

The Dilemma of Determining a Criterion for Benchmarking Armed Conflicts in Public International law (A Content Analysis)

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Abstract :

The paper provide an indepth analysis of the problem of lack of specific and precise criteria for determining and categorising the types of armed conflicts as well as the intervention of international organizations in resolving the internal armed conflict and the containment of its effects which may lead to a change in the legal description of the armed conflict from being being a domestic to an international armed conflict and vice versa. Adopting qualitative methodology the paper tries to achieve three important objectives; to highlight the types of the armed conflicts, to develop a specific standard of determining the nature of the armed conflicts and to highlight the role of the international organizations in providing different legal descriptions of the armed conflicts. To achieve these objectives this paper is divided into three sections. The first section deals with the definition of armed conflicts in which it analysed and dicussed two issues: the requirement for determining and

operationalizing the concept of armed conflicts within international law and the causes and nature of armed conflicts. the second section, deals with the criteria adopted in determining the nature of the armed conflicts which is view from two parlances. The first discusses the international legal personal standard, while the other searches the criterion of the international character. The final section deals with the role of the international organizations in determining the nature of armed conflicts. This section also analysed two important issues in which the first one discusses the role of the United Nations Organization, while the other discusses the role of the other international organ.

Key words: armed conflict, public international law, international organization

Introduction :

The resort to using of the armed force is considered an inseparable part of human history by which it was accompanied and it is still ongoing to this day,¹ taking forms and different patterns known as the armed conflicts.² Therefore, it is not only one of the means, but also one of the key features in which human relations are characterized whether at the domestic level or at the international level, especially when those relationships reach to a dead end. At the first glance, the armed conflicts represent the use of force to achieve the goal among the warring countries; these armed conflicts are wider than the traditional war. However, the armed conflict is involving other types of the armed conflicts such as civil war,³ armed struggle and popular resistance and the internal disturbances and tensions.⁴ Each one of these armed conflicts has its own circumstances and causes that lead to the eruption.⁵

¹ Jack S. Levy, and William R. Thompson. *Causes of war* (John Wiley & Sons, 2011), 1.

² Abo Al-Qasim Qoor, *Introduction of Peace and Conflict studies* (Bahrain: Alapetkar, 2010), 4.

³ , Matthew O. Jackson, and Massimo Morelli. "3 The reasons for wars: an updated survey," *The Handbook on the Political Economy of War* (2011), 2-4.

⁴ Levy, Jack S., and William R. Thompson. *Causes of war*, 3.

⁵ Ibid.

Accordingly, the concept of the armed conflict is no longer limited to a particular conflict. On the contrary, it includes types and images of multiple conflicts in which some of these multiple conflicts are internal, international,¹ and international in nature depending on the importance and the parties of the conflict and the nature of interests that are threatened.² This means that these types and images of armed conflict may overlap and intertwine with each other.³ Thus, this scenario leads to place a specific criterion alone to determine the nature of the armed conflict or that is extremely difficult without mentioning what problems are raised by the intervention of international organizations to end the armed conflicts.⁴ These problems prevent them from highlighting the exact nature of the armed conflict.

Conceptual clarification :

There is no doubt that the armed conflict is one of the images by using the military force regardless of shapes or sizes of these

¹ Christopher Murray and Etal "Armed conflict as a public health problem," *Available at SSRN 1082870* (2002).

² James G. Stewart, "Towards a single definition of armed conflict in international humanitarian law: A critique of internationalized armed conflict," *Revue Internationale de la Croix-Rouge/International Review of the Red Cross* 85, no. 850 (2003): 313.

³ Jack SLevy and William R. Thompson. *Causes of war*, 3-4.

⁴ *Ibid.*

images of conflicts as well as the extension of its effects.¹ Determining the concept of the armed conflicts depends on a mere reference to one bullet fired across border from one of the soldiers or one of the citizens of the state. This one bullet fired can be also shot by the armed organization which was as a spark to create a greater conflict dragged armies to wars that knew no victory, it can be shot by a cannon shell or it can be even experienced a new weapon in the territory of the state in which its resonance or effects extend to the territory of neighboring countries.² It can be touched on the political impact on the level of the neighboring countries or the entire international community, regardless of being a traditional weapon or one of (weapons of mass destruction).³ It can be related to the use of the arms among the people of one nation in which it is not connected to the image of misdemeanors and crimes punishable in accordance

¹ James G. Stewart, "Towards a single definition of armed conflict in international humanitarian law: A critique of internationalized armed conflict, 315.

² On June 28, 1914, a nineteen-year-old Bosnian student named Gavrilo Princip stepped up to an open car on a Sarajevo street and fired two shots. The bullets from Pricip's gun killed Archduke Franz Ferdinand, the heir to the throne of Austria-Hungary, two shots are the Spark That Started World War I [Robin S. Doak, *Assassination at Sarajevo: The Spark that Started World War I* (Capstone, 2009),8.]

³ Anthony G. Macintyre and Etal "Weapons of mass destruction events with contaminated casualties: effective planning for health care facilities," *Jama* 283, no. 2 (2000): 245-248.

with the laws of the national penalty or among people and regimes in the countries.¹ It can occur between international parties characterized by the international legal personality or its occurrence is shown due to the fact that one of the parties has this characteristic which the other parties do not have. This characteristic can be noticed regardless of the objectives, results, the conflict parties and the extent of the availability of a third party in such disputes.

In order to investigate the truth of the definition of armed conflict, this section is divided into two requirements. The first one is particularly dealing with the concept of the armed conflicts, while the second tries to show the causes of the armed conflicts.

The Concept of the Armed Conflicts

The evolution, accompanied by the international community in its construction has left its direct impact on the formulation of the essence of the idea of the armed conflicts. Hence, this idea was narrowed as a result of the goals and objectives represented by the goals, ambitions, and purposes of certain international parties in the international community.² It then moved towards the expansion of its concept with regard to objectives and other purposes that were

¹ Fearon, James D., and David D. Laitin. "Ethnicity, insurgency, and civil war." *American political science review* 97, no. 01 (2003): 76-80.

² Levy, Jack S., and William R. Thompson. *Causes of war*, 1.

especially related to the humanitarian aspect until the present era where the rules of humanitarian international law governed the armed conflicts.¹

The idea of war has traditionally emerged and can be described as the most prominent images of the armed conflicts at the level of the international jurisprudence. According to the international jurisdiction,² a war is considered a mere armed conflict between two or more countries in which peacetime situation has consequently replaced hostility. The purpose of such a war is to defend the rights or interests of the warring states. In this case, the whole situation was beyond the scope of armed conflict and the forms that have well known effects and their descriptions as being armed conflicts required the legal regulation and treatment. It is necessary to place it in a legal framework based on the real criteria to carefully determine their descriptions for the purpose of codifying and reducing its negative effects. The view of the traditional international legal jurisprudence regarding the armed conflicts was based on a set of principles adopted as a criterion in determining the concept of war

¹ Robert K. Goldman, "International Humanitarian Law and the Armed Conflicts in El Salvador and Nicaragua," *Am. UJ Int'l L. & Pol'y* 2 (1987): 539.

² Hans-Peter Gasser, "International Humanitarian Law An Introduction," *International Review of the Red Cross* 34, no. 298 (1994): 88.

that begins with the need for the availability of the organic component related to the parties of the conflict. Consequently, the parties of the conflict should be stated that have sovereignty as a war is considered a legal case arises only among countries. Further, the consequent existence of this case provided a substantial impact on the regulation of the warring states relations within each other on the one hand, and between these warring states and the neutral countries that do not participate in the war.¹

This criterion for determining the war did not consider a number of the images of the concept of the armed conflicts.² For example, the Civil War is not considered as one of the accounts of the traditional international jurisprudence because the main difference between the Civil War and the international war is that the parties of the armed conflict in any international conflicts are bound to be among the members states of the international community.³ This essentially requires that they possess international legal

¹ Nabil M. Hassan, *Criminal Responsibility of the Leaders in Period of Armed Conflict* (Cairo: Egyptian Print, 2008), 25-26.

² Charles W. Hoge, Jennifer L. Auchterlonie, and Charles S. Milliken. "Mental health problems, use of mental health services, and attrition from military service after returning from deployment to Iraq or Afghanistan," *Jama* 295, no. 9 (2006): 1023- 1026.

³ Salah Al-Dien Amer, *People's Armed Resistance in Public International Law* (Cairo: Dar Alfaker Al Araby, 1998), 75

eligibility, which means that it always takes place among sovereign states, while the rebellious part in the civil war does not have that characteristic of sovereignty as well as the rest of the images of the armed conflicts which all of its parties or one of them do not have the feature of the sovereignty of the state.¹

In addition, it is extremely difficult to determine the parties in a conflict because of the mutual dependence of the world.² This is the case in the international community that has international alliances and mutual conventions such as those of the common defense conventions and other international commitments. Hence, it has been noted that countries find difficulty in supporting conflicts of other countries, and even if these countries were not included directly in the dispute as main sides; it may be indirectly involved in the armed conflict.³

Furthermore, the will of the outbreak of fighting between the parts of the armed conflict and the purpose of that fight should be accompanied by the direct use of force and armed clashes. It should

¹ Ibid.

² Mile Terziovski and Etal, "Establishing mutual dependence between TQM and the learning organization: a multiple case study analysis," *The Learning Organization* 7, no. 1 (2000): 24-25.

³ Tuzalin Hegps, "Place of international law in the resolution of conflicts through the Security Council," *Majalit Al-hak*, No.1 (1971): 28.

be also accompanied by other grounds of traditional international jurisprudence in determining the basis of the war.¹ This requires making the armed conflicts always has a large-scale within its impact and narrow within its concept. Many international and internal armed conflicts are similarly extracted from its concept. Therefore, it requires that using of armed force should be included whether it is by land, sea or air in which it relatively requires its widening operations on a large scale because the will of the outbreak of fight necessarily represent a psychological element that undoubtedly relates to the will of the conflict parts to ignite the flames of war between them. There can be no war in its traditional legal sense if there is no deliberate intention of the conflict parts of the conflict to end or even eliminate the state of peace in order to replace the war.²

¹ Nabil M. Hassan, *Criminal Responsibility of the Leaders in Period of Armed Conflict*, 28.

² When countries gathered in the Second Conference of Lahey 1907, they agreed among themselves, that no way to began the war only after prior notification clear and explicit Such notification shall be in the form of a declaration the cause of war between its parties, and each state signed on this Convention is committed to disclose the desire to war as mentioned by the Convention before it starts in hostilities, which therefore, breach of agreement represents an international crime [Ibid]

Consequently, several purposes can be achieved, such as forcing a country to yield to the demands of the aggressive State, the occupation of part of its territory, control over the entire territory and thus an attempts to annex it to its territory, force them to act or not to act, or destroying the state and its people. This is the ultimate goal of the war. The purpose of the conflict is to destroy a particular country or its ability to resist.¹ This necessarily and directly requires resorting to the use of force or violence among the parts of the armed conflicts. In the traditional thinking, the war that is not followed by violence is nothing but a sham war that do not result in the outcomes and commitments, whether it occurs between the two conflict states or parts of the conflict.² For example, if the state announces a state of war, this act is insufficient to create a state of war. The actual armed clash should be emerged, and the traditional international customary law has been settled on the need for the declaration of war before the happening of the armed conflict.³ If the armed clash took place without the declaration of a state of war, this may naturally

¹Ahmad Abo Alwaffa, *The General Theory of International Humanitarian Law* (Cairo:Arab Renaissance Publishing House, 2006), 13.

² Nabil M. Hassan, *Criminal Responsibility of the Leders in Period of Armed Conflict*, 29.

³ Ibid.

lead to a state of war as long as the circumstances of the case support it.¹

The traditional view of the concept of armed conflicts, i.e. The international traditional legal concept of a war, did not necessarily consider numerous images of armed conflicts from the concept of armed conflict². Instead, that view made a clear confusion in the concepts relating to the armed conflicts. It also limited the concept of armed conflict in a way that means the war that occurs between countries that enjoy sovereignty at the international level without other subjects of international law as well as other individuals and groups who actually requires the current need to provide legal protection for them, especially with regard to the benefits and rights under international humanitarian law. This act prompted the international community to seek the expansion of the concept of armed conflicts through the evolution of the legal rules that organized the armed conflicts.

The international community has made efforts to form international legal rules. It has tried to make it fit with renewable conditions on the level of international relations, especially those characterized by overlapping military officers with civilians in order

¹ Ibid.

² Levy, Jack S., and William R. Thompson. *Causes of war*, 1.

to find a level of respect for human rights, especially any parts can turn to the use of excessive violence in any dispute at peacetime. Similarly, the direct armed conflict is described as a potential element that is possible can be used in any place and time.¹

Moreover, this should be occurred without neglecting the development of rules that organized the armed conflicts in which it was accompanied by states which seemed slow to adopt domestic legislation or acknowledgment of international legislation for the implementation of its provisions or to rely on its provisions.² It can be noted that the term “the armed conflicts” has been apparently used in the contemporary international documents, especially after the conferences relating to armed conflicts, including the four Geneva Conventions of 1949.³ Protocol I of 1977 of the Geneva Conventions, the Hague Convention of 1954 that is concerned of the protection of cultural property at the time of the armed conflicts,⁴ San Remo guide concerning the international law applicable to the

¹ Ali A. Abdullah, *Law of Armed Conflict: International Humanitarian Law* (Beirut: Dar Al-Muallef, 2004), 11.

² Terue Ferry, *International Humanitarian Law*, (Geneva: Red Cross, 1984), 9.

³ Kamal Hummad, *International Humanitarian Law and Heritage Protection During Armed Conflicts* (Beirut: Halabi rights Publications, 2005), 31-32.

⁴ George H. Aldrich, "Prospects for united states ratification of additional protocol I to the 1949 Geneva conventions," *The American Journal of International Law* 85, no. 1 (1991): 1-3.

armed conflicts at Sea in 1994, and the Convention of the prohibition of creating technologies to change the environment technologies for military purposes or for any other hostile purposes of 1976.¹

To summarize, many researchers and scholars and those interested in the affairs of armed conflicts have avoided giving a general sense of the definition of armed conflict, but they give definitions of armed conflicts characterized as not being having an international character (internal) and the international armed conflicts. Due to this, the armed conflicts can be defined as: every conflict occurred between two or more sides that belong to both or at least one of the persons of international law or it could not be the case and this conflict was such a threat to international interest or predicted the creation of serious humanitarian disasters.

The Causes and nature of Armed Conflicts

The study of problem that stares at the humanity requires us to stand on the causes of this problem with a view of the possibility of developing solutions to them. The armed conflict is considered one of the fundamental problems that threaten the existence of humanity. To know the reasons behind its emergence is very important. Since these reasons are multiple and overlapping, this paper helps simplify

¹ Ibid.

the concepts and divide them into internal and other international reasons.

First: The Internal Reasons

Many reasons that are available cause to break out the armed conflict. Poor countries or those that are with fragile political systems are often vulnerable to such disputes because it includes deterioration of the political, economic and social conditions.¹ As for political reasons, the struggle for power is one of the most important reasons that lead to the outbreak of the internal armed conflict.² Thus, the use of force by those in authorities or by the opposition against the authority was one of the reasons that led to the establishment of the internal conflict such as the case in Somalia, El Salvador, Haiti, and many African countries.³ Further, the loss of confidence in the national automaticity and the occurrence of an identity crisis will lead to the outbreak of armed conflict, which has up to secession and the formation of a new state as well as the

¹ Matthew O. Jackson, and Massimo Morelli. "3 The reasons for wars: an updated survey." *The Handbook on the Political Economy of War* (2011): 34.

² Steven R. David, "Internal war: causes and cures," *World Politics* 49, no. 04 (1997): 552-555.

³ Massad A. Zeidan, *The Intervention of United Nations in Armed Conflicts Not of An International Character: A Comparative Study* (Alexandria: Dar Al-Ketab, 2009), 91.

marginalization exposed by a region of the territories of the State.¹ Its parties are excluded from the participation in power and the lack of basic services such as the case of the Darfur region in which it led to the outbreak of armed conflict.²

As for the economic reasons, it represents a failure of economic institutions that are depending heavily on agriculture, the absence of modern industrial structures, the increase of the public debt size, rampant bribery and nepotism, embezzlement, and people who are in a critical place to run the country do not have the experience, competence and the ability to understand the internal and international economic variables.³ All these combined or individual factors significantly contributed to the spread of violence and the threat of statehood like what happened in many African countries where the capable state authority was absent to run things inside and the voice of gunpowder became the effective power.⁴

¹ Amir Faraj, *International Criminal Court and the Problem of Darfur* (Alexandria: University Publications, 2009), 73

² Ibid.

³ Massad A. Zeidan, *The Intervention of United Nations in Armed Conflicts Not of An International Character: A Comparative Study*, 93.

⁴ Ibid.

Second: The International reasons

The international reasons can often be the cause for the move and the continuation of armed conflicts. These reasons vary according to the period experienced by the international relations as well as the different, effective frameworks in the international system. Furthermore, any application of the concept of non-international armed conflict would lead to include or deny a number of veterans of legal privileges and immunities provided by international humanitarian law.¹

Moreover, the disagreement of the geographical divisions of sovereignty with its social divisions was the cause in which some states extended separatist movements; these countries thought that they express the Nations and Nationalities broader than the geographic scope of its sovereignty. This will lead the support of

¹ international humanitarian law does not provide for a single set of rights and duties t which every person is subject. Quite to the contrary, international humanitarian law provides for different rights or duties for different categories of persons. In international armed conflicts, the central dichotomy of categories is that between the civilian population and the “military”, which consist of a number of categories listed in article 50 para. 1 Prot. I. Most of the members of the military are “combatants”, i.e. persons who may take direct part in hostilities and are, on the other hand, the legitimate object of (individualised) attacks. The other category are the civilians, i.e. all persons who are not members of the military. As a matter of principle, they enjoy a status of ”immunity”, [Michael N. Schmitt, "Second Expert Meeting on the Notion of Direct Participation in Hostilities,"]

ethnic, religious and cultural divisions.¹ In addition, it might be the engine of the armed conflict characterized by the ambitions of regional or international state. For example, it has been found that the interests of the major states and the division of the countries of the world into influential regions had a big role in igniting the armed conflict particularly after the development of weapons and the increase of its purchase. The countries that produce these weapons find it profitable to ignite the conflicts, especially if the spirit of nationalism, racism, sectarianism, and the problems of the border provide sources of funds through the sale of weapons to these hotspots.²

The Criteria Adopted to Determine the Nature of Armed Conflict

Despite the fact that the last four decades experienced by the international community have witnessed a number of international and non-international armed conflict otherwise. This resulted in human pain and destruction of property.³ However, this made the international humanitarian law have priority to constant evolution

¹ Massad A. Zeidan, *The Intervention of United Nations in Armed Conflicts Not of An International Character: A Comparative Study*,99.

² International Committee of the Red Cross. *Arms availability and the situation of civilians in armed conflict*. International Committee of the Red Cross, 1999, 4.

³ Nabil M. Hassan, *Criminal Responsibility of the Leaders in Period of Armed Conflict*, 32

that particularly occurred during the twentieth century in the forms and images of armed conflicts. In addition, it witnessed the global change of the idea of fair war.¹ This idea has made the traditional theoretical position in the concept of legal war flow from the satisfaction of contemporary international community requirements under international humanitarian law described as a distinct branch of international law in which the jurisdiction of its rules is hardly confined to the regulation of armed conflict.²

The internal and international armed conflicts in many countries of the world such as the armed conflicts that took place in Iraq in particular, Palestine, Somalia, Lebanon, Yemen, Yugoslavia (former), Rwanda and Sierra Leone revealed the emergence of new images of armed conflict that could lie between revolutionary groups and regular armies characterized as forms that did not live up to the legal cases of war.³ However, these images are in need for the application of the rules of the international law due to the large number of its victims and the size of its devastating effects.⁴ The armed conflicts have largely become a nationalist and international character in a way that blends with the character of the separatist

¹ Ali A. Abdullah, *Law of Armed Conflict: International Humanitarian Law*, 9.

² Ibid.

³ Ibid.

⁴ Ibid.

wars in which it would impact the overall inclusion of individuals in the context of the armed conflict.¹ To put these conflicts within the proper legal status and according to specific criteria, this section is divided into two requirements. The first dealt with the international legal personality criterion while the second discusses the criterion of international character.

The Criterion of the International Legal Personality²

This criterion has adopted the traditional theory of armed conflicts. According to that theory, the armed conflicts are divided into armed conflicts that have no international character (internal) and international armed conflicts.³ According to this criterion, the conflict characterized as being international or not depends on the enjoyment of the parties of the conflict with the international legal personality or their lack of enjoyment. If one of the conflict parties

¹Ali A. Abdullah, *Law of Armed Conflict: International Humanitarian Law*, 9.

² The personality of international legal is (the expression of the relationship that exists between a specific unit and a specific legal system); Talat G. Legee, *The International Legal Status of the Multinational Compaines* (Amman: Hamed for Publishing and Distribution, 2008), 126; Mohammed K. Yakoot, *The International Personal in Public International Law and Islamic Law* (Cairo: Dar Al-Muna, 1971), 11.

³ James G. Stewart, "Towards a single definition of armed conflict in international humanitarian law: A critique of internationalized armed conflict, 313.

lacks this character, a conflict of non-international character will be revealed.¹

The Non- International Armed Conflicts (internal armed conflicts)

The Article 3 shared in the Geneva Conventions of the year 1949 has mentioned this statement: (the armed conflict that has no international character).² Attitudes have been varied and views have been contrasted concerning the adoption of a unified definition of armed conflicts characterized as non-international character. Some of these attitudes adopted a narrower concept, while others adopted a broad concept.³ For example, it has been found that the two projects submitted by the League of Arab States to Special diplomatic Conference regarding the two additional protocols have adopted the broad concept. Therefore, the first article of the draft of Protocol II has stated that (this protocol applies to all armed conflicts in a way that are not covered by Article 3 shared in the Geneva Conventions

¹ Ibid, 313-14.

² Common Article 3 of the four scoliosis agreements have stipulated in 1949 that ((in the case of armed conflict not of an international character of the territory of one of the High Contracting Parties, committed to each party of the conflict by apply the provisions of this agreement.

³ Samer A. Al-Mazgeny, “Armed Conflicts in Public International Law and the Nature of Lebanese War” (Master’s Theses, College of Law Baghdad University, 1978), 65.

of August, 12th 1949, which occurred among armed forces or other groups under responsible command).¹

On the other hand, based on the broad concept, others defined this type of conflict as those conflicts that take place within the borders of the territory of a state.² This type can be run between its armed forces and dissident armed forces or other organized armed groups. It can be practiced under responsible leadership on the part of the territory in a way that enables them to undertake sustained and concerted military operations.³ According to the broad concept, the armed conflicts that have non-international character lies within the framework of the state without specifying the identity of the parties of the conflict. Hence, Castberg believed that non-international armed conflict is not an individual conflict or just frenzy, but it is a conflict which resembles the international war occurred within the region of the same state.⁴ On the other hand, the narrower sense of the non-international armed conflict considered this type of conflicts and civil war as two synonymous and identical concepts. Therefore, the non-international armed conflict is defined as the conflict in

¹ Ibid.

² Ahmad Abo Alwaffa, *The General Theory of International Humanitarian Law*, 9.

³ Ibid.

⁴ Samer A. Al-Mazgeny, "Armed Conflicts in Public International Law and the Nature of Lebanese War, 66.

which the armed forces of a state engaged in armed confrontation with a class or some groups within its national territory.¹

The Expert Committee formed by the International Committee of the Red Cross (ICRC) has the same direction. To develop non-international armed conflict, it is required to have a move against the legitimate government that has the collective character, that is, it must have a minimum of regulation.² An example of this type is the conflict which happened in the Republic of Bosnia and Herzegovina between the Serb minority and the Government of Bosnia, especially after the Serb minority was able to control a geographical area of the region of the State of Bosnia and Herzegovina. The elected Bosnian government has no control over it.³ This has driven others to adapt this conflict and stated that it is non-international armed conflict because it is run within the framework of a single state between the legitimate government and the faction of its citizens who came out and took up arms in the face of the same state. In other words, in Bosnia, the armed conflict in its public meaning is considered (civil

¹ Sharif Atlam, *Lecturers in International Humanitarian Law: The Meaning of International Humanitarian Law and Its Development* (Beirut: Dar Al Arab Future, 2001), 38.

² Samer A. Al-Mazgeny, "Armed Conflicts in Public International Law and the Nature of Lebanese War, 50.

³ Hussm A. Abdelkhalek, *Responsibility and Punishment for War Crimes in Bosnia and Herzegovina* (Alexandria: Al-Dar AlJamaaia, 2004), 266.

war) and in its exact meaning, it is considered (detachable war).¹ This contrast in the attitude was due to this type of armed conflict in which it involved many of the images and shapes. In addition, it has made the adoption of a unified position described as uncertainty, ambiguity and lack of legal clarity of vision. Therefore, it is difficult to adopt a unified legal conception of non-international armed conflicts.²

The International Armed Conflicts :

Many scholars and writers of international law shared the concepts of war and armed conflicts.³ These two concepts shared similar things in terms of content and objectives in a way that is prevailing in the writings of jurists of traditional international law.⁴ It should be noted that Mohammed Hafez Ghanem defined war or armed conflict as a conflict between two or more states regulated by the international law and behind this conflict there is an attempt by the parties to seek each of them to maintain the national interests.⁵

¹ Ibid.

² Ibid.

³ Ayoob, Mohammed. *The third world security predicament: State making, regional conflict, and the international system*. L. Rienner Publishers, 1995.

⁴ Mohammed H. Ganem, *The Principles of Public International Law* (Cairo: Dar Alnahda Al Arabia, 1961), 624

⁵ Ibid.

Further, it has been defined as (an armed fighting between the countries with the aim of giving priority to political point of view according to means regulated by the international law).¹ According to this criterion, the international armed conflicts are those that occur among people of international law, specifically among countries or among an international organization such as the UN. Otherwise, the armed conflict is not merely a non-international armed conflict.

Thus, it is clear that the international legal character as criterion developed by the traditional theory to determine the nature of armed conflict has overlooked the importance and seriousness of many of these types of conflicts.² Therefore, the conflict parties have not enjoyed the feature of the international legal character.³ This leads to maintain such type of conflict and gives it the feature of non-international conflict and reduces its importance. In order to solve and include its effects, many of these conflicts will be subject to the laws of internal states and they are not subject to international humanitarian law in many of its conditions.⁴ This criterion lacks the

¹Hassanein A. Bioady, *The invasion of Iraq between International Law and International Politics* (Alexandria: Munshaat Al-Maharef, 2005), 10.

² Assam Al-Atiya, *Public International Law*, 315-316.

³ Ibid.

⁴ Meron, Theodor. "International criminalization of internal atrocities." *American Journal of International Law* (1995): 556-557.

determination of the nature of armed conflict in a way that fits its seriousness on the international community. Moreover, it considers justifying historical phase undergone by the international community. That phase is the stage of colonization. Therefore, that criterion is a justification for its continuation as well as adding its legitimacy.

The Criterion of the International Character

This criterion represents the sum of jurisprudence efforts and international practices concerning the distinction between the various forms of armed conflict. This criterion has come in response to put each conflict in its right position and according to its seriousness that does or does not threaten the international interests. This criterion focuses on determining the nature of armed conflict concerning the international character represented by the extension of its spatial and temporal scope and its effects on two or more states.¹ According to this criterion, the absence of the international

¹ Criterion two of the 1998 European Union Code of Conduct on Arms Exports covers ‘serious violations of human rights’. The following explanation is provided: ‘Systematic and/or widespread violations of human rights underline the seriousness of the human rights situation. However, violations do not have to be systematic or widespread in order to be considered as “serious” for the Criterion Two analysis. According to Criterion Two, a major factor in the analysis is whether the competent bodies of the UN, the EU or the Council of Europe (as listed in Annex III) have established that serious violations of human rights have taken place in the recipient

legal character is shown to determine parties of the conflict to be replaced by other forms and patterns. These forms are shown on the surface which is not completely international, but it does have some of the elements and characteristics of the international armed conflict.

Despite the fact that the traditional international law and the four Geneva Conventions of 1949 in which they recognizes only two groups of the armed conflicts which are the non-international and international armed conflicts, there is a third group of the armed conflicts that has emerged without a specific name.¹ This new group is characterized by two aspects; one is negative and the other is

country. In this respect it is not a prerequisite that these competent bodies explicitly use the term “serious” themselves; it is sufficient that they establish that violations have occurred. The final assessment whether these violations are considered to be serious in this context must be done by Member States. Likewise, the absence of a decision by these bodies should not preclude Member States from the possibility of making an independent assessment as to whether such serious violations have occurred,’ [Genève Academy Briefing No. 6, The What amounts to ‘a serious violation of international human rights law’?An analysis of practice and expert opinion for the purpose of the 2013 Arms Trade Treaty, August 2014].

¹ Salah Al-Dien Amer, *People’s Armed Resistance in Public International Law*, 525.

positive. Thus, this kind of conflicts does not arise between states, but they take the character of internationalism.¹

Furthermore, the most important images of this new group are the wars of liberation against colonial powers or foreign rule in which it was considered as civil wars by the traditional jurisprudence. The customs of war laws cannot be applied except when the rebels are recognized by rebels or veterans.² It should be noted that this description that prevailed traditional jurisprudence has turned to the other legal description as a result of entering the majority of states within the international community, considering the wars of liberation and armed struggle against colonialism and occupation as a legal act within the scope of international law.³ Consequently, such conflicts have been expressed in many of the recommendations of the General Assembly of the UN.⁴ Thus, it is no longer possible to ignore these conflicts or to consider them as non-international conflicts, but it is considered as an international character because it does not take place between the two countries, but it occurred

¹ Hamed Sultan and Aaisha Ratb, *Public International Law* (Cairo: Dar Alnahda Al Arabia, 1984), 796.

² Salah Al-Dien Amer, *People's Armed Resistance in Public International Law*, 526-525.

³ Ibid.

⁴ Ibid.

between a state and a state which is on its way to the emergence.¹ However, others considered the liberation movements against colonial domination as international conflict.² They defined the international armed conflicts as (those in which two or more states clash with arms and those in which the people struggling against colonial domination, the crimes of apartheid, or foreign occupation. These conflicts are subject to a large number of rules, including those stated in the four Geneva Conventions and Additional Protocol I).³

The people's armed resistance, liberation movements against foreign occupation, and apartheid policies do not have the elements of the international legal character and therefore the armed conflicts that betray others is not an international conflict.⁴ It is however considered an armed conflict in which the internal and international elements mingled in a way that made these conflicts have internal foundations and international manifestations and more precisely

¹ Ibid.

² Nagam A. Ziaad, "Study in the International Humanitarian Law and International Law of Human Rights." Phd Thesis, University of Musel, 2004, 66.

³ Ibid.

⁴ Assam Al-Aatiya, *public International Law*, 7th Ed. (Bagdad: Al-Nahdah, 2008), 312-315.

described as (an international character).¹ On the other hand, others argue that the non-international armed conflict could turn into effect during or at the end to a conflict with an international character in many situations such as:²

1. In terms of effects, the victory of the rebels may lead to the emergence of a new state if the goal of the rebels is separation or they may lead to the emergence of a new government if their goal is to actually overthrow the existing regime.
2. In terms of recognition, other countries may have recognized the rebels as fighters or revolutionists and thus a conflict that has been practiced has international effect in which they are required to respect the laws of war.

Additionally, the interference of the international organizations and other countries involved in non-international armed conflicts in order to provide assistance to a party of the conflict may also lead to a change in the legal description of these conflicts to be armed conflicts with international feature.³ Other countries may interfere in the conflict by providing assistance to rival groups. The international nature of the conflict is clearer if each competing group backed by a

¹ Ahmad Abo Alwaffa, *Mediator in Public International Law*, 4th ed (Cairo: Dar Al-Nahdaa Al-Arabih, 2004), 9.

² Ibid.

³ Ibid, 11.

State.¹ A number of criteria have been proposed to determine whether the conflict has an international or domestic nature. One of the most important suggestions is that the conflict should be international, which is of an international character, if the internal forces conflicting are just tools to foreign countries.² Another important suggestion is that armed forces should be placed to separate the two parts of the two regions that were one state before partition. Finally, a separatist movement, in actual exercise, control over a part of a state already existed.³ Further, Al Jawmard pointed out that the internal armed conflict is a danger. The conflict which could become an event on the international level is a conflict which is taking place in the region of a state between the armed forces and splinter forces or organized armed group which is subject to responsible leadership exercised on the part of its region to allow them to launch military operations.⁴

Thus, it can be noted that the armed conflicts with an international character is the result of the evolution of the view of the international

¹ Ahmad Abo Alwaffa, *Mediator in Public International Law*, 739.

² Ibid.

³ Ibid.

⁴ Amer Aljumerd, "The United Nations Intervention in the Affairs of States," *AL_Rafedain for Rights Journal*, no. 3 (1997): 139.

community to the concept of armed conflict in its general sense.¹ The successive developments experienced by the international community have shown new forms of armed conflict in a way that was not familiar to scholars of traditional international law.² Therefore, it should be highlighted. The bilateral division for these conflicts does not cover all forms of conflict. Widening the scope, an extension of its effects, the intervention of other countries, and the intervention of international organizations has significantly contributed to show a new kind of conflict that was not known to the majority of international jurisprudence. This is known as the armed conflict with international feature.³

The Role of International Organizations in Determining the Nature of Armed Conflict

The armed conflicts provided by the world after the Second World War was the crucial factor to draw the attention of international jurisprudence to the importance of legal problems,⁴ particularly those related to determining the true nature of these conflicts.

¹ W. Blair and Etal, "International Law Association The Hague Conference (2010): Committee on International Monetary Law," (2010),1.

² Ibid, 8.

³ Ibid, 10-11

⁴ Salah al-Dien Amer, *Introduction to Study of Public International Law* (Cairo: Dar Al-Nahdaa Al-Arabih, 2007), 981.

Determining the fact that this conflict does or does not have an international feature is not an easy or simple issue.¹ It is however very difficult, especially when one considers that there are types of armed conflicts mingled with domestic and international concepts alike.² It should be noted that it is more complicated when the organizations interfere in these conflicts, whether by providing humanitarian aid to the catastrophic regions to end the conflict or to contain its effects.³ These interventions of international organizations in its various forms and manifestations may provide new legal descriptions regarding conflicts described as the internal conflicts.⁴ In order to adequately discuss the role of international organizations in giving a description of an armed conflict, whether it is an internal or international feature, this section is divided into two requirements. The first addresses the role of the Organization of the UN, while the other deals with the role of other organizations.

The role of the UN in Determining the Nature of Armed Conflicts

Before the establishment of the UN, the international intervention changes its forms and causes due to different political circumstances and the main power that govern the international relations from one

¹ Ibid.

² Ibid.

³ Ibid.

⁴ Ibid.

phase to another.¹ Before the rise of the UN in the internal affairs of states, the intervention had mostly come from individual states or groups.² After the emergence of the UN in 1945, its interference in the internal affairs of states concerning the rule of armed conflicts to contain its effects had passed two stages. Each stage has an effect to change the legal conception of the nature of the armed conflict.³ Regarding the first stage, it has been represented by the rise of the Cold War. The other stage has been represented by ending the Cold War. This is done by the fall of the USSR and the USA takes over the leadership of the international community.⁴

In the Cold War stage, the intervention of the UN to the rule of non-international conflicts were determined because it is governed by the policy of the balance of power. Its interference was a reflection of common interests between the poles of the worlds.⁵ It had intervened to end the internal crisis in Korea in 1950 as well as its intervention to end the conflict in the Biafra region in 1967.⁶ Following the end

¹ Ibid.

² Ali S. Abo Haife, *The Public International Law* (Alexandria: Knowledge Facility,1979), 210.

³ W. Blair and Etal, "International Law Association The Hague Conference,1-12.

⁴ Ibid.

⁵ Massad A. Zeidan, *The Intervention of United Nations in Armed Conflicts Not of An International Character: A Comparative Study*, 204-206.

⁶ Ibid.

of the cold war, more than 100 armed conflicts erupted around the world.¹ This led to massive violations of the rights of humanity. Further, the African and Asian continents have been the most affected by these armed conflicts and their consequences of crimes against humanity.

These conflicts included a significant number of the continent's countries such as Somalia, Rwanda, Mozambique, Angola, and Sierra Leone.² Additionally, the Western Europe witnessed acts of ethnic cleansing against the Muslims of Bosnia, Herzegovina, Kosovo Albanians and Albania. It should be noted that the Government of Russia committed acts of genocide against the Chechen Muslims. There were many tragic actions faced by the continent of Asia like what is still happening in Palestine.³ In Central America, there were many tragic events arising from the armed conflict to gain power.⁴ In El Salvador, the civil wars since 1988 and

¹ The number of conflicts increased after the end of the cold war, peaking after 1992. Most were contained by the end of 1997. There were 27 conflicts in 1998 and 36 in 1999.

² Hussam H. Hassan, *Humanitarian Intervention in Contemporary International Law* (Cairo: Dar Al-Nahdaa Al-Arabih, 2004), 449

³ Ibid.

⁴ Ali R. Abdul-Rahman, *The Principle of Domestic Jurisdiction or Space Possible for the state in Contemporary International Relations* (Cairo: Dar Al-Nahdaa Al-Arabih, 1997), 464

until 1992 led to the deaths of more than four hundred thousand people. The military coup led to the deaths of more than two hundred thousand people where the military General (Raul Cedars) ousted the elected President (Aristide) from power.¹ Concerning the armed conflict that occurred in Somalia, the international atmosphere was well prepared to let the Security Council interfere to end the conflict. Its interference was a series of resolutions issued in connection with that conflict.² In 1992, the Security Council issued the resolution 794 which it was intended to military intervention for humanitarian purposes allowed by Council to use all the means needed to create a secure environment for humanitarian relief operations in Somalia.³

After the intensification of the conflict in Somalia, the Security Council issued Resolution 814 in March 26, 1993 to work under Chapter VII of the Charter in order to use the force to cope with Somalia under the so-called (UNOSOM 11) so as to preserve peace

¹Ibid, 449; Ali R. Abdul-Rahman, *The Principle of Domestic Jurisdiction or Space Possible for the state in Contemporary Internatinal Relations*, 464.

² Richard B. Lillich, "Role of the UN Security Council in Protecting Human Rights in Crisis Situations: UN Humanitarian Intervention in the Post-Cold War World, The," *Tul. J. Int'l & Comp. L.* 3 (1995): 4

³ Ibid.

and security there.¹ However, the worsening situation and the increasing clashes between some factions that have the will to resist the international intervention have increased the seriousness of the situation.² Due to the increasing casualties in the ranks of the UN forces, the Security Council issued the resolution 837 in January 6, 1993 calling for the tracing the people who participated in the killing of international troops or incited to kill them to punish them. The Secretary General of the UN has to take all the means needed in order to achieve that goal.³

Similarly, Rwanda, Sierra Leone, Mozambique and other countries in the African continent share the same context.⁴ Regarding the armed conflict that took place in Bosnia and Herzegovina, the Security Council has issued Resolution 757 dated in May 30, 1992.⁵ This resolution included a number of paragraphs. One of the most important paragraphs is to demand the Council to put an end to the fighting immediately in Bosnia and to stop all forms of external

¹ Massad A. Zeidan, *The Intervention of United Nations in Armed Conflicts Not of An International Character: A Comparative Study*, 248.

² Ibid.

³ Ibid.

⁴ Hussm A. Abdelkhalek, *Responsibility and Punishment for War Crimes in Bosnia and Herzegovina*, 40-43.

⁵ Ibid.

intervention.¹ The Council also announced that the situation in Bosnia and Herzegovina forms a threat to international peace and security.² Additionally, it emphasizes the ban concerning the arms embargo to Yugoslavia and the need to make efforts to deliver humanitarian aid without hindrance to Sarajevo and other places in Bosnia and Herzegovina.³ The Council stressed the need to find a peaceful and rapid solution to the situation in Bosnia and Herzegovina and at the end the resolution, the Council declared its dismay about the massive violations of international humanitarian law in Bosnia and Herzegovina.⁴

In Central America, particularly in El Salvador, for example, armed power struggles occurred. These conflicts have led to bloody clashes between the government on one hand and the so called (Vara Bondo Marty) front of National Liberation on the other hand.⁵ Due to the lack of agreement, the UN contributed to the achievement of agreement between the government and the National Liberation

¹ Ibid.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Ali R. Abdul-Rahman, *The Principle of Domestic Jurisdiction or Space Possible for the state in Contemporary Internatinal Relations*, 476; Hussam H. Hassan, *Humanitarian Intervention in Contemporary International Law* , 521.

Front. As a result, the situation critically worsened in the country.¹ This makes the Security Council issue the resolution 729 on January 14th 1992. Therefore, the UN tasks are expanded in a way that includes four main tasks such as a ceasefire, monitoring human rights respects, and assistance in achieving the democracy.²

These armed conflicts have pushed the UN to prevent them in order to end and to contain its effects. This helps it add the feature of internationalism. These conflicts are no longer confined to the territorial limits of the state in which it occurred, but they have been internationalized and become worthy of the attention of the UN. The Security Council issued several resolutions to end these conflicts and to establish international criminal courts to try major war criminals in Yugoslavia and Rwanda. Hybrid courts have been also created in Sierra Leone and Lebanon.³

The UN intervention through the Security Council and the International special missions may gain these conflicts which were characterized as an internal character the feature of internationalism. Highlighting these conflicts in its various resolutions, the Security Council may change the description of these conflicts and gave them

¹ Ibid.

² Ibid.

³ David Malone, *The UN Security Council: from the Cold War to the 21st century* (Lynne Rienner Publishers, 2004) 1-3.

a new description that fits the danger of these conflicts concerning the interests of the international community in maintaining international peace and security in a way that broadly entailed with the application of the rules of international humanitarian law. There are many examples of UN Security Council resolutions in which the legal description of non-international armed conflicts have been changed to armed conflicts with international feature.

The Role of Other International Organizations in Determining the Nature of Armed Conflicts

The role of other international organizations is shown in determining the role of the armed conflict. In many cases and through joint work with the UN Organization, Central America has cooperated with the UN organization and organization of American States.¹

As for Somalia, it cooperated with the African Union Organization, the Arab League, and the Islamic Conference. As for the Balkans, it has cooperated with the Organization for Security and Cooperation in Europe and particularly with the NATO.² Regarding the armed

¹Akira Iriye, *Global community: The role of international organizations in the making of the contemporary world* (Univ of California Press, 2002), 1-2.

² Marie Dupuy Pierre, *Public international public*, Transalate by Mohammed A. Sascela & Saleem Hadad (Beirut: Univeresity Corporation for Studies, Publishing and Distribution, 2008), 660-661.

conflicts occurred in the Darfur region, the role of other regional and international organizations seemed clear in order to end the conflict and bring peace to this region.¹ Hence, the Organization of the African Union has continued its efforts to ensure the administration of justice in the Darfur region as stated in the statement of peace and Security Council of this organization and dated July 21st 2008.² It has been stated that the Council (reaffirms its firm commitment to the fight against impunity, the strengthening of democracy, and domination of law throughout the continent in accordance to the constitution of the law. In this regard, once again, it condemns the flagrant violations of human rights in Darfur.³

In accordance with the resolution issued by the Security Council Resolution 1593 and dated March 31st 2005, the Prosecutor of the International Criminal Court has to submit a report to the Security Council every six months, announcing the activities undertaken and those that will be conducted. On July 14, 2008, the Prosecutor's Office prosecuted Sudanese President "Omar Hassan al-Bashir" and lifted a case to the Pre-Trial Chamber.⁴ This case included ten

¹ AbduAllah Al-Ashaal, Sudan and International Criminal Court (Cairo: Dar Alkeytab Alkanony, 2009), 281.

² Ibid.

³ Ibid.

⁴ Ibid.

charges related to genocide, crimes against humanity and war crimes. He demanded the pre- trial chamber to issue an order to arrest the president.¹

In the region of Kosovo, which became an independent state later, the deterioration of the political and humanitarian situation urged the organization of the Security and Cooperation in Europe with the support of the UN to interfere in order to calm and ease the tension between the two groups of Serbian and Albanian.² In the period between March 1998 and March 1999, the Security Council issued a number of resolutions under Chapter VII of the Charter. These resolutions are (1160, 1199 and 1203).³ Concerning these resolutions, NATO did interfere in Kosovo.⁴

The regional and international organizations, including the World which carries out the functions entrusted under their charters, have proven their ability to prevent many of the threats that threaten the international peace and security. Further, its cooperation with the UN makes the international community go towards integration in its

¹ Ibid, 265.

² Ibid.

³ Marie Dupuy Pierre, Public international public, 662.

⁴ Mahdy J. Mahdy, The Sovereignty and Humanitarian Intervention: Political Legal study (Erbil: Nobless For Printing and Publishing, 2004), 79.

specializations. As a result, there is no problem if interference to end the armed conflicts has given these conflicts different legal descriptions. It should be noted that its multiple interferences in the zones of conflict have attracted the attention of the international community regarding these armed conflicts and the necessity to make it have the feature of internationalization. This occurred in many countries of the African continent, Central America, and other countries of the world.

Conclusion :

To conclude, it can be noted that the term (the armed conflict) is neither old nor modern, but its presence to express the transmission of international jurisprudence in describing the conflict occurred between two countries or between the components of one state. It was described as a war and has changed to the new description which is known as (the armed conflict) due to the fact that the latter is more comprehensive in its meaning and its implications.

Additionally, the traditional jurisprudence agreed on dividing the armed conflicts into categories. The first is called the international armed conflicts. The four Geneva Conventions of 1949 and the Additional Protocols II of 1977 shared the name. These conventions divided the armed conflicts into international armed conflicts and armed conflicts that do not have an international feature.

There are two criteria concerning the division of armed conflicts. The first does or does not concentrate on the availability of the elements of the international legal character of the parties of the conflict. Therefore it was called the criterion of the international legal character. As for the second criterion, it focuses on the availability of the international character of the armed conflict. Therefore, it was called the criterion of the international character. Further, the criterion of the international legal character has two types of armed conflicts. These are the international armed conflicts and internal armed conflict. When one of the parties of the armed conflict loses the international legal character, the armed conflict, then turns from being an international armed conflict to an internal armed conflict. On the other hand, the criterion of the international feature has three types of armed conflicts. These include an international armed conflict, an internal armed conflict, while the third is considered as an international character.

It should be noted that the international character of the armed conflicts is available whenever an external interference occurred in the internal armed conflict. This armed conflict has several images such as people's armed resistance and armed struggle against all forms of racial discrimination and civil war if it would lead to a threat of the international peace and security. Further, the UN interference to end the internal armed conflict has two stages. The

first was at the time of the Cold War, while the second was after the end of the Cold War as well as the uniqueness of the USA to lead the international community. On the other hand, the UN interference to resolve the internal armed conflict makes the internationalization of the conflict and giving legal descriptions which were not characterized before the UN interference. Additionally, it is not only limited to the UN interference, but it was also extended to include other international organizations such as the African Union, the NATO, and the International Criminal Court. All these interferences by the international organizations mentioned above may make the internationalization of internal armed conflicts and give them the international character.

Consequently, the criterion of the international character to determine the nature of armed conflict should be taken into consideration because it is the most accurate criterion in determining the nature of these conflicts. It is also the most comprehensive in determining its seriousness of the international community and its interests. Besides, the UN organization has to be more impartial and it has to avoid being subject to political considerations which represent the interests of the major states, especially the USA. It is also necessary to increase the activation of the role of other international organizations, particularly the regional organizations since these organizations are capable to contain the conflict and not to extend its effects.

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