

The “General Close of Military Operations” as the Benchmark for the Declassification of Armed Conflicts and the End of the Applicability of International Humanitarian Law

La “fin générale des opérations militaires” ou le moment charnière pour la déqualification des conflits armés et la fin de l’applicabilité du droit international humanitaire

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Abstract

When does an armed conflict end? When does the specific body of law applicable to such a situation — namely, international humanitarian law (IHL) — cease to apply? There is, to date, no clear-cut answer to these questions in treaty law but, rather, a functional approach to the matter. Anchored in wider research related to the temporal scope of applicability of IHL, this contribution demonstrates how the notion of the “general close of military operations,” which appears in Article 6, paragraph 2, of *Geneva Convention IV* and in Article 3(b) of *Additional Protocol I*, fulfills the function of determining that any armed conflict has ended.

Résumé

Quand un conflit armé prend-il fin? Quand le corpus juridique spécifiquement applicable à une telle situation, à savoir le droit international humanitaire (DIH), cesse-t-il de s’appliquer? À ce jour, il n’y pas, en droit conventionnel, de réponse définitivement tranchée et uniforme à ces questions; elles font au contraire l’objet d’une approche fonctionnelle. Ancrée dans une recherche plus large relative à la portée temporelle de l’applicabilité du DIH, cette contribution démontre comment la notion de “fin générale des opérations militaires,” qui apparaît à l’article 6, paragraphe 2 de la *Convention IV de Genève* et dans l’article 3 (b) du *Protocole additionnel I*, remplit la fonction de conduire à la conclusion que tout conflit armé a pris fin.

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Mots-clés: droit des conflits armés; droit international humanitaire; fin des conflits armés; fin des conflits armés internationaux; fin des conflits armés non internationaux; fin des hostilités (actives); fin générale des opérations militaires.

INTRODUCTION

Among the markers of the evolution of armed conflicts since the adoption of the *Geneva Conventions*¹ seventy years ago are their prolongation in time and the vagueness surrounding their cessation.² At the time of the adoption of the *Geneva Conventions*, peace treaties remained the preferred way to end international armed conflicts. Non-international armed conflicts, and the ways in which they ended, were of little interest. Situations of occupation were seen as transitional in nature and therefore not destined to persist. Today, however, not only are international armed conflicts no longer the most frequent type of conflict, but the conclusion of peace treaties has also somehow fallen into desuetude.³ The question of the end of non-international armed conflicts is simply not settled, and it has been shown that a situation of occupation may last for more than forty years.⁴

¹ See *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) [*Geneva Convention I*]; *Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea*, 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950) [*Geneva Convention II*]; *Geneva Convention Relative to the Treatment of Prisoners of War*, 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950) [*Geneva Convention III*]; *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) [*Geneva Convention IV*].

² Marco Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare* (Cheltenham, UK: Edward Elgar, 2019) at 191.

³ See Julia Grignon, *L'applicabilité temporelle du droit international humanitaire* [Temporal scope of applicability of international humanitarian law] (Zurich: Schulthess, 2014) at 217–39 [Grignon, *L'applicabilité temporelle*]. See also Marko Milanovic, “The End of Application of International Humanitarian Law” (2015) 96 IRRC 163; Knut Dörmann, ed, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (Cambridge and Geneva: Cambridge University Press and International Committee of the Red Cross, 2016) at para 276. While some peace treaties still remain in force today, they are no longer the way by which parties to a conflict choose to put an end to it.

⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, [2004] ICJ Rep 136.

These reconfigurations of situations of armed conflict and of the ways in which they end have consequences for the legal understanding of that moment. However, whereas there is an extensive literature on issues surrounding the classification of armed conflicts, issues relating to what could be called their “declassification” have received less attention until recently. This is so despite the fact that the end of armed conflicts raises as many questions, if not more, than their beginning.

As is the case with classification, the declassification of situations of violence is closely linked to the applicability of international humanitarian law (IHL). In other words, the question of when a conflict ends is linked to the question of when IHL ceases to apply: once IHL has been applied, when does it cease to have effect? There is no clear-cut answer to this question in treaty law; rather, there is a functional approach to the matter. Marko Milanovic has underlined this idea by referring to a “palimpsest” and concluding that there is “fragmentation” in the relevant provisions that impedes identification of the end of application of IHL in general terms.⁵ The end of application of IHL in international armed conflicts indeed depends on the situation of the people that it protects (for example, until their release, repatriation, and re-establishment)⁶ and on the status of the relevant territory (occupied or not).⁷ As for non-international armed conflicts, *Additional Protocol II* refers to the “end of the armed conflict,” without more precision.⁸ Core IHL texts therefore do not provide a significant point or event, or even a decisive notion, that would be obvious and that would make it possible to conclude that any given armed conflict has completely ended. Under IHL, the only codified rule on the general cessation of fighting between armed forces can be found in the 1907 *Hague Regulations*.⁹ This text provides for two possibilities in this respect: capitulation¹⁰ or armistice¹¹ — two notions that are no longer useful today, as will be described below.

⁵ Milanovic, *supra* note 3 at 164.

⁶ See *Geneva Convention I*, *supra* note 1, art 5; *Geneva Convention III*, *supra* note 1, art 5; *Geneva Convention IV*, *supra* note 1, art 6, para 4.

⁷ *Geneva Convention IV*, *supra* note 1, art 6, para 3.

⁸ *Additional Protocol II to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts*, 8 June 1977, 1125 UNTS 609 (entered into force 7 December 1978), art 2, para 2 [*Additional Protocol II*].

⁹ *Regulations Concerning the Laws and Customs of War on Land, annexed to Convention (IV) Respecting the Laws and Customs of War on Land*, 18 October 1907, (1908) 2 AJIL Supp 90 (entered into force 26 January 1910) [*Hague Regulations*].

¹⁰ *Ibid*, art 35.

¹¹ *Ibid*, arts 36–41.

This article demonstrates how the notion of the “general close of military operations,” which appears in Article 6, paragraph 2, of *Geneva Convention IV* and in Article 3(b) of *Additional Protocol I*,¹² fulfills the function of determining that any armed conflict has ended. Indeed, even if IHL may be applicable beyond this point — for example, if people remain deprived of their liberty or the fate of all missing persons has not been elucidated — the “general close of military operations” constitutes the benchmark for the determination of the end of armed conflicts, be they international or non-international.

This notion has already been mobilized in the relevant literature but in a rather scattered manner. Robert Kolb and Richard Hyde consider that it codifies customary IHL; however, they seem to refer to practice that predates the adoption of the *Geneva Conventions* — that is, before the appearance of the notion itself in treaty law and without differentiating between international and non-international armed conflicts, which is odd since the expression “general close of military operations” only appears in *Geneva Convention IV* and *Additional Protocol I*, which are both applicable to international armed conflicts.¹³ Marko Milanovic concludes “that an IAC [international armed conflict] would end with a general close of military operations, with no real likelihood of a resumption in hostilities.”¹⁴ He distinguishes, however, the end of non-international armed conflicts, where analogies with international armed conflicts would be difficult to draw, and considers that their end may be found when certain thresholds are no longer satisfied.¹⁵ Similarly, the updated 2016 Commentary of the International Committee of the Red Cross (ICRC) regarding Common Article 2 of the *Geneva Conventions* relies on this notion, stating that “evidence that there has been a ‘general close of military operations’ is the only objective criterion to determine that an international armed conflict has ended in a general, definitive and effective way.”¹⁶ Others have also rallied to this conception, such as Christian Schaller and Nathalie Weizmann, who each mention it in their enumerations of the ways of ending international armed conflicts, the former regarding multinational military operations¹⁷ and the latter

¹² *Additional Protocol I to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts*, 8 June 1977, 1125 UNTS 3 (entered into force 7 December 1978) [*Additional Protocol I*].

¹³ Robert Kolb & Richard Hyde, *An Introduction to the International Law of Armed Conflicts* (Oxford: Hart Publishing, 2008) at 102.

¹⁴ Milanovic, *supra* note 3 at 174.

¹⁵ *Ibid* at 180.

¹⁶ Dörmann, *supra* note 3 at para 277.

¹⁷ Christian Schaller, “The Temporal Scope of the Laws of Armed Conflict in Multinational Military Operations” in Robin Geiß & Heike Krieger, eds, *The “Legal Pluriverse” Surrounding Multinational Military Operations* (Oxford: Oxford University Press, 2019) 49.

regarding detentions in armed conflicts.¹⁸ More broadly, Marco Sassòli has touched upon the notion in his recent book when assessing the beginning and end of the application of IHL,¹⁹ and Dustin Lewis, Gabriella Blum, and Naz Modirzadeh have naturally included it in their significant work that attempts to systematize the end of armed conflicts through four distinct theories.²⁰

Against this panorama of contributions relating to the end of the applicability of IHL, the value of this contribution lies in its principal aims. First, building on wider research dealing with the overall temporal scope of the applicability of IHL,²¹ it proposes to apply the “general close of military operations” notion today to both international and non-international armed conflicts. Second, it provides a comprehensive overview of the matter and not only in relation to specific situations (such as internment/detention) or specific contexts (such as the “global war on terror”). In turn, the findings below aim to offer a global benchmark for the termination of the applicability of IHL while explaining why this notion should be retained, (most importantly) what it covers, and why it should be distinguished from another notion — that is, the “end of (active) hostilities,” which appears in other provisions of the *Geneva Conventions*, as explained below. These findings also contribute to identifying useful and practical tools when it comes to determining the end of a situation of armed conflict.

To this end, this article will first review notions that can be found in the field of the end of armed conflicts but that must be excluded — namely, on the one hand, any formal act and, on the other, a concept that is at first sight related but definitely distinct: the “end of (active) hostilities.” Then, the article will explain how the notion of the “general close of military operations” appears to be the most helpful in declassifying any situation of armed conflict. In doing so, the specific question of the end of occupation, which is a subcategory of international armed conflicts, will not be considered. Indeed, this question has already been the subject of

¹⁸ Nathalie Weizmann, “The End of Armed Conflict, the End of Participation in Armed Conflict, and the End of Hostilities: Implications for Detention Operations under the 2001 AUMF” (2016) 47:1 Colum HRLR 204.

¹⁹ Sassòli, *supra* note 2 at 191–92.

²⁰ Dustin A Lewis, Gabriella Blum & Naz K Modirzadeh, *Indefinite War: Unsettled International Law on the End of Armed Conflict* (Cambridge, MA: Harvard Law School Program on International Law and Armed Conflict, 2017) at 50 (see, in particular, the comprehensive summary table), 97–1030 (the four theories developed).

²¹ Grignon, *L’applicabilité temporelle*, *supra* note 3.

many debates, and the reader may refer to the existing literature on this subject.²²

EXCLUDED NOTIONS

ACTS PROVIDED FOR BY TREATY AND OTHER LEGAL ACTS

Belligerents wishing to put an end to the armed conflict that opposes them and to settle its consequences have a rather wide range of international legal instruments available to them with which to do so: beyond capitulation and armistice, which are expressly mentioned in the 1907 *Hague Regulations*, these legal instruments include ceasefires and peace treaties. All have the same goal: silencing weapons.²³ Their meaning and purpose have been dealt with in the literature. Jann Kleffner, in particular, has discussed them in depth,²⁴ including with regard to the end of IHL’s applicability.²⁵ They will not be examined further in this article other than to reiterate the following.

First, capitulation,²⁶ which is the only formal legal act referred to in treaty law that could have decisive significance for the end of armed conflicts, is no longer found in state practice. As a result, the only formal legal act with which the end of international armed conflicts effectively coincides has no operational repercussions today. Capitulation is therefore not useful for the purpose of determining the way in which armed conflicts are put to an end. Second, an armistice agreement is clearly not intended to put an end to a state of war in the original sense of the term.²⁷ The intrinsically transitional

²² See e.g. Vaios Koutroulis, *Le début et la fin de l'application du droit de l'occupation* [The beginning and end of the application of the law of occupation] (Paris: Pedone, 2010); Tristan Ferraro, “Determining the Beginning and End of an Occupation under International Humanitarian Law” (2012) 94 IRRC 133; Julia Grignon, “The End of Occupation” in Andrew Clapham, Paola Gaeta & Marco Sassòli, eds, *The Geneva Conventions in Context: A Commentary* (Oxford: Oxford University Press, 2015) 1575 [Grignon, “End of Occupation”]; Sassòli, *supra* note 2.

²³ For a parallel approach, see Christine Bell, *Peace Agreements and Human Rights* (Oxford: Oxford University Press, 2003); Christine Bell, “Peace Agreements: Their Nature and Legal Status” (2006) 100 Am J Intl L 373 at 375–76. See also Yoram Dinstein, *War, Aggression and Self-Defence*, 5th ed (Cambridge: Cambridge University Press, 2011) at 30–61.

²⁴ Jann K Kleffner, “Peace Treaties” in Rüdiger Wolfrum, ed, *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2011) [Kleffner, “Peace Treaties”]; Jann K Kleffner, “Scope of Application of International Humanitarian Law” in Dieter Fleck, ed, *The Handbook of International Humanitarian Law*, 3rd ed (Oxford: Oxford University Press, 2013) 43 [Kleffner, “Scope of Application”].

²⁵ Kleffner, “Scope of Application,” *supra* note 24.

²⁶ See *ibid* at 68ff.

²⁷ Richard R Baxter, “Armistices and Other Forms of Suspension of Hostilities” (1976) 149 Rec des Cours 353 at 372ff; Howard S Levie, “The Nature and Scope of the Armistice

or even temporary nature of this legal instrument should therefore in no way be decisive in determining the end of armed conflicts.²⁸ In addition, armistices seem in any event to have become obsolete since those that were signed in the context of conflicts in the Middle East or the Koreans in the 1950s. Third, peace treaties, even in their contemporary meaning,²⁹ do not in themselves automatically put an end to military operations, and they do not necessarily prevent the resumption of the conflict. In other words, if they are followed by effects, they may coincide with the end of armed conflict but, taken in isolation, they do not suffice.³⁰ Fourth, ceasefires,³¹ both reflecting a practical approach and being the notion that is today the most commonly used when it comes to reaching an agreement to put an end to hostilities,³² cannot be the decisive criterion for concluding that an armed conflict has ended.³³ Indeed, they only “signal[] an attempt to reach a more comprehensive and permanent settlement of an armed conflict”³⁴ and are “used with reference to suspension of hostilities.”³⁵ Further, like peace treaties, they are based on a hazard: they may never be concluded, even though, objectively, it can be considered that the armed conflict has ended, or, on the contrary, they may well be signed without being implemented. Finally, other types of agreements that may have consequences for the continuation of hostilities can be concluded during an armed conflict.³⁶ Examples of such

Agreement” (1956) 50 Am J Intl L 880 at 884; Sydney D Bailey, “Cease-fires, Truces, and Armistices in the Practice of the Security Council” (1977) 71 Am J Intl L 461 at 472. See also Georg Schwarzenberger, *International Law as Applied by International Courts and Tribunals: The Law of Armed Conflict* (London: Stevens, 1968) at 725ff; Kleffner, “Scope of Application,” *supra* note 24 at 65.

²⁸ For a divergent view, see Yoram Dinstein, “Armistice” in Rüdiger Wolfrum, ed, *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2015) at para 4.

²⁹ Kleffner, “Peace Treaties,” *supra* note 24 at paras 1, 22–23. See also Christine Bell, “Peace Agreements: Their Nature and Legal Status” (2006) 100 Am J Intl L 373 at 377ff; Kleffner, “Scope of Application,” *supra* note 24 at 69.

³⁰ Similarly Dörmann, *supra* note 3 at para 276; Weizmann *supra* note 18 at 220; Schaller, *supra* note 17 at 62.

³¹ See Christine Bell, “Ceasefire” in Rüdiger Wolfrum, ed, *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2009) at para 6; see also Kleffner, “Scope of Application,” *supra* note 24 at 66ff.

³² Baxter, *supra* note 27 at 364; Bell, *supra* note 31 at 10; Dinstein, *supra* note 28.

³³ Schaller, *supra* note 17 at 54.

³⁴ Bell, *supra* note 31 at para 1.

³⁵ *Ibid* at para 2.

³⁶ Baxter, *supra* note 27 at 358. See also Alfons Klafkowski, “Les formes de cessation de l’état de guerre en droit international (Les formes classiques et non classiques)” [Forms of cessation of the state of war in international law (classical and non-classical forms)] (1976) 149 Rec des Cours 217.

agreements include a “suspension of arms” or a “truce,” which are, however, outdated today. The sole purpose of a suspension of arms or a truce is to allow the belligerents to carry out certain acts that would not be executable under the fire of hostilities. These concepts are temporary in nature and do not affect the characterization of the armed conflict as such. Therefore, they fall outside the scope of this article.

Since the purpose of the declassification of armed conflicts is mainly to end the application of IHL, it is therefore necessary to make a fundamental distinction between the legal effects of formal instruments — as instruments of international law binding on the parties who have signed them³⁷ — and their consequences for the applicability of IHL. Thus, trying to find a criterion that could mark the end of armed conflicts, and having found that legal instruments are not helpful in this task, it appears that the solution is to be found in a notion that factually describes a situation.³⁸ In this respect, the concept of the “end of (active) hostilities,” which can be found in treaty law, is widely used in the IHL community’s language. However, as explained below, even if this notion produces significant or even crucial impacts, it does not help to declassify a situation of armed conflict.

THE END OF (ACTIVE) HOSTILITIES

The expressions “cessation of active hostilities,” “close of hostilities,” “end of active hostilities,” and “end of hostilities” (compactly referred to here as “end of (active) hostilities” for brevity and convenience) can be found in the *Geneva Conventions* of 1949 and their *Additional Protocols* of 1977, in provisions that seek to set a differentiated starting point for the application of some specific protections. Hence, the “end of (active) hostilities” is a notion that was introduced to derogate from the general scope of applicability of IHL. Also, the “end of (active) hostilities” is an ancient notion. It appeared already in the *Lieber Code*³⁹ and was reproduced in the 1906 *Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field*⁴⁰ and

³⁷ For details regarding the legal effects of these instruments, see Baxter, *supra* note 27; Wolff Heintschel von Heinegg, “Factors in War to Peace Transitions” (2004) 3 Harv JL & Pub Pol’y 843. See also Paola Gaeta, “The Dayton Agreements and International Law” (1996) 7 Eur J Intl L 147.

³⁸ Similarly, Milanovic, *supra* note 3 at 146; Dörmann, *supra* note 3 at paras 282, 495; Weizmann, *supra* note 18 at 220.

³⁹ *Lieber Code*, US General Orders no 100 (1863), art 135 (referring to the “cessation of active hostilities”).

⁴⁰ *Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field*, 6 July 1906, 11 LNTS 440 (entered into force 9 August 1907), art 2 (referring to the “close of hostilities”).

the 1929 *Convention Relative to the Treatment of Prisoners of War*.⁴¹ In contemporary IHL treaties, it appears, in particular, in Article 118 of *Geneva Convention III*,⁴² Articles 46 and 133 of *Geneva Convention IV*,⁴³ and Article 33 of *Additional Protocol I*.⁴⁴

Contrary to Milanovic's statement in this respect,⁴⁵ it is rather clear from a careful reading of the *travaux préparatoires* that the drafters of the *Geneva Conventions* wanted to make a distinction between the "end of (active) hostilities" and the end of the armed conflict that would be materialized by the "general close of military operations" in *Geneva Convention IV*. Indeed, the introduction of the expression "end of (active) hostilities" in the *Geneva Conventions* derives from the disproportionate time that elapsed between the end of the Second World War and the repatriation of persons who had been interned during that conflict. In order to prevent such a situation in the future, the drafters of the 1949 *Geneva Conventions* decided that it was unnecessary to wait for the formal end of the armed conflict for measures of repatriation to be undertaken. As for the word "active," it was originally added in 1947, during the preliminary negotiations of the 1949 *Geneva Conventions*, in order to point out that prisoners of war must be repatriated as soon as possible. Later, in 1949, it appeared unnecessary to maintain this additional word in the convention relating to civilians.⁴⁶ The word "active," however, was maintained in the draft of Article 118 relating to the release and repatriation of prisoners of war and was reused in Article 33 of *Additional Protocol I*, which relates to the missing. Here again, a careful reading of the *travaux préparatoires* of those texts reveals that there is no legal distinction to be made between the "end of active hostilities" and the "end of hostilities." Both expressions have the same meaning.⁴⁷

⁴¹ *Convention Relative to the Treatment of Prisoners of War*, 27 July 1929, 118 UNTS 344 (entered into force 19 June 1931), art 23, s II (referring to the "end of hostilities"). For a comprehensive historical analysis of the notion, see Grignon, *L'applicabilité temporelle*, *supra* note 3 at 327–33.

⁴² *Geneva Convention III*, *supra* note 1, art 118 (referring to the "cessation of active hostilities").

⁴³ *Geneva Convention IV*, *supra* note 1, arts 46, 133 (referring to the "close of hostilities").

⁴⁴ *Additional Protocol I*, *supra* note 12, art 33 (referring to the "end of active hostilities").

⁴⁵ Milanovic, *supra* note 3 at 148.

⁴⁶ Federal Political Department, *Final Record of the Diplomatic Conference of Geneva of 1949*, vol II-A (Bern: Federal Political Department, 1950) at 624; Federal Political Department, *Diplomatic Conference of Geneva of 1949, Sténogrammes de la Commission III*, vol 1 (Bern: Federal Political Department, 1950) at 21–22.

⁴⁷ A detailed analysis of this part of the *travaux préparatoires* can be found in Grignon, *L'applicabilité temporelle*, *supra* note 3 at 327–37.

Today, the provisions in which the expression “end of (active) hostilities” is found relate to the end of deprivations of liberty,⁴⁸ the dead,⁴⁹ missing persons,⁵⁰ and the effects of some weapons such as anti-personnel landmines,⁵¹ explosive remnants of war,⁵² and cluster munitions.⁵³ None of these provisions provides guidance as to what should be understood by the expression “end of (active) hostilities.” However, analysis of these provisions in light of their *travaux préparatoires* and of their interpretations by some commentators makes it possible to draw the following conclusions.⁵⁴ First and foremost, it is quite clear that the difficulties encountered when trying to determine what this expression covers reflect the desire of the drafters to retain a certain flexibility in determining the time at which some specific provisions begin to produce their effects. While using words that aim to reflect reality on the ground, they wanted to facilitate further interpretations that would be the most favourable to individuals.⁵⁵ This reading is supported by the words that appear alongside the expression.

Indeed, and this is the second conclusion arising from a reading of the relevant provisions, all idioms that are attached to the expression “end of hostilities” — namely “without delay,”⁵⁶ “as soon as circumstances permit,”⁵⁷

⁴⁸ *Geneva Convention III*, *supra* note 1, art 118; *Geneva Convention IV*, *supra* note 1, arts 46, 133; *Additional Protocol II*, *supra* note 8, art 6.

⁴⁹ *Geneva Convention I*, *supra* note 1, art 17; *Geneva Convention IV*, *supra* note 1, art 130.

⁵⁰ *Additional Protocol I*, *supra* note 12, art 33.

⁵¹ *Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II, as amended on 3 May 1996) annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects*, 3 May 1996, 2048 UNTS 93 (entered into force 3 December 1998) [*Protocol II*].

⁵² *Protocol on Explosive Remnants of War to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects*, 28 November 2003, 2399 UNTS 1 (entered into force 12 November 2006) [*Protocol V*].

⁵³ *Convention on Cluster Munitions*, 30 May 2008, 2688 UNTS 39 (entered into force 1 August 2010). For a comprehensive nomenclature of these topics in relation with the end of armed conflicts, see Lewis, Blum & Modirzadeh, *supra* note 20.

⁵⁴ For a comprehensive analysis of the expression “end of (active) hostilities,” see Grignon, *L'applicabilité temporelle*, *supra* note 3 at 337–61. See also Weizmann, *supra* note 18 at 232ff.

⁵⁵ Similarly, Christiane Shields Delessert, *Release and Repatriation of Prisoners of War at the End of Active Hostilities, a Study of Article 118, Paragraph 1 of the Third Geneva Convention Relative to the Treatment of Prisoners of War* (Zurich: Société suisse de droit international, 1977).

⁵⁶ See e.g. *Geneva Convention III*, *supra* note 1, art 118.

⁵⁷ See e.g. *Additional Protocol I*, *supra* note 12, art 33; *Geneva Convention I*, *supra* note 1, art 17, para 4; *Geneva Convention IV*, *supra* note 1, art 130, para 3.

“as soon as feasible,”⁵⁸ or “immediately,”⁵⁹ as well as the addition of the adjective “active”⁶⁰ — refer to a moment that occurs as early as possible. It is therefore immediacy that underlies this expression. This observation also points to the fact that the “end of (active) hostilities” has to be distinguished from the “general close of military operations,” an expression that has another objective, as will be demonstrated in greater detail later in this article.⁶¹ Indeed, distinguishing between military operations and hostilities makes it possible to consider that the exchange of intermittent shots cannot constitute an obstacle to the implementation of provisions that use the expression “end of (active) hostilities,” if these shots are linked to the last military operations taking place on a territory with a view to concluding the armed conflict. A mere sporadic resumption of hostilities cannot be the pretext for postponing or interrupting the implementation of such provisions. The “end of (active) hostilities” is intended to mark a moment that occurs before the end of the conflict. However, there will always have to be an incompressible period of time before it can be said that the hostilities have ceased.

The third and last conclusion that can be drawn from the relevant provisions and that attests that the “end of (active) hostilities” is not automatically coincidental with the end of an armed conflict is based on the following observation: the end of hostilities relating to a given context does not prevent other hostilities from continuing in another context. Indeed, the mere fact that some hostilities continue elsewhere does not mean that the “end of (active) hostilities” cannot be established regarding a particular conflict. As stated by Sassòli, “[i]f IHL applies, each conflict has its own beginning and its own end. At the end of active hostilities in a given international armed conflict, prisoners of war (not accused of or sentenced for a crime) must be repatriated. The detention, e.g. of Taliban fighters arrested in Afghanistan, cannot be prolonged simply because, in the Philippines or in Iraq, the ‘war on terrorism’ goes on.”⁶² This statement applies more generally for all provisions that use the expression “end of (active) hostilities.” Since the internment of prisoners of war is justified by a particular conflict, as are deaths and disappearances, and given that the effects of explosive remnants of war are also linked to a specific conflict, it is the end of (active) hostilities associated with each singular conflict that determines when the state should be considered under an obligation to repatriate

⁵⁸ See e.g. *Protocol V*, *supra* note 52, art 3, paras 2–3.

⁵⁹ See e.g. *Protocol II*, *supra* note 51, art 7, para 3 (a).

⁶⁰ See e.g. *Geneva Convention III*, *supra* note 1, art 118.

⁶¹ Similarly, see Weizmann, *supra* note 18 at 206; Schaller, *supra* note 17 at 53.

⁶² Marco Sassòli, “The Status of Persons Held in Guantanamo under International Humanitarian Law” (2004) 1 *J Int'l Criminal Justice* 96 at 100. See also Weizmann, *supra* note 18.

prisoners of war, to provide information relating to deaths and missing persons, and/or to begin the clearance of sites. Nothing prevents that state from doing so as soon as the situation is sufficiently stable in one context, regardless of the hostilities in which it might be engaged in another, even be they hostilities that might be linked to the same conflict.

Therefore, in the absence of a clear conventional definition, the elements highlighted above make it possible at least to identify indicators that confirm that it is not the notion of the “end of (active) hostilities” that should be taken into consideration when determining whether an armed conflict has ended. On the contrary, the “end of (active) hostilities” is the triggering factor for the applicability of some provisions. Moreover, this notion is generally perceived as being in competition with the notion of the “general close of military operations.” In fact, the *Geneva Conventions* and their *Additional Protocols* place these two expressions in diametric opposition to one another. As stated above, the first is an expression whose aim is not to materialize the end of armed conflict but, rather, to mark the starting point for the application of certain specific provisions of IHL. In that regard, the “end of (active) hostilities” has nothing to do with the end of armed conflict. In contrast, the notion of the “general close of military operations” is used to determine when IHL is deemed to cease to apply — that is, when an armed conflict ends.

THE GENERAL CLOSE OF MILITARY OPERATIONS

If neither formal acts nor the factual end of hostilities are useful for determining the end of armed conflicts, what is the decisive moment at which it can be concluded that an armed conflict has ended? The phrase “general close of military operations,” which initially appeared only in 1949 in *Geneva Convention IV*,⁶³ is used in a wider manner in *Additional Protocol I*⁶⁴ and aims at defining the termination point of the applicability of IHL in international armed conflicts.⁶⁵ Regarding non-international armed conflicts, neither Common Article 3 to the *Geneva Conventions* nor *Additional Protocol II* contains a specific provision for the purpose of delimiting their application. And if Article 2, paragraph 2, of *Additional Protocol II* contains a reference to the “end of the armed conflict,”⁶⁶ this reference is related only to the specific issue of the deprivation of liberty. Therefore, in the absence of a precise definition, one has to identify a common denominator.

In this respect, the updated Commentary to Common Article 3 does not adopt the “general close of military operations” as a benchmark for

⁶³ *Geneva Convention IV*, *supra* note 1, art 6, para 2.

⁶⁴ *Additional Protocol I*, *supra* note 12, art 3.

⁶⁵ Similarly, see Dörmann, *supra* note 3 at para 277; Sassòli, *supra* note 2 at 190.

⁶⁶ *Additional Protocol II*, *supra* note 8, art 2, para 2.

determining the end of non-international armed conflicts but, rather, enumerates four facts to be taken into account in determining whether a non-international armed conflict has come to an end. In my opinion, however, the general close of military operations should be replicated for the purpose of declassifying non-international armed conflicts. The following section will explain why the “general close of military operations” is the phrase that should be referred to, even in non-international armed conflicts, and sets out some elements that may be useful in determining the occurrence of this “general close of military operations.”

THE RELEVANCE OF THE PHRASE “GENERAL CLOSE OF MILITARY OPERATIONS” FOR THE PURPOSE OF DETERMINING THE END OF ALL ARMED CONFLICTS

INTERNATIONAL ARMED CONFLICTS

First, it must be recalled that, under IHL, the determination of the end of an armed conflict has as its purpose the declassification of the situation in order to determine the end of the applicability of this body of law. Therefore, the meaning of the end of armed conflicts must be sought in the provisions related to the temporal scope of the application of the main treaties of IHL. In that respect, it may first be noted that, while, as explained above, the expression “end of hostilities” has been used in some specific provisions since the first instruments codifying modern IHL, it was not until 1949 that a provision relating to the general applicability of IHL appeared. The first appearance of the phrase “general close of military operations” is coincidental with the adoption of the 1949 *Geneva Conventions*. Only one of those conventions, however, contains an article relating to its overall temporal applicability — that is, Article 6 of *Geneva Convention IV*, which provides, *inter alia*, that “[i]n the territory of Parties to the conflict, the application of the present Convention shall cease on the general close of military operations.”⁶⁷ Each of the other three conventions simply contain a provision specifying their own scope of application, depending on the people they protect. Indeed, although there is an Article 5 entitled “Duration of Application”⁶⁸ in *Geneva Convention I* and an Article 5 entitled “Beginning and End of Application”⁶⁹ in *Geneva Convention III*, these provisions only regulate the status of two specific categories of protected persons — namely, the wounded and the sick, on the one hand, and prisoners of war, on the other hand. They are not *per se* useful for the purpose of determining whether or not IHL is applicable to a given armed violence situation.

⁶⁷ *Geneva Convention IV*, *supra* note 1, art 6, para 2.

⁶⁸ *Geneva Convention I*, *supra* note 1, art 5.

⁶⁹ *Geneva Convention III*, *supra* note 1, art 5.

Similarly, Article 4 of *Geneva Convention II* is entitled “Field of Application.”⁷⁰ This article, however, is related to the distinction between “embarked” and “disembarked” forces, which is another element that falls outside the scope of this contribution. As for *Additional Protocol I*, its Article 3, which replaces and/or supplements the 1949 provision(s), provides that “the application of the Conventions and of this Protocol shall cease, in the territory of Parties to the conflict, on the general close of military operations.”⁷¹ This provision, similar to Article 6, paragraph 2, of *Geneva Convention IV*, opens the door to a wider use of the concept.

Thus, there is a kind of overlapping between the notions and the provisions. Two different expressions exist: “end of (active) hostilities” and “general close of military operations.” The former can be found in many provisions, but it does not mark the end of the applicability of IHL, whereas the latter is mentioned to mark the end of applicability of IHL but only in one provision of one of the conventions, and it is reiterated in *Additional Protocol I* without further explanation. This situation calls for further clarification, and a detour through the *travaux préparatoires* is again enlightening and confirms Milanovic’s speculation.⁷² The *travaux* reveal that this expression came about as a result of an imbroglio composed of several layers. Without entering into too much detail, it can be summarized that, while the initial draft proposed by the ICRC used the notion of hostilities,⁷³ the latter was dismissed because of the fear of a resurgence of formalism.⁷⁴ Additionally, the delegations spoke without distinguishing between the different effects of the provision under discussion — namely, its general effects on the end of the applicability of IHL in a given situation, and its specific effects on persons that were subject to restrictions of their liberty.

Moreover, discussions were mainly held in different parallel commissions dedicated to each convention according to their topic.⁷⁵ As a consequence, a governmental delegation could not always attend all the debates that were going on. Yet discussions on the applicability of *Geneva Convention III* and *Geneva Convention IV* respectively in fact took place simultaneously, and the plenary discussions did not have enough capacity to question the

⁷⁰ *Geneva Convention II*, *supra* note 1, art 4.

⁷¹ *Additional Protocol I*, *supra* note 12, art 3.

⁷² Milanovic, *supra* note 3 at 148.

⁷³ Federal Political Department, *Final Record of the Diplomatic Conference of Geneva of 1949*, vol I (Bern: Federal Political Department, 1949) at 114.

⁷⁴ For a detailed analysis of this part of the *travaux préparatoires* on the matter see Grignon, *L’applicabilité temporelle*, *supra* note 3 at 247–52.

⁷⁵ Federal Political Department, *Diplomatic Conference of Geneva*, *supra* note 46 at 9, 11, 18, 21, 24; Federal Political Department, *Final Record of the Diplomatic Conference of Geneva of 1949*, vol II-A (Bern: Federal Political Department, 1950) at 623–24 (Committee III), 815 (Committee III: Report to the Plenary Assembly).

consistency of each provision with all the other provisions in the other conventions. And an additional element contributed to the blurring of the debates: *Geneva Convention IV*, which encapsulates the phrase “general close of military operations,” is also the sole convention that contains an entire section specifically dedicated to occupied territories. This led to specific discussions regarding the temporal scope of application of the convention in those territories. In any case, what can be retained from the birth of the notion of the “general close of military operations” and with regard to its potential for constituting a benchmark for the declassification of armed conflicts and the end of the applicability of IHL is that the purpose of the chosen words was to reflect effectiveness.⁷⁶

This conclusion is confirmed by the adoption of *Additional Protocol I*. Although only Article 3 of this protocol is relevant here, it is notable that the debates that took place during the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts in 1974–77, in relation to the meaning of the notion of “military operations,” also took place in relation to Article 49 in which the word “attack” had to be defined. But, in sum, what is noteworthy is that the delegates did not address the general meaning of the expression “general close of military operations,” except for one delegation that proposed an amendment to the draft submitted by the ICRC. This amendment suggested that the phrase “on the general close of military operations” be replaced by the phrase “on the termination of the armed conflict.”⁷⁷ Be that as it may, the Commentary to Article 3 unifies the debate here in a most general and self-explanatory way. Indeed, in order to explain why the general end of applicability of IHL does not necessarily correspond to the end of the applicability of some of its specific provisions, the Commentary states that

[t]he general close of military operations may occur after the ‘cessation of active hostilities’.... [A]lthough a ceasefire, even a tacit ceasefire, may be sufficient for [the Third] Convention, military operations can often continue after such a ceasefire, even without confrontations. Whatever the moment of the general close of military operations, repercussions of the conflict may continue to affect some persons.⁷⁸

⁷⁶ See Federal Political Department, *Diplomatic Conference of Geneva*, *supra* note 46 at 11, 24 (debates of Committee III).

⁷⁷ Federal Political Department, *Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva, 1974–1977*, vol III, Part I, Amendments to Draft Additional Protocol I and Annex (Bern: Federal Political Department, 1978) at 16 (amendment proposed by the Syrian Arab Republic).

⁷⁸ Yves Sandoz, Christophe Swinarski & Bruno Zimmermann, ed, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Geneva: International

NON-INTERNATIONAL ARMED CONFLICTS

Neither Common Article 3 to the *Geneva Conventions* nor *Additional Protocol II* contains any provision relating to their general applicability. Common Article 3 merely provides that it applies in the event of an armed conflict that is not of an international character. As for *Additional Protocol II*, it provides only a few brief clarifications on the applicability of some of its provisions — namely, Articles 5 and 6 on detention. These provisions state in a singular syntax that persons deprived of their liberty should be able to benefit from the protections referred to therein “[a]t the end of the armed conflict ... until the end of such deprivation or restriction of liberty.”⁷⁹ However, this clarification is relevant only for those two specific provisions. It is not relevant for the determination of the applicability of other provisions of the protocol. Moreover, this paragraph is ambiguous in itself since it refers both to the time point of the “end of the armed conflict” and to the end of the detention, even though the moments at which each of these situations occurs do not necessarily coincide.

Non-international armed conflicts have a specificity that takes on a particular dimension when it comes to determining their end. This specificity is based on fulfillment of the criteria of intensity and organization that are relevant for their classification. But what about their declassification? Does the disappearance of one or both of these criteria put an end to the armed conflict? Or, on the contrary, is it necessary to witness a peaceful settlement of the situation? As Common Article 3 is deemed to apply to armed conflicts not of an international character that are triggered when the armed groups involved have a sufficient level of organization and the intensity of violence has reached a certain threshold, it could be considered that, if the organization of the group shows weaknesses or if the intensity of the violence gradually decreases, then the situation can no longer be classified as an armed conflict. Similarly, since *Additional Protocol II* also applies under the same two cumulative conditions, one of which contains two underlying conditions,⁸⁰ it could be considered that, if the responsible command of the armed group is impacted or if control over the territory shifts such that the insurgents are only able to carry out sporadic military activities or such that they have become unable to comply with the provisions contained in the

Committee of the Red Cross, 1987) at para 153. The same view is reiterated in the updated *Commentary to Common Article 2* in Dörmann, *supra* note 3 at para 278.

⁷⁹ See *Additional Protocol II*, *supra* note 8, art 2, para 2.

⁸⁰ The existence of a responsible command and control over the territory, the latter condition allowing insurgents to carry out continuous and concerted military activities and to comply with *Additional Protocol II*. See *Additional Protocol II*, *supra* note 8, art 1.

protocol, then this instrument can no longer be applied.⁸¹ So contend, *inter alia*, Milanovic, Weizmann, and Schaller.⁸²

Nevertheless, some elements suggest otherwise. For example, the Commentary to Article 2, paragraph 2, of *Additional Protocol II* adopts the opposite view. Observing, first, that “[t]he text does not contain any indication as regards the end of its applicability,”⁸³ it considers that “[l]ogically this means that the rules relating to armed confrontation are no longer applicable after the end of hostilities.”⁸⁴ Then, interpreting the meaning of “end of armed conflicts,” it refers to “the end of active hostilities, i.e., when military operations have ceased.”⁸⁵ Even if this statement amalgamates the “end of (active) hostilities” and the “end of military operations,” contrary to what is discussed above and below, it remains clear that the authors of the Commentary never refer to the ebb and flow of the armed group’s organization or to the intensity of the violence for determining the temporal scope of the application of this instrument but, rather, only to the end of armed fighting.⁸⁶ Therefore, the end of the applicability of IHL to the non-international armed conflict does not necessarily mirror its beginning.

Here, an analogy to the beginning and end of a situation of occupation can be made: if boots on the ground are necessary in order to realize the underlying conditions of Article 42 of the 1907 *Hague Regulations*, it may well be that a unilateral withdrawal of the occupying power’s troops produces no impact on the classification of the situation.⁸⁷ In other words, parallelism of form does not perforce operate with regard to the beginning and end of armed conflicts. Applied to non-international armed conflicts, this means that their classification may remain unchanged even if the intensity of violence decreases or if the group’s organization fails. As a result, a situation that no longer objectively meets the classification of a non-international armed conflict could continue to be subject to IHL if it has at some point been so classified.⁸⁸

⁸¹ Dietrich Schindler, “The Different Types of Armed Conflicts According to the Geneva Conventions and Protocols” (1979) 163 *Rec des Cours* 121; Djamchid Momtaz, “Le droit international humanitaire applicable aux conflits armés non internationaux” [International Humanitarian Law applicable to non-international armed conflicts] (2001) 292 *Rec des Cours* 9 at 50.

⁸² Milanovic, *supra* note 3; Weizmann, *supra* note 18; Schaller, *supra* note 17.

⁸³ Sandoz, Swinarski & Zimmermann, *supra* note 78 at para 4492.

⁸⁴ *Ibid.*

⁸⁵ *Ibid* at para 4493.

⁸⁶ They also note in a footnote that “[a]n amendment which was not adopted proposed that the application of the Protocol should cease ‘upon the general cessation of military operations.’” *Ibid* at para 4492, n 11.

⁸⁷ For a detailed analysis in this respect, see Grignon, “End of Occupation,” *supra* note 22.

⁸⁸ For a wider discussion about the declassification of non-international armed conflicts, see Julia Grignon, “The Criteria for Determining Nowadays Non-International Armed

International criminal case law has also supported this view. In the *Tadić* case, the International Criminal Tribunal for the former Yugoslavia (ICTY) clearly considered the “peaceful settlement” of a situation as the marker of the end of a non-international armed conflict and not the gradual disappearance of the criteria that contributed to its characterization as such in the first place.⁸⁹ This position was reiterated masterfully in the *Haradinaj* case: “[A]ccording to the *Tadić* test an internal armed conflict continues until a peaceful settlement is achieved. ... [T]here is no need for the Trial Chamber to explore the oscillating intensity of the armed conflict in the remainder of the indictment period.”⁹⁰ It is therefore confirmed that, according to the ICTY, the end of non-international armed conflicts occurs when, in the material sense, a “peaceful settlement” of the situation is reached.

The *Gotovina* case, where the following statement was made, is also interesting in this respect: “The Trial Chamber understands the Markač Defence’s submission to be that the armed conflict was terminated by a drastically decreased level of intensity, and/or level of organization of one of its participants, resulting in the non-applicability of the law of armed conflict. This position does not accurately reflect the law. As a rule, the fourth Geneva Convention of 12 August 1949 ceases to apply at the general close of military operations.”⁹¹ This reasoning is admittedly ambiguous as the tribunal applies a conclusion based on *Geneva Convention IV* to a situation that is not covered by it since the latter was a non-international armed conflict. However, in any case, these findings support the rationale according to which what counts is the pacification of the situation, not the disappearance of the criteria. This conclusion also supports the view that the “peaceful settlement” referred to is to be understood in its material sense and not in

Conflicts, towards a Relaxation?” in Maxime Lismonde & Stéphane Kolanowski, eds, *Legal and Operational Challenges Raised by Contemporary Non-International Armed Conflicts: Proceedings of the 19th Bruges Colloquium* (Bruges: College of Europe/International Committee of the Red Cross, 2018) 19.

⁸⁹ ICTY, *Prosecutor v Duško Tadić, alias “Dule,”* Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, Case No IT-94-1 at para 70.

⁹⁰ ICTY, *Prosecutor v Ramush Haradinaj, Idriz Balaj, Lahi Brahimaj,* Trial Chamber I, Judgment, 3 April 2008, Case No IT-04-84-T at para 100. Similarly, see ICTY, *Prosecutor v Dragoljub Kunarac, Radomir Kovač, Zoran Vuković,* Appeals Chamber, Judgment, 12 June 2002, Cases Nos IT-96-23 and IT-96-23/1-A at para 57; ICTY, *Prosecutor v Ljube Bošković, Johan Tarčulovski,* Appeals Chamber, Judgment, 10 July 2008, Case No IT-04-82-T at para 293.

⁹¹ ICTY, *Prosecutor v Ante Gotovina, Ivan Čermak, Mladen Markač,* Trial Chamber I, Judgment, 15 April 2011, Case No IT-06-90-T, vol II at para 1694, quoting *Geneva Convention IV, supra* note 1, art 6.

the formal sense of a peace treaty or another agreement of the same kind,⁹² since the former is the factual general close of military operations that is mobilized *in fine*. Besides, the tribunal seized this opportunity to state that, “[o]nce the law of armed conflict has become applicable, one should not lightly conclude that its applicability ceases. Otherwise, the participants in an armed conflict may find themselves in a revolving door between applicability and non-applicability, leading to a considerable degree of legal uncertainty and confusion.”⁹³

These conclusions appear to be fully satisfactory. Today’s non-international armed conflicts often show a decrease of intensity, sometimes to levels below the relevant threshold for classification, followed again by an increase in violence. The same occurs with the organization criterion: sometimes armed groups lose their internal discipline for a period of time, or they even disappear totally and are replaced by newcomers. If we were to consider each time this happens that the applicability of IHL has ended, and later consider each time the required thresholds are met again that the applicability of IHL has resumed, it would lead to too much uncertainty. It would create a kind of oscillation where, at some points, IHL is applicable and then no longer applicable and then applicable again. This cannot be the solution. Stakeholders must know what law has to be applied and that it has to be applied for a certain period of time. Therefore, as soon as a non-international armed conflict has been classified as such, it is not the disappearance of one of the criteria that should be considered to determine the end of the conflict. To determine whether a non-international armed conflict has ended, reference must instead be made to a notion that is more stable and practically implementable.⁹⁴ The “general close of military operations” fulfills this function.

THE MEANING OF THE PHRASE “GENERAL CLOSE OF MILITARY OPERATIONS”

First, the use of this concept was sought in order to considerably extend the applicability of IHL over time. A study of the use of the words “military

⁹² Similarly, see Lindsay Moir, “The Concept of Non-International Armed Conflict” in Andrew Clapham, Paola Gaeta & Marco Sassòli, eds, *The Geneva Conventions in Context: A Commentary* (Oxford: Oxford University Press, 2015) 391 at 413. For a discussion of the matter, see Milanovic, *supra* note 3. For a divergent view, see Schaller, *supra* note 17 at 54.

⁹³ ICTY, *Prosecutor v Ante Gotovina, Ivan Čermak, Mladen Markač*, Trial Chamber I, Judgment, 15 April 2011, Case No IT-06-90-T, vol II at 897. This view is also supported by the updated *Commentary on the Geneva Conventions*, but, for international armed conflicts, see Dörmann, *supra* note 3 at para 277.

⁹⁴ Similarly, see Sassòli, *supra* note 2 at 191. For a divergent view, see Milanovic, *supra* note 3.

operations” in the main instruments of IHL⁹⁵ and in some military manuals⁹⁶ reveals that these words cover a very large number of activities. Military operations cover an extremely wide field of actions, and they must be distinguished from “hostilities.” The result is that, even if the conflict between two belligerents seems to have ended, some military operations can continue to be carried out, thereby impeding the conclusion that the conflict is over. Operations in which armed forces continue to be involved are an integral part of military operations, and are therefore covered by IHL as long as they are linked to a pre-existing armed conflict. In this respect, a distinction may be made depending on the territory in which given military operations are taking place, be it foreign territory or the national territory of the armed forces. In the case of troop movements on foreign territory, as long as the armed forces are present on that territory and intend to conduct combat there — that is, provided that they are not positioned solely for the purpose of administering the territory — IHL continues to apply. In such a situation, the “general close of military operations” would occur when the armed forces leave that foreign territory.

However, it becomes more complicated when troop movements continue to be observed on the national territory of the armed forces, either after they have returned to their territory as in the previous hypothesis or because they have actually never left it — that is, because the international armed conflict has taken place without ever deploying troops in the enemy’s territory or because there has been a non-international armed conflict. If all movements of troops on their own territory were to be covered by IHL, it would have unlimited applicability, and the conflict would never end. That is why, in order to be able to consider that military operations have ended, it is necessary to refer to a specific conflict. If, for example, troops continue to carry out activities for hostile purposes on their own territory after their withdrawal from a neighbouring foreign territory, then the “general close of military operations” has not occurred and the conflict has not ended.⁹⁷ If, on the other hand, the military activities taking place on that territory no longer have any connection with the conflict, then it can be considered that the

⁹⁵ *Geneva Conventions*, *supra* note 1; *Additional Protocol I*, *supra* note 12; *Additional Protocol II*, *supra* note 8.

⁹⁶ See e.g. *Doctrine of the Armed Forces of the Czech Republic* (2004), online: <www.files.ethz.ch/isn/15108/dacr_12-04_en.pdf>; New Zealand Defence Force, *Foundations of New Zealand Military Doctrine* (2017), online: <www.nzdf.mil.nz/assets/Uploads/DocumentLibrary/NZDDP-D-4th-ed.pdf>.

⁹⁷ The updated *Commentary to Common Article 2* relies on the same findings and states: “[T]he fact of redeploying troops along the border to build up military capacity or mobilizing or deploying troops for defensive or offensive purposes should be regarded as military measures with a view to combat. Even in the absence of active hostilities, such military operations having a continuing nexus with the international armed conflict will justify maintaining the classification of the situation as an international armed conflict.” Dörmann, *supra* note 3 at para 279; see also at paras 280–81.

“general close of military operations” has occurred, and it can be considered that the conflict has ended.

Second, the epithet “general” used in the subject phrase should be duly considered. In the context of a world war, such as the Second World War to which participants in the 1949 Diplomatic Conference were parties, or of a conflict involving a great number of protagonists as is often the case in contemporary armed conflicts, hostilities may cease between two or more parties but continue between one of them and another party or parties. In such a scenario, if, for example, A, B, and C have fought against each other, as soon as the hostilities cease between A and B they must proceed, *inter alia*, to the repatriation of their respective prisoners of war (assuming A and B are states). However, as long as the fighting continues between B and C, military operations cannot be considered to have ceased in general. This is reflected in the Commentary to Article 6 of *Geneva Convention IV*, which refers to the “the final end of all fighting between all those concerned.”⁹⁸ If military operations have involved more than two stakeholders, the conflict has not ended as long as the military operations have not ceased among some of them, notwithstanding their cessation among some of the others. Thus, what is decisive is that fighting relating to a specific armed conflict has ceased in a generalized manner.

Third, the finding that the “general close of military operations” has occurred is necessarily a progressive and an *ex-post* one. A minimum period of time has to elapse before it can be ascertained that an armed conflict has ended. A situation does not go back to “normal” suddenly, but gradually. International law, however, provides no indication of “how long the cessation needs to last for an armed conflict to be considered legally at an end.”⁹⁹ A set of concordant items of evidence must be taken into account in order to reach the conclusion that military operations have ceased. None of these indicators alone can be decisive; it is only in combination that they produce effects. Among these indicators, the withdrawal of an army from a foreign territory is perhaps the most direct and the most convincing — it at least indicates that military operations are nearing completion. If no further hostile action is taken as a result of this withdrawal, one can quickly conclude that the conflict has ended. With respect to the signing of an agreement providing for the cessation of hostilities, it will raise the question of the end of the armed conflict and will call for verification of its effectiveness on the

⁹⁸ Jean S Pictet, *Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War: Commentary*. (Geneva: International Committee of the Red Cross, 1958) at 63. The same view is reiterated in the updated *Commentary to Common Article 2*, see Dörmann, *supra* note 3 at para 278.

⁹⁹ International Law Association, *The Hague Conference* (2010) at 31, online: <ila.vettoreweb.com/Storage/Download.aspx?DbStorageId=1266&StorageFileGuid=84aco2f3-e51a-4308-adfo-e94256758f38>.

ground. The same holds true for a unilateral declaration indicating the willingness of a party to lay down arms. The “general close of military operations” can then take place over a relatively short period of time if the wishes expressed are indeed fulfilled. In addition, violence may gradually decrease and ultimately disappear. This is particularly true for non-international armed conflicts.

In this regard, it should be stressed that, while the “general close of military operations” is similar in both international and non-international armed conflicts, the progressiveness factor will almost inevitably be longer for non-international armed conflicts. There may be a decrease in the intensity of violence or the level of organization, but sporadic violence may continue or even persist on a long-term basis. Because the situation has at some point reached the level of non-international armed conflict, but a decrease in intensity or organization is not relevant to the continuation of that status, it will continue to be classified as such over a long period of time. Even if the armed group has weaknesses, it would be difficult to conclude that a “general close of military operations” has taken place as long as there has not been a general demobilization of its members.

Hence, while the beginning of international armed conflicts is immediate and triggered by a single event, their end occurs gradually and may depend on the fulfillment of a combination of several elements. Conversely, while the realization of the conditions for the classification of non-international armed conflicts may take a relatively long time – due to the progressive materialization of the required elements – it is not the progressive disappearance of these elements that puts an end to the non-international armed conflict but, rather, a moment in time characterized by an independent event — namely, the pacification of the situation, which is materialized by the “general close of military operations.” Thus, reference to the “general close of military operations,” which is intended to be synonymous with the “end of the armed conflict,” does not make it possible to set an uncontested date. In most cases, it is only gradually, on the basis of consistent evidence, that one will be able to assess that military operations are coming to an end.

Fourth and finally, the “general close of military operations” must be distinguished from the “end of (active) hostilities.” Nowadays, both expressions can to some extent be used in the same way that “armistice” and “peace treaty” were used in the past. The armistice did not mean the end of the war, but it made it possible to resolve some problems linked to a conflict that was about to come to an end. With respect to the peace treaty, it was intended to settle definitively all the effects of the conflict and to allow a return to normalized relations between former belligerents by ending the “state of war.” Today, the terms contained in the *Geneva Conventions* converge towards the same purposes while totally adopting practical language that does not entail any formal legal acts. The “end of (active) hostilities” does

not mean the end of the armed conflict, but it allows for some steps to be taken under specific provisions,¹⁰⁰ whereas the “general close of military operations” indicates that the armed conflict is completely over. In short, “hostilities,” in essence, refers to the use of force, while “military operations” refers to everything that contributes to the use of force.¹⁰¹

The test of the “general close of military operations,” composed of the indicators identified above, is relevant for any situation that has at some point been classified as an armed conflict, be it international or non-international in character. Moreover, thanks to these indicators, the notion of “general close of military operations” is anchored in an operational way of thinking that goes beyond the vague or undefined notions of the “end of armed conflict” or a “peaceful settlement.” Ultimately, they make possible the assessment of the end of the applicability of IHL.

CONCLUSION

Shortly after the seventieth anniversary of the *Geneva Conventions*, this analysis has contributed to showing that a phrase elaborated in 1949 is not only still relevant today but also provides the solution to an important question raised in contemporary armed conflicts. It has also shown that IHL is not a fixed body of law that cannot be interpreted in an evolutive manner. This article has further illustrated that phrases and expressions chosen by the drafters of IHL instruments, although sometimes vague and ambiguous, fulfill the functions for which they were chosen — namely, reflecting the situation as it occurs in the field. Finally, it has shown that IHL is definitely a pragmatic body of law. Therefore, flexibility must govern its interpretation. In other words, it must always be borne in mind that IHL aims at regulating situations of extreme crisis in an attempt to reconcile the irreconcilable.

Regarding the end of armed conflicts, and with it the end of the applicability of IHL, one must, in the absence of a definition, rely on indicators that, read together, can constitute a criterion for determining whether or not a given situation of violence has come to an end. There is no specific identifiable moment that constitutes the sudden end of an armed conflict. The “general close of military operations” constitutes a factual finding that weapons have fallen silent and that relations between former parties to a conflict have been pacified. This expression is intended to extend considerably the applicability of IHL over time; it was conceived as such. The “general close of military operations” occurs when all military manoeuvres related to a given conflict have ceased. In this respect, the term “general” is pivotal and implies that the end of the armed conflict can only be established

¹⁰⁰ See details earlier in this article.

¹⁰¹ Similarly, Office of the Judge Advocate General, *Law of Armed Conflict at the Operational and Tactical Levels* (2001) at para 3; *Doctrine of the Armed Forces of the Czech Republic*, *supra* note 96.

when all parties thereto have ceased their manoeuvres. Such an observation can only be made *a posteriori*. It will only be possible to assess the end of an armed conflict after its effective end. In other words, it is only after a certain period of time has elapsed that it will be possible to consider that the last manoeuvres were indeed the last ones.

Finally, questioning the end of armed conflicts is a reminder that, if IHL offers crucial protections to people affected by armed conflicts, those protections are minimum standards in the context of war. IHL also introduces many derogatory regimes. Moreover, one should never forget that triggering the applicability of IHL means that people are experiencing an armed conflict, a situation that nobody wishes to experience. Therefore, the assessment of the end of armed conflicts must be made cautiously. It is important to find a balance between maintaining protections for the people who need them and being able to accept that a conflict has come to an end, leaving room for other legal rules to take over, even gradually. At that moment, the question becomes more political than legal, but is it still realistic to apply IHL today without being political?