

EDITORIAL

The Human Security Report and the Stockholm International Peace Research Institute (SIPRI) have documented a significant decline in the number and severity of armed conflicts since the end of the cold war. However, the 2008 edition of the Center for International Development and Conflict Management's *Peace and Conflict* study indicated that this overall decline in conflicts had stalled. There are different methods of measuring and classifying wars, be it from a historical, behavioural, psychological, economic, sociological or political point of view.

This edition of the *Review* focuses on the legal aspect of categorizing armed conflict. The classification of a conflict is important in determining the obligations that arise for the parties to it. The first issue is to determine whether a situation amounts to an armed conflict, and thus whether it falls within the ambit of international humanitarian law. To classify a situation of armed violence in law and express that classification is an essential but delicate matter – this problem of applicability is considered to be the Achilles heel of international humanitarian law. The very existence of an armed conflict is frequently denied by states, either to downplay clashes or to prevent rebels from acquiring any kind of legitimacy.

Most present-day wars are fought within nations, signalling a further shift away from the pattern of international armed conflicts that characterized the first half of the 20th century. New phenomena have also arisen, such as the spreading of domestic chaos and armed violence in the absence of effective government control and services. Armed violence in weak or failed states often spills over borders, and third states appear inclined to assume sporadic law and order functions in place of a disabled government, so as to maintain the perceived security threat at a tolerable level. Current efforts to repress acts of piracy off the coast of Somalia are an evident case in point. In addition, the old phenomenon of terrorism has gained renewed importance in light of the asymmetry of military power and the growing damage capability of non-state groups. The notion of a continuous and never-ending global 'war on terror' has cast expectations of international humanitarian law into doubt. Moreover, the transnational character of this type of armed violence stretches the concept of armed conflict within a defined territory to its limits.

These developments challenge the traditional distinction between international and non-international armed conflicts, as today's conflicts increasingly involve non-state entities and often have a transnational dimension. Legal classification of a conflict into one of the traditional categories is frequently contested, particularly in the case of 'internationalized' internal armed conflicts. Conversely,

in situations that may not qualify as an armed conflict (such as sporadic terrorist acts), states may nevertheless want the situation to fall within the scope of international humanitarian law in order to have what they perceive as greater freedom of action to combat those adversaries. In referring to provisions of international humanitarian law, states may feel less constrained than under the human rights regime which, some argue, unduly restricts their use of force in such situations.

In view of the tasks conferred upon it by the Geneva Conventions and by virtue of its internationally recognized mandate, the ICRC has the competence to make a legal classification of an armed conflict. This categorization determines the legal framework for action and the corresponding obligations of the warring parties, and prepares the ground for its operations to protect the conflict victims and the civilian population.

In principle, the ICRC shares its legal assessment of the situation with the parties to a conflict and reminds them, formally or informally, of their obligations. The qualification is not binding for those parties or for third states, but they must consider it in good faith. Whether or not the ICRC publicly communicates its view of the legal framework to the warring parties will depend on the short- and long-term humanitarian needs of the victims. It will also depend on the explicit or presumed attitude of the parties to the conflict, as well as that of other members of the international community (in particular worldwide and regional organizations). The overarching aim in this regard is to ensure that victims benefit, at least *de facto*, from treatment that complies with humanitarian rules.

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