue, conflict play.

Branch 1: Definition of International Armed Conflicts

An international armed conflict is defined as a dispute that arises between two states and that is likely to lead to intervention by members of the armed forces, even if one of the parties denies the existence of a state of war.⁽⁷⁾

This type of armed conflict is governed by the four 1949 Geneva Conventions, Additional Protocol I of 1977, the Hague Rules, and other legal principles.⁽⁸⁾

Professor Sadek Abu Haif defined the conflict by saying: "It is a struggle between the armed forces of each of the two disputing parties, each aiming to maintain its rights and interests in the face of the other."⁽⁹⁾

Thus, Professor Sadek Abu Haif stipulated the existence of two elements in the international conflict: the presence of armed forces and the conflict of interests.

Professor Ghanem believed that armed conflict is "a conflict between two or more states governed by international law, the purpose of which is to defend the national interests of the belligerent states."⁽¹⁰⁾

Thus, this definition limited the parties to the conflict to states, and did not mention other subjects of international law, such as international organizations, that could be parties to international armed conflict.

Ismail Sabri Muqlid used the term "conflict" instead of "dispute," and defined it by saying: "Conflict at its core is a conflict of national wills, and it is the conflict resulting from the difference in the motives of states, in their perceptions, goals, aspirations, resources, and capabilities, which ultimately leads to the making of decisions or the pursuit of foreign policies that differ more than they agree, but despite this, conflict, with all its tensions and pressures, remains below the point of armed war."⁽¹¹⁾

Salah al-Din Amer refers to the term international armed conflict as those hostile operations that arise between two states, and therefore the presence of more than one state in the context of the conflict is what gives it an international character, and at the same time, it is what distinguishes it from non-international conflicts, in that there is only one state or one person from the subjects of public international law in the context of such conflicts.⁽¹²⁾

Thus, Salah al-Din Amer distinguished between international and non-international conflicts, making international conflicts conflicts in which more than one state participates, unlike non-international conflicts that are within one state.

Branch 2: Definition of Non-International Armed Conflict

1- The Concept of Non-International Armed Conflicts in Jurisprudence

Jurisprudence has attempted to define non-international armed conflicts, which were largely the sole domain of states' internal affairs, adhering to their sovereignty. However, with differing ideas and ideologies, and with the developments in the international community, the definition of non-international armed conflicts has varied according to traditional jurisprudence and contemporary jurisprudence, as follows:

- Definition of International Armed Conflicts in Traditional Jurisprudence
- Non-International Armed Conflicts in Contemporary International Jurisprudence

Definition of International Armed Conflicts in Traditional Jurisprudence

Some jurists have been interested in wars within the state, despite the lack of legal organization as it is today, and these jurists' views on this type of conflict have varied as follows:

1- Definition of Jurist Grotius:

Jurist Grotius is considered one of the first to address war within a single state in his book, (The Law of War and Peace), in the last chapter of belligerents, and types of wars, where he divided war - non-international armed conflicts - into three types: public wars, private wars, and mixed wars.

"Public conflicts" means conflicts between states - units of sovereignty - whereas "private wars" are those that take place between subjects of one state - the individuals themselves - and "mixed wars" are those that combine the characteristics of private and public war - between the nobility and the individuals - that is, civil war. It distinguishes between international conflicts and internal conflicts that are within the same state, and in doing so, it is considered the first to differentiate between civil war and international war.⁽¹³⁾

2- Definition of Jurist Bo Vendov:

Jurist Bo Vendov defined non-international armed conflicts as: "That war in which members of one society are at war with each other." (i.e. internal conflicts).⁽¹⁴⁾

Thus, Bo Vendov defined non-international armed conflicts as the war that takes place within the single state, that is, what was later known as civil war.

Through the previous definitions, the researcher concluded that the most important feature of these definitions is flexibility and generality, in order to impart a kind of humanity to these conflicts. However, all of these definitions agree on considering this type of conflict as internal wars, in which the state remains the decision-maker, and it cannot be considered an international conflict, and therefore excluded from the scope of international humanitarian law.

3- Opinion of Jurist "Francis Leber":

Jurist "Francis Leber" attempted to distinguish between rebellion, civil war, and revolution in the second section of his codification entitled Rebellion (Civil War Rebellion) in articles 149 to 151).

He defined rebellion as: "An armed popular uprising against a government or part of it, or its laws or employees, and it may be limited to mere armed resistance that goes beyond that."⁽¹⁵⁾

He defined civil war as: "A war between two or more factions of a state that dispute all other authorities, and claim to be the legitimate government, and the expression may be used in wars of rebellion when the rebellious provinces or part adjoin the seat of government."⁽¹⁶⁾

As for revolution, he defined it as "an armed rebellion on the widest scale, which is usually in the form of a war between the legitimate government and a section of its territory, with the aim of seceding from its jurisdiction to it, and establishing a private government."⁽¹⁷⁾

Leber's instructions, a set of legal rules directed to govern the American armies in the field, distinguished between revolution, civil war, and rebellion in articles 149, 150, 151 respectively.

Article 149 states: "If the scope of military operations is narrow, then it is a rebellion."

Article 150 stipulates: "If the aim of military operations is to establish a new state, then it is a revolution."

As for Article 151, it was intended to establish a new state in place of the existing government, so it is a civil war.

It was published by the United States Department of War in 1863 under General Order No. 100, and these instructions are the first attempt to codify the rules of land warfare, and had a clear impact on the laws and customs of war, and on the attempts that came later. Whether in the form of instructions to the armies in the field or in the rules contained in the Brussels Declaration of 1874, the Hague Rules of 1907, and even on some of the rules contained in the 1949 Geneva Conventions.⁽¹⁸⁾

Although jurist Leber's attempt is important in defining the concepts of rebellion, insurrection, revolution, and civil war, it is fraught with some shortcomings due to its connection to something hidden that is difficult to reveal except at the end of the conflict. Because it relates to the intention, and revealing it if it relates to the establishment of a new state, or the establishment of a new government, in addition to the fact that it has no international character, as it was developed to govern the behavior of the armies during the American Civil War, it is a private attempt that cannot be generalized to all countries

2- Non-International Armed Conflicts in Contemporary International Jurisprudence

Two trends have emerged in the definition of non-international armed conflicts, and this is due to the ambiguity of the term on the one hand, and the different political backgrounds of each jurist on the other. This difference is due to the fact that Common Article 3 did not define the nature of non-international armed conflicts, leaving the field open to jurisprudence, where it was divided into two trends. The first trend, the "Restrictive Trend," adopted civil war, while the second trend chose the expansive trend of the concept of non-international armed conflicts for all forms of non-international armed conflicts without exception. Here is a breakdown of each of these two trends:

First: The Expansive Trend

Second: The Restrictive Trend

First: The Expansive Trend

Determining the meaning of non-international armed conflicts is not an easy matter, and it is a matter of great accuracy and difficulty. For this reason, jurists have not agreed on a comprehensive and exclusive definition due to its ambiguity and its connection to the political background of each jurist.⁽¹⁹⁾

Professor Salah al-Din Amer says: "The phrase armed conflict of a non-international nature is subject to permanent and continuous interpretations by the international community."

This indicates that determining the meaning of non-international armed conflicts is subject to the purposes of states, the political and economic goals, and the implementation of the principle of non-intervention in internal affairs to determine the meaning of internal armed conflicts.⁽²⁰⁾

Professor George Abi Saab also adopted the expansive trend when he put forward the idea of the emergence of a new generation of non-international armed conflicts, represented in chaotic conflicts, which may have been taken from the theory of creative chaos expressed by the former US Secretary of State "Condoleezza Rice" on many occasions,⁽²¹⁾ which is a new type of non-international armed conflicts that lack a degree of organization and take place in the face of less structured governments, and competing rebel forces and gangs in the absence of a central authority, and the multiplicity of semi-organized military sects, and without a clear leadership, which makes it difficult to identify the belligerent parties, and remind them of respecting the rules of international humanitarian law.⁽²²⁾

He stipulated that these conflicts lack organization against rival rebel forces and gangs, in the absence of a central authority. He also identified the multiplicity of military and semi-organized sects without a clear leadership, and this makes identifying the belligerent parties difficult, while reminding them to respect international humanitarian law.

This last opinion is considered a summary of the previous definitions, and it is the opinion adopted by the researcher in defining non-international armed conflicts, where it has been able to accommodate all the newly created conflicts in their various forms, which he called chaotic conflicts that lack organization, and the differences between their parties, from organized governments, or the least organized, and from rebels and gangs. It is an attempt to contain as many conflicts as possible, especially those that the world is witnessing today, which are more violent and deadly than the international conflicts that the past century has known, with the aim of providing the necessary protection to their victims.

Second: The Restrictive Trend

The supporters of this trend have confined non-international armed conflicts to the form of civil war without any other forms of armed conflicts. It is the most severe of these types in terms of impact on civilians' rights due to the collapse of institutions, the destruction of infrastructure, the disruption of work by the constitution, and the rule of the law of force within societies that are prone to these conflicts.

Jurists have differed in defining the term civil war due to the differences in their political and ideological convictions, and the different environments in which they live.

Eric David believes that non-international armed conflicts are a narrow and precise conflict, that is, the civil war that takes place in the face of the government and the rebels who constantly monitor part of the region, such as the Spanish Civil War 1936-1939, the American Civil War 1861-1865, and the war in Salvador, the former Yugoslavia, and Rwanda.⁽²³⁾

Salah al-Din Amer defined the civil war as: those hostile operations that take place within a single state, and exist when two opposing parties' resort to arms within the state for the purpose of gaining power in it, or when a large percentage of the citizens in the state take up arms against the legitimate government.⁽²⁴⁾

Salah al-Din Amer confined the civil war to the current hostile operations within a single state for the purpose of gaining power.

Muhammad bin Nuna defined it as every armed struggle that erupts within the borders of a state, seeking to seize power in the state, or to establish a new state through secession.

Professor bin Nuna followed the same approach as his predecessor, where he defined civil war as armed operations within a single state seeking to seize power or secede from the mother state.

As for Dr. "Suhail al-Fatlawi," he believes that civil war is armed fighting between individuals, groups, political, religious, or national institutions, and it is armed fighting between organized or unorganized military militias in order to control power within the state or independence in part of the region, and establish a new state.⁽²⁵⁾

Branch 2: The Internationalized Armed Conflict

The post-World War II world has witnessed the spread of many armed conflicts that were always taking place within the territory of states, and were supported by the opposing blocs during the Cold War, which made them combine the characteristics of non-international armed conflicts, given the foreign intervention in them. This type of armed conflict is known as the internationalized armed conflict. To study this type, we need to address: the concept of internationalized armed conflict and the problem of internationalized conflict

The internationalized armed conflict is defined as: that non-international armed conflict that becomes international for many complex reasons in international law.⁽²⁶⁾

1- If a state that has fallen victim to armed operations recognizes the rebels as belligerents, then the conflict becomes an international conflict for them.⁽²⁷⁾

2- If one or more foreign states provide assistance to one of the parties with its armed forces.

3- If two or more foreign states intervene with their armed forces and each provides assistance to one of the parties.

4- If the forces of an international organization such as the United Nations, or a regional organization intervene if it decides to intervene for humanitarian reasons, such as sending its international forces to resolve an armed conflict to develop solutions or to negotiate a settlement. Most of the armed conflicts that took place after World War II were internationalized armed conflicts, as happened in the Congo, Somalia, Afghanistan, and others...⁽²⁸⁾

Section 2: The Armed Conflict in Syria as a Non-International Armed Conflict

The deterioration of conditions in Syria led to the beginning of popular awareness, which resulted in popular demonstrations that continued to turn into a revolution calling for the removal of the existing regime. All of this turned into a complex and intertwined conflict, and in an attempt to classify this conflict, it is necessary to apply the standards mentioned in Common Article 3 of the 1949 Geneva Conventions (Subsection 1), the standards of Additional Protocol II of 1977 (Subsection 2), and the standards of the International Criminal Tribunal for the former Yugoslavia (Subsection 3)

Subsection 1: Standards of Common Article 3 of the 1949 Geneva Conventions

Common Article 3 of the 1949 Geneva Conventions states: "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.

1. The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

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."⁽²⁹⁾

The armed conflict in Syria began with confrontations between the Syrian army and government forces in Aleppo, Hama, and Homs in late 2011⁽³⁰⁾.

If we look at the set of material standards for non-international armed conflict set by the Pinto⁽³¹⁾ Commission, we find that it is specified in:

- **First: The Existence of Collective and Organized Hostilities**

The events began at the end of February 2011 with peaceful demonstrations and protests demanding change, and with the beginning of March, demonstrations broke out in the city of Daraa in protest against the arrest of some children and their ill-treatment against the background of writings on the walls, like the revolutions in Tunisia and Egypt, and then the demonstrations spread throughout the country.

On March 25, 2011, the Syrian regime forces (the army) attacked the city of Daraa, and the number of civilian deaths to this date reached eleven thousand, and a very large number of demonstrators were arrested, and these military operations by the regime forces increased gradually with the increasing intensity and density of the demonstrations.

In August 2011, the formation of what is known as the Free Syrian Army, composed of defectors from the Syrian regime army of high rank, in addition to civilian opponents who took up arms to fight the regime forces, was announced.

Many armed groups were formed, which announced their accession to the Free Syrian Army, and the latter was able to carry out attacks against the regime forces, forcing them to withdraw from some sites.⁽³²⁾

This indicates the existence of collective and organized hostilities, and the armed conflict in Syria can be considered a non-international armed conflict based on this standard.

- **Second: The Presence of Victims**

As for determining the level of violence, the United Nations Fact-Finding Committee issued a report in November 2011 in which it said: "It is unable to determine the level of violence in the confrontations between the regime army and the armed groups, especially the Free Syrian Army, and therefore international humanitarian law does not apply to this reality."

On February 22, 2012, the Committee issued another report in which it said: "The degree of violence in the confrontations has reached a very high level, but it is unable to measure the level of organization that the Free Syrian Army and other armed groups reach. Therefore, the Committee believes that international humanitarian law is still not consistent with the current situation. At the end of March 2012, Human Rights Watch issued a report denouncing the commission of war crimes in Syria, especially in Idlib, but the description of war crimes requires the existence of a prior armed conflict.⁽³³⁾

On July 14, 2012, the International Committee of the Syrian Red Cross belatedly announced the following: "The conflict in Syria is a non-international armed conflict, but it did not generalize this classification to the entire conflict, but rather to some areas, especially the confrontations between the regime army and the armed groups, which reached a degree of organization that meets the standards of Common Article 3 of the 1949 Geneva Conventions. Especially since Syria is not a signatory to Additional Protocol II 1977.⁽³⁴⁾

Therefore, the provisions of Common Article 3 of the 1949 Geneva Conventions apply to the conflict in Syria between the regime army and the Free Syrian Army.

- **Third: That Hostilities be Confined to Within the Territory of the State**

The year 2012, especially its beginning, represents the bloodiest year in the armed conflict in Syria. The regime army used tanks, armored vehicles, and heavy artillery to bomb some rural areas and cities, and the militias loyal to the regime began attacking civilians in some of the forces of rural Homs (Al-Houla), and the military operations reached inside the capital, Damascus.⁽³⁵⁾

Subsection 2: Standards of Additional Protocol II of 1977

Additional Protocol II of 1977 identifies the need for three standards to classify a conflict as a non-international armed conflict:

First: - The Existence of Hostilities Between the Regular Armed Forces and the Dissident Armed Forces Confined Within the Territory of the State

The parties to the conflict, according to the text of Article 1/1 of Additional Protocol II, are the regular army on the one hand, and a dissident group from the regular army or armed rebel groups on the other⁽³⁶⁾.

In the armed conflict in Syria, we find:

1- The Syrian Regime Army on the One Hand: The Syrian government has one of the strongest armed forces in the Middle East, numbering 300,000 soldiers, including 220,000 in the army, and 70,000 in the air force, in addition to 350,000 reservists. The Syrian army also has 19 mechanized infantry battalions and 22 tank brigades, and 11 regiments to carry out special tasks, and the army includes 4,000 members in the naval forces, and 3,000 in the air force.⁽³⁷⁾

2- Militias and Different Belligerent Groups in Syria: including the Free Syrian Army, ISIL, Hezbollah, and other groups opposed to the Assad regime, in addition to the paramilitary formations and militias affiliated with the Syrian regime. The National Defense Forces are considered the largest militias supporting the Syrian regime, formed in 2012, and consist of more than 100,000 volunteers. These militias are similar to those affiliated with the Iranian Revolutionary Party,

suggesting that they were formed under the supervision of the commander of the Quds Force in the Iranian Revolutionary Guard, Qassem Soleimani.⁽³⁸⁾

Second: The Existence of a Responsible Leadership That Carries Out Continuous and Coordinated Military Operations

There are many parties to the armed conflict in Syria, and many of the militias and armed groups have a responsible leadership that can carry out continuous and coordinated operations. For example, Hayat Tahrir al-Sham, which seceded from al-Qaeda, still controls several areas in Idlib and continues its suppression of civilians. The Investigation Committee has noted violations represented in relocation, torture, execution, looting, extortion, and monopolization of electricity and Internet services. The International Investigation Committee has documented four cases of execution of detainees and reviewed ten additional reports of similar cases between November 2019 and June 2020. The Committee has intervened in providing humanitarian aid and obstructing health services⁽³⁹⁾.

This indicates the degree of organization within these groups, which enables them to carry out military operations like any regular army.

The reports stated that the Syrian Democratic Forces - a Kurdish-led armed group with support from the US-led military coalition against ISIL - were able to detain approximately 100,000 suspected ISIL members and their family members, mostly women and children. This is evidence of the existence of an organized organization, and a responsible leadership that enables it to carry out such military operations.⁽⁴⁰⁾

Third: Control Over Part of the Territory and the Ability to Apply Additional Protocol II of 1977

Article 1 of Additional Protocol II stipulates another condition for the existence of a non-international armed conflict, which is the control over part of the territory and the ability to apply Additional Protocol II attached to the four Geneva Conventions. That is, the armed conflicts in which armed rebel groups are able to exercise (over a part of the territory of the High Contracting Party from the control that enables them to carry out continuous and coordinated military operations and are able to apply the Protocol).⁽⁴¹⁾

As an example of control over part of the territory, we find that "Hezbollah and other Iranian-backed Shiite militias controlled about 20 percent of the country's borders. Although the Syrian customs authorities are officially responsible for managing the crossings with Iraq (al-Bukamal), Jordan (Nassib), and Lebanon (al-Arida, Jdeidet Yabous, Qusayr, and al-Dabbous), the real control is in fact elsewhere. Hezbollah occupies the Lebanese border, and has established its bases on the Syrian side (al-Zabadani and al-Qusayr), from which it controls the mountainous Qalamoun region. Similarly, Iraqi Shiite militias manage both sides of the border from al-Bukamal to al-Tanf. The grip of forces loyal to Iran also extends to many Syrian military airports, which often serve as a means of transporting Iranian weapons destined for "Hezbollah" and the front line with Israel in the Golan Heights.⁽⁴²⁾

Private sources also reported remarkable activity by those close to the party in the eastern part of Daraa Governorate, by recruiting young people to work under the party's command, with many inducements such as staying in their towns and not serving in the regime army, in addition to offering salaries that are many times what the fighters in the regime army or its security services receive⁽⁴³⁾.

This is evidence of the group's organization and its ability to control part of the territory by its ability to recruit new members into its army.

Subsection 3: Standards Set by the International Criminal Tribunal for the former Yugoslavia (ICTY)

The International Criminal Tribunal for the former Yugoslavia (ICTY) set three standards:

First: The Existence of a Continuous Armed Conflict

Second: The Severity Standard

Third: The Organization Standard

First: The Existence of a Continuous Armed Conflict

The armed conflict has not stopped since its inception, except for short periods based on United Nations requests and agreements, where confrontations between the Syrian army and government forces began in Aleppo, Hama, and Homs in late 2011. On March 25, 2011, the Syrian regime forces (the army) attacked the city of Daraa, and the number of civilian deaths to this date reached eleven thousand, and a very large number of demonstrators were arrested, and these military operations by the regime forces were gradually increasing with the increasing intensity and density of the demonstrations. In 2011, the formation of what is known as the Free Syrian Army, composed of defectors from the Syrian regime army of high rank, in addition to civilian opponents who took up arms to fight the regime forces, was announced.

Many armed groups were formed, which announced their accession to the Free Syrian Army, and the latter was able to carry out attacks against the regime forces, forcing them to withdraw from some sites. The coalition forces consisting of

seventy members led by the United States launched air strikes targeting ISIL in Iraq in August 2014, and more than 13,500 air strikes were launched in the absence of the explicit approval of the Syrian government.⁽⁴⁴⁾

Second: The Severity Standard

The severity of the violence is evident in the statistics presented by official authorities, which provided statistics in numbers for Syrian refugees and displaced persons, where the number of Syrian refugees exceeded 5.5 million refugees in neighboring countries. 6.7 million displaced Syrians refugees and asylum seekers in more than 130 countries, and reported that more than 66 percent of Syrian refugees in the region are women and children. About 1.6 million Syrian child refugees in the region are under the age of ten. 1.8 million people live in camps and informal settlements. In Lebanon, the percentage of children aged 5 to 17 who engage in child labor is 4.4 percent.

On the humanitarian side, 213,000 people receive services related to responding to violence against women. More than 13 million people need humanitarian assistance and protection and 6 million are in dire need. 2.4 million children are out of school and 1.6 million children are at risk of dropping out of school. 9 out of 10 Syrian refugees are now living in extreme poverty.

Syrian refugees are distributed in neighboring countries according to the statistics of the United Nations High Commissioner for Refugees in 2020: that the total number of refugees is: 5,556,417. Turkey has 3,576,344, while the number in Lebanon is: 914,648 refugees, and the number in Jordan has reached: 654,692, and in Iraq there are 245,810 refugees, Egypt embraces: 129,210 Syrian refugees.⁽⁴⁵⁾

As for enforced disappearances, it is estimated that about 1.2 million Syrian citizens have experienced arrest at some point since March 2011, and this era has turned an estimated 99,000 people into victims of enforced disappearance, while the Assad regime is responsible for about 84,000 of these cases. When comparing the cases of enforced disappearance with the total number of Syrians in 2011, which is 21 million, assuming that each disappeared person has five family members or at least individuals, we find that nearly half a million people are directly affected by the crime of enforced disappearance, that is, 2.3% of the total population, and the percentage of detainees represents about 85% of political detainees, while the remaining 15% represent armed opposition fighters. Most political detainees are those who participated in peaceful demonstrations and protests against the authority, and most of them are journalists, medical personnel, relief workers, members of opposition parties, opinion writers, and activists on social media.⁽⁴⁶⁾

Third: The Organization Standard

Many of the armed groups on Syrian territory have a degree of organization, a responsible leadership, and the ability to recruit groups that belong to it, as is the case with the Free Syrian Army, Hezbollah, and the Islamic State Organization: The Free Syrian Army has achieved many victories over the Syrian regime, especially in southern Syria, where it began with intermittent attacks, then gained control of several military centers in the western countryside, then attacked military and vital points in the western and eastern regions, and some barriers that divide Daraa, Raqqa, and Idlib.⁽⁴⁷⁾

Section 3: The Internationalization of the Armed Conflict in Syria

The armed conflict in Syria is distinguished from other non-international armed conflicts by the large number of actors involved and their intermingling. We find armed groups fighting against the ruling regime on the one hand, and groups fighting among themselves on the other, in addition to regional and international interventions. The conflict may extend to neighboring countries; therefore, the term "internationalization of internal armed conflict" has emerged, which requires a set of conditions to be met. We will examine the conditions for internationalizing internal armed conflict (Subsection 1), and then apply this to the armed conflict in Syria (Subsection 2).

Subsection 1: Conditions to be Met for a Conflict to be Internationalized

The conflict in Syria has evolved from a political conflict to a military conflict between the regime army and the parties supporting it on the one hand, and the Free Syrian Army and the revolutionary organizations fighting alongside it on the other, where sectarian affiliation has led to bringing in fighters and material and financial support. After Hezbollah and the Iranian Revolutionary Guard Corps entered the conflict, in addition to external support, the war in Syria became an international war on Syrian soil. This war did not remain merely a revolution against a tyrannical ruling regime, but rather turned into a war threatening international peace and security.⁽⁴⁸⁾

An internal armed conflict may turn into an international armed conflict when elements of international armed conflict are intertwined with elements of non-international armed conflict, and this can only be achieved by meeting conditions in terms of the nature of the conflict, including:

- 1- That the state in whose territory there is a rebellion recognizes the rebels who are rebelling on its territory and gives them the description of belligerents, and this is impossible for the state to do, because this contradicts its sovereignty.
- 2- That one or more foreign states provide military assistance to one of the parties.
- 3- That there be direct intervention by two or more foreign states with their armed forces, and they provide assistance to one of the parties to the internal conflict at the expense of the other party.⁽⁴⁹⁾

Subsection 2: Applying the Conditions for Internationalizing the Conflict to the Armed Conflict in Syria

External parties may intervene in a non-international armed conflict, changing the classification of the conflict. Is external intervention in the Syrian conflict sufficient to transform it into an international conflict? Or at least part of it, especially the indirect confrontations between the Syrian state and the countries supporting the armed opposition? Especially since many evidence indicates that some countries neighboring Syria are supplying weapons and military equipment, and providing training to members of the Free Syrian Army. There is no doubt that this represents a violation of Syrian sovereignty and a violation of the principle of non-intervention.

In the absence of confirmation of the existence of a foreign state that completely controls the Free Syrian Army, the Syrian conflict remains an internal conflict. The question remains about the action of one of the other armed groups under the supervision of another state against the Syrian government? The second question that arises is whether there will be another international armed conflict separate from the internal conflict if another state deploys its forces, even secretly, to fight the Syrian armed forces?

Common Article 3 of the four Geneva Conventions is the minimum standard for the protection of civilian populations; therefore, the Syrian government and non-governmental armed groups are obligated to apply the legal rules stipulated in the Article.

Therefore, the minimum protection that must be provided to all those who do not participate, or no longer participate actively in the hostilities, such as civilians and members of the armed forces of the parties to the conflict who are captured, wounded, or surrendered.

In Additional Protocol II annexed to the Geneva Conventions relating to non-international armed conflicts "all those affected by an armed conflict,"⁽⁵⁰⁾ and this is an expansion in the scope of protection of international humanitarian law, to include persons who are not necessarily parties to the conflict, and Syria has not signed Additional Protocol II, but all those participating in the hostilities must observe a number of customary rules. In the Syrian case, the rules of customary international humanitarian law are not binding on states alone, but on all parties to the conflict.⁽⁵¹⁾

By examining the conditions for internationalizing armed conflict, we find that:

1- Recognition by the state in whose territory a rebellion takes place to the rebels who are rebelling on its territory and giving them the description of belligerents is impossible for the Syrian state to do, because this contradicts its sovereignty.

2- The provision of military assistance by one or more foreign states to one of the parties:

Among the interventions in the Syrian conflict is the entry of Turkish forces to the Syrian armed borders, and its control over the city of Jarabulus on August 24, 2016, after the withdrawal of ISIL from it, and over the city of Afrin and its suburbs recently, after clashes with the Syrian Democratic Forces, which can amount to international armed conflicts between Turkey and Syria, not in its part related to the conflicts in which there is a direct confrontation between the armed forces of the two countries, but in its part related to the occupation of part of a territory belonging to another state, even if there are no direct clashes between the two states. This is what the official Syrian side adheres to, and this is what was confirmed by a statement from the Syrian Ministry of Foreign Affairs dated August 29, through which the Ministry claimed that "the violations and massacres committed by the Turkish regime in its invasion of Syrian territory constitute a crime of aggression..."⁽⁵²⁾

However, the Turkish authorities justify their intervention in northern Syria by the right to legitimate self-defense against the threat of terrorist organizations that launch missiles at Turkish territory and launch attacks from northern Syria.

3- That there be direct intervention by two or more foreign states with their armed forces, and they provide assistance to one of the parties to the internal conflict at the expense of the other party. An American official reported that the "brutal" Israeli air force targeted a warehouse at Damascus International Airport on March 3, 2013, which it believed contained Iranian Fatch-110 surface-to-surface missiles. The New York Times reported on March 4, 2013, that the air attack launched by the occupying Israeli entity on Syria targeted a shipment of missiles coming from Iran that was on its way to Hezbollah in Lebanon.⁽⁵³⁾

The legal qualification of the conflict between the forces of the Syrian regime and the ISIL organization in Syria is in fact a thorny topic, given that the organization is considered globally to be a transnational terrorist organization, and therefore the conflict can be considered an extended non-international armed conflict, given the ISIL organization's control over vast lands in both Iraq and Syria, and it therefore meets the conditions of the threshold of non-international armed conflicts, according to Additional Protocol II of 1977. It is necessary to draw attention to the fact that the Syrian regime does not recognize all of these groups and considers them terrorist groups.⁽⁵⁴⁾

However, the conflict against ISIL did not stop at this point. In August 2014, the United States carried out air strikes, and according to The New York Times, when it reported statistics on the website of the US Department of Defense, the Pentagon, indicating that the coalition led by the United States, which includes Britain, France, Canada, Australia, Jordan, Saudi Arabia, Bahrain, the United Arab Emirates, Turkey, and Israel, in addition to the Assad regime and Russia, where the number of strikes in Syria and Iraq reached 7162 strikes within 2579 strikes on Syria, the United States alone carried out 2442 strikes on Syria and 4583 air strikes on Iraq, all claiming to fight ISIL.⁽⁵⁵⁾

The Syrian-Russian military alliance continued to attack civilian objects indiscriminately. Human Rights Watch documented 18 unlawful attacks in Idlib between January and March 2020 that killed at least 112 people, injured approximately 359, and destroyed schools and health facilities. Cluster munitions were used in two attacks on schools in Idlib in February. According to the UN Office for the Coordination of Humanitarian Affairs, 84 medical facilities halted

operations in Idlib and Aleppo in March 2020, and Save the Children reported that 217 schools were displaced or damaged as a result of the conflict in Idlib between December 2019 and March 2020.

The jurisprudence of the International Court of Justice states that "intervention by invitation," as long as the consent of the state concerned is valid, falls outside the scope of Article 2(4) of the United Nations Charter, which prohibits the use of force by states in their international relations. The cause of consent leads to the transformation of intervention into a violation of international law from that point onward, and would make the foreign state intervening a party to the conflict.⁽⁵⁶⁾

In light of solid evidence of the presence of militias sponsored by other states fighting with the Syrian armed forces against the Free Syrian Army and other armed groups of the Syrian government, such as Hezbollah, Iraqi and Afghan militias, it is possible that this conflict could turn into an international conflict if the existing balance is disturbed and some states decide to intervene with their own armed forces to tip the balance in favor of the opposition.⁽⁵⁷⁾

The International Committee of the Red Cross submitted a report stating that the application of the Geneva Conventions in its entirety of international humanitarian law applies to: all cases of civil wars, colonial disputes, or religious wars that may arise in the territory of one or more of the High Contracting Parties," and in 1971 the Committee submitted a draft to the Conference of Experts recommending a proposal aimed at the obligation to apply the entire body of international humanitarian law to civil wars in the event of the intervention of foreign forces.⁽⁵⁸⁾

Conclusion:

The issue of the legal classification of the armed conflict in Syria is a complex and thorny issue that requires the concerted efforts of the international community and the cooperation of specialized classification bodies, and requires looking at the conflict from several angles, and considering the parties involved in it, in order to be able to determine its type, and thus the optimal application of international humanitarian law. Through the previous study, we have reached the following results:

1- Common Article 3 of the four 1949 Geneva Conventions is the minimum standard for the protection of civilian populations, and the parties to the conflict: the Syrian government and non-governmental armed groups must apply all the legal rules stipulated in the previous article.

2- Additional Protocol II annexed to the 1977 Geneva Conventions expands the scope of protection to include persons who are not necessarily parties to the conflict.

3- The legal qualification of the conflict in Syria is not uniform but rather evolves with the changing parties involved. Each time a party enters the conflict, the qualification shifts accordingly. The conflict between the forces of the Syrian regime and the ISIL organization is thorny because considering the ISIL organization to be a terrorist organization - for those who classify it as such - and given its control over vast lands in both Iraq and Yemen, the conflict can be classified as a non-international conflict, according to the conditions of Additional Protocol II of 1977.

4- An internal armed conflict transforms into an international armed conflict when elements of non-international armed conflicts are intertwined with elements of international armed conflict, provided that the following conditions are met:

5- That the state in whose territory there is a rebellion recognizes those rebels who are rebelling on its territory and gives them the description of belligerents.

6- The provision of military assistance by one or more foreign states to one of the parties.

7- If there is direct intervention by two or more foreign states with their armed forces and they provide assistance to one of the parties to the internal conflict at the expense of the other party.

8- The International Criminal Tribunal for the former Yugoslavia set three standards:

*The existence of a continuous armed conflict.

*The Severity Standard.

*The Organization Standard.

9- Additional Protocol II of 1977 specifies the need for three criteria to classify any type of conflict as a non-international armed conflict as follows:

*The existence of hostilities between the regular armed forces and the dissident armed forces confined within the territory of the state.

*The existence of a responsible leadership that carries out continuous and coordinated military operations.

*Control over part of the territory and the ability to apply Additional Protocol II of 1977.

From the above, it is clear that an international body should be established consisting of experts whose role is to classify conflicts, or that the International Committee of the Red Cross should officially undertake this task.

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