

## APPLICATION AND APPLICABILITY OF THE LAW OF ARMED CONFLICT TO ARMED CONFLICTS WITHIN THE CONTEXT OF THE COVID-19 PANDEMIC\*

### Abstract

*The coronavirus pandemic otherwise known as COVID-19 pandemic is one recent incident shaking the entire world given its rapid spread and the level of death recorded so far. Following the pandemic, activities have been slowed down across the world in order to arrest further threat of infection. This slowdown of activities did not however affect the temerity with which armed conflicts rake havoc across some parts of the world, despite the pandemic. It therefore becomes imperative to consider the place of the Law of Armed Conflict in this context. The Article interrogates, by means of legal and case law analysis, the application and applicability of the Law of Armed Conflict to the armed conflicts taking place in some part of the world amidst the COVID-19 pandemic. The Article argued that the Law of Armed Conflict crystallizes in situations of armed conflict to protect potential victims and that being the case; the COVID-19 pandemic does not suspend the application of the Law of Armed Conflict once the situation of armed conflict exists. The Article however found that the COVID-19 pandemic makes the application of the Law of Armed Conflict difficult given the fact that it complicates issues. To address this difficulty, the Article recommends among other things constant dissemination of the basic principles of the Law of Armed Conflict amongst both armed forces and civilians so as to facilitate respect for the Law of Armed Conflict; the enactment of domestic laws criminalizing the violation of the Law of Armed Conflict; and the provision of effective sanctions punishing such violations.*

**Keywords:** Law of Armed Conflict, Armed Conflict, Coronavirus disease, Pandemic

### 1. Introduction

The novel coronavirus disease (COVID-19) is one recent health threat that is holding humanity to a standstill as it had left many people infected; a handful dead and world economy epileptic. The World Health Organization designated the disease ‘2019 novel coronavirus’ (2019-nCoV) and COVID-19 in January 2020 and February 2020 respectively. On the other hand, the International Committee on Taxonomy designated it ‘Severe Acute Respiratory Syndrome 2’ (SARS-CoV-2).<sup>1</sup> The coronavirus disease is believed to be a spillover of animal coronavirus which later adapted to human-to-human transmission.<sup>2</sup> It is the seventh member of the coronavirus family to infect humans<sup>3</sup> and the fifth documented pandemic since after the 1918 Spanish flu pandemic; 1957 Asian flu; 1968 Hong Kong flu pandemic; and the 2009 flu pandemic. The disease was first reported in Wuhan, China in late December 2020<sup>4</sup> and had since then continued to spread like a wild fire, with devastating consequences on both persons and world economy. In fact, the Director-General of the World Health Organization observed that ‘this is not just health crisis but it is a crisis that will touch every sector...’<sup>5</sup> As a result of the threat posed by this disease, the World Health Organization declared it a pandemic in March 2020<sup>6</sup> and in fact the first pandemic caused by a coronavirus.<sup>7</sup> As at 10<sup>th</sup> October, 2020, a total number of 37, 318,435 of COVID-19 cases were reportedly confirmed across 214 countries and territories around the world; with about 1,075,411 deaths.<sup>8</sup> Pertinent to this Article is the fact that the COVID 19 pandemic has joined force with the already existing armed conflicts in some part of the globe (such as those taking place in Syria between government forces and non-state armed groups and those taking place between Armenia and Azerbaijan) to constitute global security threat. Thus, amidst the coronavirus pandemic, armed conflicts also abound resulting to an alarming level of deaths; injury to innocent persons; forceful

---

\* By Anita NWOTITE, LL.M, LLB, BL, Lecturer, Faculty of Law, Nnamdi Azikiwe University, Awka, Nigeria Email: nwotiteanita@gmail.com. Phone No.: 2348039574167.

<sup>1</sup>Y-C Liu *et al.*, ‘COVID-19: The First Documented Coronavirus Pandemic in History’ [2020], *Biomedical Journal*, 2. Available at <<https://doi.org/10.1016/j.bj.2020.04.007>>. Accessed 5 September 2020.

<sup>2</sup>Y-C Liu *et al.*, *op cit*, 2.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*, 1.

<sup>5</sup> <<https://www.healthnews.ng/covid19-is-now-a-pandemic...>>. Accessed 5 September 2020.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> <[https://www.worldometers.info/coronavirus/?utm\\_campaign=homeAdvegas1?](https://www.worldometers.info/coronavirus/?utm_campaign=homeAdvegas1?)>. Accessed 10 October 2020; <<https://www.undp.org/content/undp/en/home/coronavirus.html>>, accessed 11 September 2020.

displacement; and destruction of properties. Amnesty International confirms this position as it pointed out that ‘numerous armed conflicts are currently taking place around the world including those involving warring parties within a single state(non-international armed conflicts) and those involving armed forces from two or more states (international armed conflicts)’.<sup>9</sup> The pertinent question is: Does the Law of Armed Conflict apply to situations of armed conflicts in the context of the COVID-19 pandemic?

The Law of Armed Conflict (International Humanitarian Law) is that branch of international law which seeks to regulate the conduct of armed conflict by ameliorating the human suffering associated with war. In other words, it ‘is a set of rules that seeks to limit the humanitarian consequences of armed conflicts’.<sup>10</sup> Melzer affirms that ‘the purpose of International Humanitarian Law is to protect the victims of armed conflicts and regulate hostilities based on a balance between military necessity and humanity’.<sup>11</sup>

By its very nature, the Law of Armed Conflict only applies to situations of armed conflicts.<sup>12</sup> Hence, this Article interrogates the application and the applicability of the Law of Armed Conflict in the context of armed conflicts existing side by side the COVID-19 pandemic. The Article observed that the COVID-19 pandemic represents an additional challenge to the already existing situations of armed conflicts in some part of the world. The Article nevertheless, contends that the COVID-19 pandemic does not remove these situations of armed conflict from the purview of the Law of Armed Conflict neither does it suspend its application. This is because the Law of Armed Conflict operates to protect potential victims of armed conflict once armed conflict ensues. Melzer captures this succinctly: ‘the purpose of International Humanitarian Law is to protect the victims of armed conflicts and regulate hostilities based on a balance between military necessity and humanity’.<sup>13</sup> Again, it aims to protect persons who are not or are no longer taking active part in hostilities, the sick and wounded, prisoners and civilians, and to define the rights and obligations of the parties to a conflict in the conduct of hostilities’.<sup>14</sup> Thus, once the situation of armed conflict exists, as in the case of Syria and Armenia/Azerbaijan, the Law of Armed Conflict takes effect, other factors characterizing the armed conflict notwithstanding.

## 2. Clarification of Key Terms

### Pandemic

A Dictionary<sup>15</sup> defines the term ‘pandemic’ as ‘a disease affecting a whole country, or the world’. The World Health Organization, on the other hand defines a pandemic as ‘a disease epidemic that has spread across a large region; for instance, a multiple continent or worldwide’.<sup>16</sup> In other words, a pandemic is a disease which affects the world; region or a country.

### Coronavirus Disease (nCoV) or (COVID-2019)

The novel coronavirus disease (nCoV) also known as COVID-19 is ‘believed to be a spillover of animal coronavirus which later adapted to human-to-human transmission’.<sup>17</sup> It is ‘an infectious disease caused

---

<sup>9</sup> <<https://www.amnesty.org/en/what-we-do/armed-conflict/>>, accessed 11 September 2020. See also Ikenga K.E.Oraegbunam, ‘Just War Theory and Global Peace: Jurisprudence of the Effects of Contemporary Armed Conflicts on Human Dignity’, *Journal of Policy and Strategic Studies*, Vol. 2 No. 1, 2012, pp.99-113. Available at <http://www.sachajournals.com/documents/SJPSS2012IKENGA001002.pdf>. Accessed 3 September 2020.

<sup>10</sup> N Melzer, *International Humanitarian Law- A Comprehensive Introduction* (International Committee of the Red Cross, 2016), 17.

<sup>11</sup> *Ibid*, 16.

<sup>12</sup> Geneva Conventions, 1949, common Articles 2 and 3.

<sup>13</sup> N Melzer, *op cit*, 16.

<sup>14</sup> International Committee of the Red Cross (ICRC), *War and International Humanitarian Law*, (29 October, 2010). Available at <[www.icrc.org/en/doc/war-and-law/overview-war-and-law.htm](http://www.icrc.org/en/doc/war-and-law/overview-war-and-law.htm)>. Accessed 3 September 2020.

<sup>15</sup> D O Bolander et al., (eds) *The New Lexicon Webster’s Dictionary of English Language, Deluxe Encyclopedic Edition* (Lexicon Publications, Incorporated, 1991), 725.

<sup>16</sup> <<https://www.healthnews.ng/covid-19-is-now-a-pandemic>>. Accessed 5 September 2020.

<sup>17</sup> Y-C Liu et al., *op cit*, Y-C Liu et al. *op cit*, 1.

by a newly discovered coronavirus'<sup>18</sup> or 'a new strain that has not been previously identified in humans'.<sup>19</sup> COVID-19 is a new species of coronavirus disease that specifically infects human through direct or indirect contact with an infected person.

### Law of Armed Conflict

The Law of Armed Conflict is otherwise known as International Humanitarian Law or the Law of War.

International Humanitarian Law is the part of the body of international law that governs armed conflict. It aims to protect persons who are not or are no longer taking active part in hostilities, the sick and wounded, prisoners and civilians, and to define the rights and obligations of the parties to a conflict in the conduct of hostilities.<sup>20</sup>

It is a set of 'international rules, established by treaty or custom, which are specifically intended to solve humanitarian problems that arise directly from international or non-international armed conflicts'.<sup>21</sup> It 'is a set of rules that seeks to limit the humanitarian consequences of armed conflicts'.<sup>22</sup> The Law of Armed Conflict is that branch of international law which regulates the conduct of armed conflict by ameliorating the human suffering associated with war.

### 3. Nature and Scope of the Law of Armed Conflict

By its very nature, the Law of Armed Conflict seeks 'to limit human suffering in situations of armed conflicts while at the same time preventing atrocities'.<sup>23</sup> Ama Oji aptly captures this thus:

The essential purpose of these principles is not to provide a code governing the game of war, but for humanitarian reasons to reduce or limit the suffering of individuals and to circumscribe the area within which the savagery of armed conflict is permissible.<sup>24</sup>

The nature of the Law of Armed Conflict is that of balancing military necessity against concern for humanity. It ensures the protection of potential victims of war and the restriction of the means and methods of warfare. In striking such a balance, the Law of Armed Conflict not only recognizes the right of combatants to participate directly in armed conflict<sup>25</sup> and to use such a force that is necessary and proportionate in achieving the intended military object,<sup>26</sup> but also the right of those not<sup>27</sup> and those no longer taking direct part in hostilities to be protected against the effects of military operation.<sup>28</sup> In the whole, the business of the Law of Armed Conflict is not to determine the justification for the use of force<sup>29</sup> but to regulate the conduct of the parties once armed conflict has ensued. The Law of Armed Conflict does not therefore apply to all situations. Its scope is limited to the situation of armed conflict (whether international or non-international in character).

### 4. Defining Armed Conflict

The classification of a situation as an 'armed conflict' means that the Law of Armed Conflict comes into effect.<sup>30</sup> Although the Geneva Conventions, 1949 used the term 'armed conflict', this term is not

---

<sup>18</sup> <[https://www.google.com/search?ei=jBtTX\\_HHlpLgXgPMrZuWA&q=what+is+co...](https://www.google.com/search?ei=jBtTX_HHlpLgXgPMrZuWA&q=what+is+co...)>. Accessed 6 September 2020.

<sup>19</sup> <<https://www.afro.who.int/news/coronavirus-disease-what-you-need-know>>. Accessed 6 September 2020;

<<https://www.who.int/health-topics/coronavirusNtab=tab-1>>. Accessed 6 September 2020.

<sup>20</sup> International Committee of the Red Cross (ICRC), *op cit*.

<sup>21</sup> A A Bouvier and H J Langholtz, *International Humanitarian Law and the Law of Armed Conflict*, (3<sup>rd</sup> edn, Operations Training Institute, 2020) 13.

<sup>22</sup> N Melzer, *op cit*, 17.

<sup>23</sup> U O Umzurike, *Introduction to Law*, (3<sup>rd</sup> edn, Spectrum Books Limited, 2005) 212.

<sup>24</sup> E A Oji, *Responsibility for Crimes under International Law*, (Dade Publishers, 2013), 73-74.

<sup>25</sup> Protocol Additional to the Geneva Conventions, 1949, and relating to the Victims of International Armed Conflict, 1977 (Protocol I), Article 43(2).

<sup>26</sup> *Ibid*, 51(5)(b).

<sup>27</sup> *Ibid*, Articles 51(1); 57(1).

<sup>28</sup> *Ibid*, Article 51(1).

<sup>29</sup> United Nations Charter, 1945, Article 51.

<sup>30</sup> G C Chelimo, 'Defining Armed Conflict in International Humanitarian Law'[2011](3)(4) *Inquiries Journal*. Available at <<https://www.inquiriesjournal.com/articles/1697/defining-armed-conflict-in-international-humanitarian-law#header5page1>>. Accessed 15 September 2020.

however defined by the said Conventions. However, what is envisaged here is a situation of violent clashes between the armed forces of the parties to an armed conflict. It is any difference arising between two or more states leading to the intervention of armed forces even where one of the parties denies the existence of the state of war.<sup>31</sup> Melzer opined that

Armed conflict exists whenever recourse is had to armed force or belligerent occupation between states (international armed conflict) or when protracted armed violence takes place between governmental authorities and organized armed groups or between such groups (non-international armed conflicts).<sup>32</sup>

Armed conflict is ‘a sustainable struggle by armed forces of certain intensity between groups of a certain size consisting of individuals who are armed, who wear distinctive insignia and who are subjected to military discipline under responsible command’.<sup>33</sup> On the other hand, the International Criminal Tribunal for the Former Yugoslavia gave a resounding definition in that regard. Thus: ‘(...) an armed conflict exists whenever there is a resort to armed forces between States or protracted armed conflict between governmental authorities and organized armed groups or between such groups within a State’.<sup>34</sup>

To that effect, the common Article 2<sup>35</sup> provides:

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party even if the said occupation meets with no armed resistance.

In like manner, the common Article 3<sup>36</sup> applies to conflict not of an international character taking place within the territory of a High Contracting Party, between a State force and an organized armed group(s) or between such organized armed groups only.<sup>37</sup> Whereas the first class of armed conflict is referred to as international armed conflict; the second class is referred to as non-international armed conflict. International armed conflict exists between two or more states or between a state and an international organization or vice versa. Wars of national liberation where peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination<sup>38</sup> are also categorized as international armed conflicts.

On the other hand, non-international armed conflict or conflict not of international character is an armed conflict taking place within the territory of a High Contracting Party between its armed force and an organized armed group (s) or between such organized armed groups.<sup>39</sup> Further to that, the International Criminal Tribunal for the former Yugoslavia opined that ‘non-international armed conflict exists where there is a state of ‘protracted armed violence between governmental authorities and organized armed groups or between such armed groups within a State’.<sup>40</sup> In other words, in non-international armed conflict, at least one of the parties is non-governmental. This class of armed conflicts is the most prevalent class of armed conflicts around the world.<sup>41</sup> Some scholars have also identified an additional

---

<sup>31</sup> A Bouvier, *op cit*, p 23.

<sup>32</sup> N Melzer, *op cit*, 50.

<sup>33</sup> I Detter, *The Law of War*, (Cambridge University Press, 2000), 26.

<sup>34</sup> *Prosecutor v Tadic*, Decision of the Motion on Interlocutory Appeal on Jurisdiction, Appeals Chamber, 2 October 1995, 70.

<sup>35</sup> Geneva Conventions, *op cit*.

<sup>36</sup> Geneva Conventions, *op cit*.

<sup>37</sup> *Ibid*, common Article 3.

<sup>38</sup> Protocol Additional to the Geneva Conventions, 1949, and relating to the Victims of Non-International Armed Conflict, 1977 (Protocol II), Article 1(4); Protocol I, *op cit*, Article 96(3).

<sup>39</sup> Geneva Conventions, *op cit*, common Article 3.

<sup>40</sup> *Prosecutor v Tadic*, *supra*.

<sup>41</sup> J Pejic, ‘The Protective Scope of common Article 3: more than Meets the Eye’, Selected Articles on International Humanitarian Law, [2011] 93 (881) *International Review of the Red Cross*, 189, 225.

class of armed conflict referred to as ‘internationalized internal armed conflicts’.<sup>42</sup> Internationalized internal armed conflicts are ‘conflicts that contain both international and non-international elements’<sup>43</sup> or ‘internal hostilities that are rendered international’<sup>44</sup> or foreign ‘intervention in previously existing internal conflict’.<sup>45</sup> A very good example is the internal armed conflict between Armenia and Azerbaijan over Nagorno-Karabakh which started since 1994; where Turkey backs Azerbaijan while Russia backs Armenia. Reisman and Silk,<sup>46</sup> for instance opined that most internal armed conflicts take the form of internationalized armed conflicts.

The classification of armed conflict into international; non-international; and internationalized internal armed conflict is important for two basic reasons, to wit: it determines the applicable legal regime;<sup>47</sup> and the rights of the parties.<sup>48</sup> For instance, while the four Geneva Conventions and the Protocol I apply to international armed conflicts; the common Article 3 and the Protocol II regulate the conduct of non-international armed conflicts. Again, whereas fighters within the context of international armed conflict are entitled to combatant<sup>49</sup> and prisoner-of-war statuses;<sup>50</sup> these statuses do not apply in non-international armed conflict.<sup>51</sup> It is therefore imperative to classify a situation into an ‘armed conflict’ so that the Law of Armed Conflict could come into effect<sup>52</sup> to protect potential victims and restrict the means and methods of warfare at the disposal of the parties. Hence, situations such as internal violence or tensions like riots, isolated and sporadic acts of violence and other acts of a similar nature do not constitute armed conflict within the meaning of International humanitarian Law.<sup>53</sup>

## 5. Conditions for the Existence of an Armed Conflict

The Law of Armed Conflict requires that certain criteria be met before a situation could rightly be described as an ‘armed conflict’. These variables are the intensity of the violence; and the level of organization of the parties.<sup>54</sup> The International Criminal Tribunal for the Former Yugoslavia confirms this in the case involving the Serbian forces and the Kosovo Liberation Army, thus: ‘the determination of the existence of an armed conflict is solely based on two criteria: the intensity of the conflict and the organization of the parties’.<sup>55</sup> These two variables must exist cumulatively<sup>56</sup> as the absence of any one of them only qualifies the situation as internal disturbance or tension such riots, demonstrations, isolated and sporadic acts of violence which are not within the purview of the Law of Armed Conflict.<sup>57</sup>

### Intensity of the violence

The threshold of violence required for the crystallization of armed conflict may be low or high depending on whether the armed conflict is international or non-international in character. According to Vite:

The level of intensity required for a conflict to be subject to the law of international armed conflict is very low. Situations envisaged by the relative instruments merely

---

<sup>42</sup> G S Stewart, ‘Towards a Single Definition of Armed Conflict in International Humanitarian Law’: A Critique of Internationalized Armed Conflict, [2003](85)(850) *International Review of the Red Cross*, 313, 315. Available at <<https://www.icrc.org/en/doc/resources/document/article/other/5pyaxx.htm>>. Accessed 15 September 2020; S Vite *op cit*, 71.

<sup>43</sup> G S Stewart, *op cit*, 314.

<sup>44</sup> *Ibid*, 315.

<sup>45</sup> S Vite, ‘Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations,’ [2009] (91) (873) *International Law Review of the Red Cross*, 69,71.

<sup>46</sup> W M Reisman and J Silk, ‘Which Law Applies to the Afghan Conflict?’, [1988] (82) *American Journal of International Law*, 465.

<sup>47</sup> G S Stewart, *op cit*, 313.

<sup>48</sup> Protocol I, *op cit*, Articles 43(2) and 44(1).

<sup>49</sup> Protocol I, *op cit*, Article 43(2).

<sup>50</sup> *Ibid*, Article 44(1).

<sup>51</sup> G S Stewart, *op cit*, 321.

<sup>52</sup> A Duxbury, ‘Drawing Lines in the Sand-Characterizing Conflicts for the Purposes of Teaching International Humanitarian Law’ [2007] (8) *Melbourne Journal of International Law*, 1-14.

<sup>53</sup> Geneva Conventions, *op cit*, common Article 3.

<sup>54</sup> S Vite, *op cit*, 75.

<sup>55</sup> *Prosecutor v Limaj*, Case No.IT-03-66-T, Judgment (Trial Chamber), 30 November 2005, para 170.

<sup>56</sup> S Vite, *op cit*, 77.

<sup>57</sup> Geneva Conventions, *op cit*, common Article 3; S Vite, *op cit*, 76; *Tadic’s case*, *supra*.

need to exist. Thus ‘as soon as the armed forces of one State find themselves with the wounded or surrendering members of the armed forces or civilians of another State on their hands, as soon as they detain prisoners or have actual control over a part of the territory of the enemy State, then they must comply with the relevant convention.’<sup>58</sup>

In other words, ‘any use of force between two States is an international armed conflict’.<sup>59</sup> Thus the common Article 2<sup>60</sup> stipulates: ‘...the present Convention shall apply to all cases of declared war or of any armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.’ The conflict need not be protracted<sup>61</sup> for this threshold to be met. Hence, the threshold of the level of violence required for international armed conflict to ensue is low since the slightest use of force such as firing of a gun in the territory of a State could trigger the application of the Law of Armed Conflict. However, where there is no *animus belligerendi* on either side, it will not be considered an armed conflict.<sup>62</sup> As for the issue of occupation (which is also a type of international armed conflict), all that is required is that ‘the belligerent succeeds in gaining upper hand over his adversary’<sup>63</sup> either through ‘a puppet government or another form of subordinate local power’.<sup>64</sup> The point being made here is that the occupying power must be ‘able to exercise effective control over a territory not belonging to it and that ‘its intervention has not been approved by the legitimate sovereign’.<sup>65</sup> The question as to the existence of international armed conflict is usually a question of fact, assessable based on case-by-case study.<sup>66</sup>

In the case of internationalized internal armed conflict, it suffices if a foreign Power intervenes in an already existing internal conflict by sending troop into a territory to support a movement opposing an incumbent government.<sup>67</sup> In this case, the level of control must be of an overall nature<sup>68</sup> where the controlling Power takes part in the financing, training and equipping or providing operational support, organizing, coordinating, or planning of military operations of that group.<sup>69</sup> As for non-international armed conflict, the threshold of violence required for its existence is determined by both the common Article 3<sup>70</sup> and Protocol II which regulate the conduct of non-international armed conflicts. The International Criminal Court for the former Yugoslavia is also instructive in this regard.<sup>71</sup> By the provisions of common Article 3<sup>72</sup> an armed conflict is said to exist where the situation reaches a threshold that differentiates it from internal disturbances and tensions such as riots, isolated and sporadic acts of violence and other acts of a similar nature to which the Law of Armed Conflict does not apply. Such threshold of violence is attained where the violence could no longer be managed by the State Police but requires the intervention of the State armed force.<sup>73</sup> In the *Tadic’s* case, the Court, posited that the threshold of intensity is reached whenever the situation could be described as ‘protracted armed violence’.<sup>74</sup> In other words, the level of violence required in non-international armed conflict in the light of the common Article 3<sup>75</sup> is higher than that required for international armed conflict. Just like

---

<sup>58</sup> S Vite, *op cit*, 72; H P Gasser, *International Humanitarian Law: An Introduction*, (The International Committee of the Red Cross and Red Crescent Movement, Henri Dunant Institute, 1993) 24.

<sup>59</sup> International Committee of the Red Cross, ‘Proceedings of the 13<sup>th</sup> Bruges Colloquium’ (2013) (43), Autumn, *Scope of Application of International Humanitarian Law*, 18-19<sup>th</sup> October, 2012, 19.

<sup>60</sup> Geneva Conventions, *op cit*

<sup>61</sup> *Prosecutor v Tadic*, *supra*.

<sup>62</sup> International Committee of the Red Cross, ‘Proceedings of the 13<sup>th</sup> Bruges Colloquium’, *op cit*, 19.

<sup>63</sup> S Vite, *op cit*, 73; Hague Regulations, 1907, Article 42.

<sup>64</sup> *Prosecutor v Tadic*, Case No.IT-94-14-T, Judgment (Trial Chamber), 3 March 2000, at 149.

<sup>65</sup> E Benvenisti, *The International Law of Occupation*, (Princeton University Press, 1993), 4.

<sup>66</sup> S Vite, *op cit*, 72.

<sup>67</sup> *Ibid*, 71.

<sup>68</sup> *Ibid*.

<sup>69</sup> S Vite, *op cit*, 71.

<sup>70</sup> Geneva Conventions, *op cit*.

<sup>71</sup> *Tadic’s* case, *supra*.

<sup>72</sup> Geneva Conventions, *op cit*.

<sup>73</sup> S Vite, *op cit*, 77.

<sup>74</sup> *Prosecutor v Tadic*, *supra*, at 70.

<sup>75</sup> Geneva Conventions, *op cit*.

in the case of common Article 3<sup>76</sup>, the Protocol II also requires that a situation reaches a certain threshold of intensity of violence higher than just internal disturbances and tensions for it to be classified as non-international armed conflict.<sup>77</sup> However, in addition to the above requirement, the Protocol II also requires that the organized armed group exercises territorial control as to enable them ‘carry out sustained and concerted military operations and to implement this Protocol’.<sup>78</sup>

### **The level of organization of the parties**

The level of organization of the parties is also an important variable in assessing the existence of an armed conflict. Although this variable is taken for granted in the case of governmental forces,<sup>79</sup> this could not be said of non-governmental armed groups. The indicative factor for compliance with this variable in the case of non-governmental group, among other things include the existence of a command structure; authority to launch operations bringing together different units, the ability to recruit and to train new combatants or the existence of internal rules.<sup>80</sup> The Protocol II specifically requires that non-governmental party be placed ‘under a responsible command’...as to enable them ‘carry out sustained and concerted military operations and to implement this Protocol’.<sup>81</sup> Hence, the requirement for the existence of an armed conflict is the same under both common Article 3 and the Protocol II, except that the Protocol II require additionally that the organized armed group exercises territorial control as to enable them ‘carry out sustained and concerted military operations and to implement this Protocol’.<sup>82</sup> Besides, the Protocol II does not extend to cover non-governmental forces fighting between or among themselves.<sup>83</sup> In other words, the application of common Article 3 is more extensive while Protocol II is more restrictive. To that effect, a situation may fall within the application of common Article 3 without falling within the application of the Protocol II. However, all cases falling within the application of Protocol II, may also be regulated by common Article 3.

### **6. Application and Applicability of the Law of Armed in the Context of the Covid-19 Pandemic**

As already pointed out, the Law of Armed Conflict only applies to situations of armed conflict,<sup>84</sup> other factors characterizing the armed conflict notwithstanding. Thus, ‘the personal, material and territorial applicability of International Humanitarian Law essentially depends on the existence of a nexus with an armed conflict...’<sup>85</sup> Armed conflict as envisaged here is a situation of protracted armed violence between States<sup>86</sup> or between States and non-state armed actors<sup>87</sup> or even a situation of foreign intervention in an already existing internal armed conflict.<sup>88</sup> Thus, the situations in such countries as Syria and Armenia /Azerbaijan, which have witnessed certain level of intensity of protracted violence and the required chain of command in terms of the organisation of the parties, meet the requirement for the crystallization of the Law of Armed Conflict. These armed conflicts like every other armed conflict witness incessant loss of civilian lives, destruction of civilian properties and forceful displacement of innocent civilians, among other consequences. For instance, following the Syrian Civil War, about 6.2 million Syrians have been internally displaced as a result of the brazen violations of the basic principles of the Law of Armed Conflict made evident in the targeting of civilians not taking active part in the armed conflict.<sup>89</sup> In fact, the internal displacement resulting from the said civil war

---

<sup>76</sup> *Ibid.*

<sup>77</sup> Protocol II, *op cit*, Article 1(2).

<sup>78</sup> Protocol I, *op cit*, Article 1 (1).

<sup>79</sup> *Prosecutor v Haradinaj*, Case No.IT-04-84-T, Judgment (Trial Chamber) 3 April 2008 at 60.

<sup>80</sup> *Prosecutor v Tadic*, *supra*, at 199-203; S Vite, *op cit*, 77.

<sup>81</sup> Protocol I, *op cit*, Article 1 (1).

<sup>82</sup> Protocol I, *op cit*, Article 1 (1).

<sup>83</sup> M Bothe and K J Partsch and W A Solf, *New Rules for Victims of Armed Conflicts*, (Martinus Nijhoff, 1982) 627.

<sup>84</sup> Geneva Convention, *op cit*, common Articles 2; Rome Statute of the International Criminal Court, 1998, Article 8(2)(d) & (f).

<sup>85</sup> N Melzer, *op cit*, 28.

<sup>86</sup> Geneva Conventions, *op cit*, common Article 2.

<sup>87</sup> *Ibid*, common Article 3.

<sup>88</sup> S Vite, *op cit*, 71; G S Stewart, *op cit*, 314-315.

<sup>89</sup> A Nwotite, ‘An Assessment of the Law of Armed Conflict and Internally Displaced Persons in the Syrian Civil War: The Need to Strengthen Protection’ [2020] (10), *Journal of Public and Private Law*, UNIZIK, 43, 43. Available at <[www.journals.ezenwaohaeto.org](http://www.journals.ezenwaohaeto.org)>. Accessed 27 September 2020

represents the largest exodus of civilians since World War II.<sup>90</sup> The civil war has also witnessed the use of a combination of unlawful tactics, including the employment of prohibited weapons such as chemical weapons; planting of landmines; bomb-shellings; and indiscriminate airstrikes among other tactics, resulting in civilian casualties.<sup>91</sup> The situation is not different with the fight between Armenia and Azerbaijan that has since 1994 witnessed intensified fighting over the city of Nagorno-Karabakh resulting in civilian deaths, destruction of civilian settlements and forceful displacement. This situation is worrisome especially when considered against the backdrop that the Law of Armed Conflict accords the civilian population and individual civilian general protection against dangers arising from military operations.<sup>92</sup> The Law of Armed Conflict further prohibits ‘acts or the threats of violence the primary purpose of which is to spread terror among the civilian population’.<sup>93</sup> To that effect, indiscriminate acts such as ‘those which employ a method or means of combat which cannot be directed at a specific military objectives’<sup>94</sup> or ‘those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol and consequently, in such case are of a nature to strike both military objectives and civilians or civilian objects without distinction’.<sup>95</sup> These basic principles of the Law of Armed Conflict also apply to the above situations of armed conflict existing within the context of the COVID-19 pandemic.

The coronavirus pandemic is only a health crisis that has joined force with the already existing armed conflicts to constitute additional challenge to global security. However, this does not and cannot suspend the application of the basic principles of the Law of Armed Conflict ‘which requires a minimum standard of treatment for persons who find themselves within the context of such armed conflict’.<sup>96</sup> Once the situation of armed conflict exists as in the above cases, the Law of Armed Conflict automatically comes into effect irrespective of other factors characterizing the armed conflicts.

The purpose of the Law of Armed Conflict in such situation is to among other things protect persons not and those no longer taking active part in hostilities<sup>97</sup> and to restrict the warring parties to the acceptable means and methods of warfare.<sup>98</sup> For instance, the requirements that civilians be protected at all times against the effect of military operations;<sup>99</sup> that persons no longer taking active part in hostilities either by choice or by circumstance be protected;<sup>100</sup> that the sick and wounded be cared for;<sup>101</sup> that captured combatants be recognized as prisoners of war;<sup>102</sup> and the requirement to allow unimpeded accesses to impartial humanitarian agencies to assist the victims of armed conflict,<sup>103</sup> cannot be suspended because such situations of armed conflict are characterized by circumstances such as the COVID-19 disease pandemic. The protection of persons not and persons no longer taking active part in hostilities remains paramount and underlies the Law of Armed Conflict.

## 7. Conclusion

The COVID-19 pandemic is a health crisis<sup>104</sup> which has joined force with the already existing armed conflicts in some parts of the world to constitute global security threat. The pandemic does not however suspend the application of the Law of Armed Conflict. This is against the backdrop that the Law of Armed Conflict crystallizes once the situation of armed conflict ensues. Thus, the situations of armed conflicts in the context of the COVID-19 disease pandemic in such places as Syria and

---

<sup>90</sup> <[www.aljazeera.com/news/2020/02/syria-cites-deliberate-attacks-civilians-200218111516852.html](http://www.aljazeera.com/news/2020/02/syria-cites-deliberate-attacks-civilians-200218111516852.html)> accessed 5 May 2020

<sup>91</sup> A Nwotite, *op cit*, 53-54.

<sup>92</sup> Protocol I, *op cit*, Article 51(1).

<sup>93</sup> *Ibid*, Article 51(1).

<sup>94</sup> *Ibid*, Article 51(4)(a).

<sup>95</sup> *Ibid*, Article 51(4)(b).

<sup>96</sup> A Nwotite, *op cit*, 45; N Melzer, *op cit*, 28.

<sup>97</sup> Protocol I, *op cit*, Articles 51 and 41.

<sup>98</sup> *Ibid*, Article 51.

<sup>99</sup> *Ibid*, Article 51.

<sup>100</sup> *Ibid*, Article 41.

<sup>101</sup> Geneva Conventions, *op cit*, common Article 3.

<sup>102</sup> *Ibid*, Article 44(1).

<sup>103</sup> Geneva Conventions, *op cit*, Article 3.

<sup>104</sup> <<https://www.healthnews.ng/covid19-is-now-a-pandemic...>>. Accessed 5 September 2020.



Armenia/Azerbaijan are not different from every other situation of armed conflict evoking the application of the Law of Armed Conflict. The purpose of the Law of Armed Conflict in this instance is to protect persons not taking active part in the hostilities and those who have ceased to fight. It does not matter whether the situation of armed conflict is further exacerbated by other circumstances such as the COVID-19 pandemic. The requirement to protect persons not and those no longer taking active part in hostilities underlies the Law of Armed Conflict and cannot be derogated except and unless expressly provided for.<sup>105</sup> It is therefore the candid recommendation of this Article that parties to armed conflicts, particularly amidst the COVID-19 pandemic be strongly committed to their obligation under common Article 1<sup>106</sup> to respect and ensure respect for the basic principles of the Law of Armed Conflict such as those requiring them to protect civilians against the effect of military operations;<sup>107</sup> and to use acceptable means and methods of warfare.<sup>108</sup> States must also embark on constant training and retraining of their armed forces so as to facilitate respect for the Law of Armed Conflict. It is further recommended that States and their appropriate agencies embark on the dissemination of the basic principles of the Law of Armed Conflict amongst civilians since they could also be perpetrators. Over and above all, States Parties to the Geneva Conventions must enact domestic laws criminalizing the violation of the Law of Armed Conflict and stipulate effective sanctions punishing such violations.

---

<sup>105</sup> N Melzer, *op cit*, 28.

<sup>106</sup> Geneva Conventions, *op cit*.

<sup>107</sup> Protocol I, *op cit*, Article 51.

<sup>108</sup> *Ibid*, Article 51(4)(a)(b) and (c).