



## Conflict with Criminal Enterprises: IHL Info Sheet<sup>1</sup>

October 2025

- A. Situation:** A state and non-state criminal enterprise, such as a gang or drug cartel, are engaged in armed violence against one another.
- B. International Humanitarian Law (IHL) application:**
- i. **Is IHL Triggered?**
    - a) To trigger IHL, there must be an ongoing armed conflict. **If no armed conflict exists, IHL does not apply**; however, other domestic and international laws may be applicable. There are two types of armed conflicts:
      1. **International armed conflict:** Involves 2 or more nations; and
      2. **Non-international armed conflict:** Involves state and non-state actors (or multiple non-state actors) opposing each other.
    - b) In cases of **mere criminality**, IHL does not apply.
    - c) To constitute a [Non-International Armed Conflict](#) (NIAC), the conflict must meet two criteria:
      - 1. Intensity of the Conflict**
        - (a) The conflict must involve a level of armed violence beyond riots or sporadic violent internal clashes.<sup>2</sup>
        - (b) Factors include the number, duration and intensity of individual confrontations, the type of weapons/other military equipment used, the number of persons and type of forces partaking in the fighting, the number of casualties, etc.<sup>3</sup>
        - (c) The group's commission of criminal activity (e.g. drug or arms trafficking), even if it is extensive, is not a relevant factor to this criterion.
      - 2. Organization of the Parties to the Conflict**
        - (a) The non-state group(s) must have sufficient internal organization to constitute an armed group.
        - (b) Factors include the existence of a command structure within the group, territorial control, its access to weapons/military equipment, its ability to plan, coordinate and carry out military operations, its ability to speak with one voice and negotiate and conclude agreements such as cease-fires, etc.<sup>4</sup>

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<sup>2</sup> ICTY, [The Prosecutor v. Dusko Tadić, IT-94-1-AR72](#), Appeals Chamber (Judgment), Case No. IT-94-1, 2 October 1995, para. 70.

<sup>3</sup> ICTY, [The Prosecutor v. Ramush Haradinaj et al.](#), Trial Chamber I (Judgment), Case No. IT-04-84-T, 3 April 2008, para. 60.

<sup>4</sup> *Id.*



- (c) The group's commission of criminal activity (e.g. drug or arms trafficking) is not a relevant factor to this criterion.
- ii. **Who decides how to classify an armed conflict?**
- a) IHL is automatically triggered when an armed conflict occurs—there is no need or requirement for a party to declare the existence of the conflict, or to publicly classify it.<sup>5</sup>
  - b) There is no international body, including the ICRC and UN, with authority to classify conflicts in a way that binds nations or armed groups.<sup>6</sup>
- iii. **Do criminal enterprises or other non-state armed groups have to follow IHL?** Yes. During armed conflicts, non-state armed groups are bound by IHL.
- iv. **What IHL Applies to NIACs?** NIACs do not trigger the entire body of IHL.
- a) [Common Article 3](#), Geneva Conventions (CA3): Requires humane treatment of civilians, hors de combat, and the wounded. Requires treatment for the wounded and sick.
  - b) [Additional Protocol II](#) to the Geneva Conventions (AP II)<sup>7</sup>
    - 1. Provides protection to civilians, civilian objects, wounded soldiers, medical personnel, relief personnel, and religious personnel.
    - 2. Even if a state has not ratified AP II, many of its provisions are considered customary international law and thus apply to the conflict.
  - c) [Customary International Law](#) (CIL): Requires parties, at a minimum, to NIACs to adhere to the fundamental principles of distinction, military necessity, and proportionality.
- v. **Under IHL, is there any legal effect to declaring that a criminal enterprise is a terrorist group?**
- a) Not in determining whether an armed conflict exists, or in classifying one. The facts and circumstances of the situation (and group) control.
  - b) *Within an armed conflict*, this type of designation is designed to mark the group as an “organized armed group.” Under IHL, the group's members are treated as the “armed forces” of the group and are targetable.<sup>8</sup>
  - c) Even if a criminal enterprise has this designation, a party must still determine whether targeted individuals are members of the group.

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<sup>5</sup> For example, during [Operation Inherent Resolve](#) (2014-Present), the U.S. did not publicly declare its classification of the conflict against ISIS. However, the conduct of the operation adhered to the rules applicable for a NIAC, which is the appropriate categorization of that conflict. **The U.S. military requires commanders to “comply with the law of war during all armed conflicts, however classified.”** DoD Directive 2311.01 (July 2, 2020).

<sup>6</sup> The facts and circumstances of the conflict [control its classification](#), not a party's public statements about it. It is therefore critical for parties to seriously consider conflict classification to ensure they conduct themselves in a lawful manner in concert with the portion of IHL that is applicable to the conflict.

<sup>7</sup> AP II is not automatically triggered in every NIAC. Pursuant to AP II, Art. 1.1, the Article applies only when “dissident armed forces or other organized armed groups exercise sufficient control over territory “to enable them to carry out sustained and concerted military operations...”

<sup>8</sup> US DoD *Law of War Manual*, para. 5.8.1.



vi. **Considerations for conflicts with criminal enterprises**

- a) In most circumstances, a conflict with a criminal enterprise will be a NIAC (if it's an armed conflict at all). In cases where a state supports or exerts control over an armed group, additional analysis is required.<sup>9</sup>
- b) In many cases, a gang or cartel's use of violence against a state (or vice versa) will not meet the *level of intensity* required to be a NIAC. A gang/cartel's criminal activity (even if widespread and serious) and efforts to police them are *not armed conflicts*, without other factors present.
- c) Every gang/cartel is organized differently, often with multiple echelons featuring differing levels of coordination. A gang/cartel's *level of organization* is the critical second piece to determining whether an armed conflict exists—a question whose answer is the difference between IHL applying or not being active.
- d) A state's declaration that a NIAC exists has no legal effect in IHL. However, it can signal an acknowledgement that IHL has been triggered and serve as a recognition of the state's legal obligations under IHL.
- e) The designation of a gang/cartel as an organized armed group functionally impacts the ability to target its members (assuming an armed conflict is involved).<sup>10</sup> The question of whether a specific person or group are members is often a complex assessment reliant on various intelligence sources, making it a case-by-case analysis.

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<sup>9</sup> The [Tadić](#) case set forth the widely-accepted legal test (“overall control”) to determine whether an outside state's support of a non-state armed group is enough to render it a party to the conflict, rather than just a provider of support.

<sup>10</sup> This fact sheet does not address the legal impact of a “terrorist group” designation under domestic or other international laws.