Chapter 24
The ILA Use of Force Committee’s Final Report on the Definition of Armed Conflict in International Law (August 2010)*

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Use Of Force

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Final Report on the Meaning of Armed Conflict in International Law

Summary

In May 2005, the Executive Committee of the International Law Association (ILA) approved a mandate for the Use of Force Committee to produce a report on the meaning of war or armed conflict in international law. The report was

* Editor’s Note: The page references are internal to the Report.

motivated by the United States’ position following the attacks of 11 September 2001 that it was involved in a “global war on terror”. In other words, the U.S. has claimed the right to exercise belligerent privileges applicable only during armed conflict anywhere in the world where members of terrorist groups are found. The U.S. position was contrary to a trend by states attempting to avoid acknowledging involvement in wars or armed conflicts. The Committee was asked to study the evidence in international law and report on how international law defines and distinguishes situations of armed conflict and those situations in which peacetime law prevails. Given that important aspects of international law turn on whether a situation is properly defined as armed conflict, providing a clear statement about the definition of armed conflict in international law would support the proper functioning of the law in general. Most fundamentally, it would support the proper application of human rights law (HRL).

At the outset of its work, the Committee found that the term “war”, while still used, has, in general, been replaced in international law by the broader concept of “armed conflict”. The Report focuses, therefore, on “armed conflict”.

The Committee also found that the existence of armed conflict has many significant impacts on the operation of international law beyond the well-known fact that during armed conflict international humanitarian law (IHL) will apply and states party to an armed conflict (or other emergencies) may have the right to derogate from some human rights obligations. In addition, states that provide asylum to persons fleeing the violence of armed conflict will have the duty to do so; treaty obligations may be implicated; the law of neutrality may be triggered; arms control agreements are affected, and United Nations forces engaged in armed conflict will have rights and duties not applicable in operations outside of armed conflict. These are just some of the areas of international law that are affected by the outbreak of armed conflict. Plainly, the existence of armed conflict is a significant fact in the international legal system, and, yet, the Committee found no widely accepted definition of armed conflict in any treaty. It did, however, discover significant evidence in the sources of international law that the international community embraces a common understanding of armed conflict. All armed conflict has certain minimal, defining characteristics that distinguish it from situations of non-armed conflict or peace. In the absence of these characteristics, states may not, consistently with international law, simply declare that a situation is or is not armed conflict based on policy preferences.

The Committee confirmed that at least two characteristics are found with respect to all armed conflict:
1) The existence of organized armed groups
2) Engaged in fighting of some intensity

In addition to these minimum criteria respecting all armed conflict, IHL includes additional criteria so as to classify conflicts as either international or