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OVERVIEW: INTERNATIONAL HUMANITARIAN LAW PROVISIONS CONCERNING THE END OF INTERNATIONAL ARMED CONFLICT

INTRODUCTION

This section outlines IHL provisions concerning the end of international armed conflicts (IACs) and the cessation of (a portion of) IHL in relation to those conflicts. (Section 5 addresses non-international armed conflicts.) To lay the groundwork, we first sketch the international-legal concept of IACs. We discuss some salient issues concerning agreements between the parties, such as cease-fires and peace treaties. The bulk of the section identifies, in outline form, IHL treaty provisions concerning the end of IACs and the cessation of application of IHL in relation to those conflicts. And we briefly highlight the most-cited general formulation by a judicial body on what marks the end of IAC. Finally, a table summarizes relevant IHL-of-IAC treaty provisions and a few salient formulations drawn from international bodies.

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The history of the contemporary international-legal concept of international armed conflicts spans many centuries. Painting the boundaries, if only in broad-brush strokes, of that concept is important here because it is not possible to determine when an IAC ends, under current IHL, without establishing the scope of the relevant conflict. Today, three types of armed conflicts between two or more states may be relevant: a state of war in the legal sense, an international armed conflict, or a belligerent occupation. Each of these concepts may entail different implications with respect to discerning when the relevant conflict has ceased and when (a portion of) IHL no longer applies in relation to it.


Over many centuries, the international-legal concept of war between two or more states as well as related concepts—such as neutrality, measures short of war, and reprisals—underwent significant changes. In contemporary terms, those concepts variously implicated the *jus ad bellum*, IHL, or both of those fields (in addition to others). Some key parts of that history, in the form of an extremely general outline, included the following shifts (in chronological order, from old to new):

- From the Just War doctrine, in which the resort to force was largely framed in terms of vindicating natural-law rights;
- To the legal institution of war, in which war, as a legal condition, was regulated as an acknowledged element of international society;
- To the general outlawry of the policy of resorting to war to resolve disputes in international relations;
- To the rise, after World War II, of the concept of international armed conflict and of the general prohibition on the “use of force” in international relations with two main exceptions (pursuant to a U.N. Security Council mandate or to self-defense in the case of an “armed attack”).

At certain points in this chronology, war was conceptualized as the exception and peace the norm; at certain other points, war was considered an institution of international law.\(^80\)

From a legal perspective, perhaps the most useful starting point to sketch the contemporary concept of IAC is the adoption of the four Geneva Conventions of 1949 (GCs I–IV). Those treaties expressly provide, with respect to their scope of application *rationae materiae* (in other words, what constitutes the subject matter of an international armed conflict to which those Conventions apply), that:

> 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 other 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.\(^81\)

In short, the key concepts are *a declared war; any other armed conflict between two or more states; and a total or partial occupation*. Each of those legal concepts may raise different considerations with respect to ascertaining the termination of the relevant type of IAC and the cessation of the applicability of (a portion of) IHL to that conflict.

**State of War**

Because we are concerned here primarily with the end of armed conflict, we will not address whether, as a matter of contemporary international law, a state may lawfully resort to or otherwise seek to establish a state of war in the legal

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81. Article 2(1)–(2) GCs I–IV.
sense. With respect to the scope of application rationae materiae, states have incorporated the concept of a “declared war” and a “state of war” into the Geneva Conventions of 1949 and—through incorporating by reference the relevant article in those Conventions—into certain other subsequent treaties that regulate IAC. Moreover, recognitions, whether implicit or explicit, of the existence of a state of war—or, at least, ostensible declarations of war—have occurred since the adoption of the U.N. Charter.


83. See supra note 80 and corresponding text.

84. See Article 18(1) Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 240 [hereinafter, “1954 Cultural Property Conv.”] (“Apart from the provisions which shall take effect in time of peace, the present Convention shall apply in the event of declared war or of any other 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 or more of them”) (emphasis added); Article 1(3) AP I (“This Protocol, which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in the situations referred to in Article 2 common to those Conventions”) (emphasis added); Article 1(1) 2001 CCW Amendment to Article 1, adopted Dec. 21, 2001, UN Doc. CCW/CONF.II/2 (“This Convention and its annexed Protocols shall apply in the situations referred to in Article 2 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims”); Article 8(2) (a) and (b) ICC Statute (defining “war crimes” in relation to international armed conflicts as meaning (a) “[g]rave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention” or (b) “[o]ther serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law”) (emphasis added).

85. E.g., with respect to Israel, on one side, and Iraq (initially as part of a coalition of Arab states), on the other, beginning in 1948, see Dinstein, War, supra note 13, at 49 (arguing that “[t]he [1991] Iraqi missile offensive against Israel must be observed in the legal context not of the Gulf War but of the war between Iraq and Israel which started in 1948. That war was still in progress in 1991, unhindered by its inordinate prolongation since 1948, for hostilities had flared up intermittently. As a matter of fact, war has not come to an end even two decades later”) (citation omitted); with respect to Greece and Albania, as of 1948, see Corfu Channel (U.K. v. Alb.), 1949 I.C.J. 4, 29 (Apr. 9) (stating that “it is a fact that the two coastal States did not maintain normal relations, that Greece had made territorial claims precisely with regard to a part of Albanian territory bordering on the Channel, that Greece had declared that she considered herself technically in a state of war with Albania, and that Albania, invoking the danger of Greek incursions, had considered it necessary to take certain measures of vigilance in this region”) (emphasis added); with respect to El Salvador and Honduras, beginning in 1969, see Land, Island and Maritime Frontier Dispute (El Sal. v. Hond.: Nicar. intervening), 1992 I.C.J. 351, 382 (Sept. 11) (stating that, “[i]n 1969 a series of border incidents occurred, which gave rise to tension between the two countries, the suspension of diplomatic and consular relations and, finally, armed conflict, which lasted from 14 to 18 July 1969. After one hundred hours of hostilities, the Organization of American States succeeded in bringing about a cease-fire and the withdrawal of troops; [sic] nevertheless the formal state of war between the two States was to persist for more than ten years”) (emphasis added); with respect to Pakistan and India, in 1971, see Pakistan, I.C.J. Pleadings, Trial of Pakistani Prisoners of War (Pak. v. Ind.), May 11, 1973, http://www.icj-cij.org/docket/files/60/9460.pdf <https://perma.cc/AZR7-2AYB> (pleading that, “[o]n 21 November 1971, taking advantage of the internal situation in East Pakistan, and acting in breach of her obligations under the
In light of that possible ongoing legal relevance of the concept of the state of war, a few considerations on the contours of such wars and the termination of those wars merit attention. Jann Kleffner explains that “the existence of a ‘state of war’ in the formal sense depends on the intention of one or more of the States concerned and commonly commences with a declaration of war.”\(^{86}\) He emphasizes, however, that the existence of a “state of war” in the formal sense “is not dependent on the actual occurrence of hostilities.”\(^{87}\) Thus, even without the occurrence of hostilities, the existence of a state of war in the legal sense might entail implications for (the termination of) IHL provisions concerning, among other things:

- Prohibitions on the threat of denial of quarter;\(^{88}\)
- Internment of nationals of the enemy state;\(^{89}\) or
- Seizure of the property of the enemy state or property of its nationals.\(^{90}\)

United Nations charter, the Government of India launched direct armed attacks against Pakistan's Eastern Province. These armed attacks continued to mount until Pakistan was forced to take measures in self-defence. The fighting spread to West Pakistan and resulted in a state of war between India and Pakistan on 3 December 1971. India notified the existence of a state of war to Pakistan through the Government of Switzerland on 4 December 1971”). (emphasis added); with respect to Panama and the U.S., as of December 1989, see William Branigin, Noriega Appointed 'Maximum Leader,' The W ash. Post, Dec. 16, 1989, A21 (reporting that a "Panamanian legislative body formed by Gen. Manuel Antonio Noriega today named him head of government, formally granted him sweeping powers and declared the country to be 'in a state of war' with the United States because of American economic sanctions") (emphasis added); see also United States v. Noriega, 808 F. Supp. 791, 795 (S.D. Fla. 1992) (finding that, ”[h]owever the [U.S.] government wishes to label it, what occurred in late 1989–early 1990 was clearly an ‘armed conflict’ within the meaning of Article 2 [of GC III]. Armed troops intervened in a conflict between two parties to [GC III]”) (citation omitted); with respect to the Democratic Republic of Congo and certain surrounding states, including Rwanda and Uganda, in and around 2000, see Arrest Warrant of 11 April 2000 (Dem. Rep. Congo v. Bel.), Oral Hearing, CR 2000/32, Nov. 20, 2000, http://www.icj-cij.org/docket/files/121/4231.pdf <https://perma.cc/Y398-NEPW> (stating that “[t]he representatives of these States have already met at Lusaka and elsewhere. It is urgently necessary that the Democratic Republic of the Congo should take part in these discussions, in these meetings, which are intended to put an end to the present state of war”) (emphasis added).

87.  Id.
88.  That is, declaring that there shall be no survivors; see Article 23(d) Hague Regulations (“In addition to the prohibitions provided by special Conventions, it is especially forbidden ... (d) To declare that no quarter will be given;”); Article 40 AP I (“It is prohibited to order that there shall be no survivors, to threaten an adversary therewith or to conduct hostilities on this basis”). See Dinstein, War, supra note 13, at 10 n.33 (stating that, “[i]n some extreme instances, even when the state of war exists only in a technical sense, a Belligerent Party may still be in breach of the jus in bello. Thus, the mere issuance of a threat to an adversary that hostilities would be conducted on the basis of a ‘no quarter’ policy constitutes a violation of Article 40 [of AP I]”).
90.  See Hans-Georg Dederer, Enemy Property, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (2015). Some of these provisions—concerning prohibitions on the threat of denial of quarter, internment of nationals of the enemy state, or seizure of the property of the enemy state or property of its nationals—may apply in a state of war in the legal sense even where no armed hostilities occur between the belligerent states. Thus, for example, so long as a state of war in the legal sense exists and even if there are no armed hostilities between the belligerent states, under the terms of Article 40 of AP I “[i]t
Further, at least traditionally, a state of war in the legal sense gives rise to the application of the law of neutrality. In turn, the law of neutrality imposes manifold obligations on and establishes rights of the parties to the conflict. The law of neutrality also traditionally imposes obligations on neutral states and other states not party to the conflict, pursuant to the duty of non-participation and impartiality. Moreover, depending on the municipal system, domestic-law implications might arise from the existence of a state of war in the legal sense, such as with respect to trade restrictions, frustration of contracts, or liability for insurance claims.

Despite these stakes, ascertaining the end of a state of war in the legal sense may pose interpretive and factual challenges. The first and foremost function of peace treaties, strictly speaking, according to Kleffner, is to “terminate the ‘state of war’ between the belligerent States and to restore amicable relations between them.” Yet, at least according to some practice, it appears that a peace treaty may no longer be a prerequisite to terminate a state of war in the legal sense. Contemporary practice, meanwhile, illustrates that the various legally-relevant end-points concerning a state of war in the legal sense may span a long period.

**International Armed Conflict**

The international-legal concept of IAC, as initially laid down in the Geneva Conventions of 1949, was developed, in part, to make the threshold of application more objective and factual and thereby remove the need for the relatively subjective and formal political recognition of a state of war in the legal sense. GCs I–IV do

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91. See Bothe, *The Law of Neutrality*, supra note 58, at 555–56 (arguing that “the threshold [of the application of the law of neutrality] must be determined according to the object and purpose of the law of neutrality. This means that the law of neutrality must be applied in any conflict which has reached a scope which renders its legal limitation by the application of the law of neutrality meaningful and necessary. It is, however, impossible to establish this threshold in a general way. One can only say that there must be a conflict of a certain duration and intensity”). *Id.* at 556.

92. See generally Bothe, *Concept and Rules*, supra note 58.


95. See Dinstein, *War*, supra note 13, at 48 (arguing that “[a] war may be terminated not only in a treaty of peace or in an armistice agreement. It may also come to an end by (i) implied mutual consent; (ii) as a result of *debellatio* of one of the Belligerent Parties; or (iii) by a unilateral declaration”).

96. See infra this section (concerning the WWII-rooted situations regarding the U.S. and Germany and regarding Japan and Russia).

97. See Milanovic, *End of IHL Application*, supra note 13, at 168. As Kleffner explains, “the States concerned can evade the existence of a state of war in the formal sense by abstaining from making a formal declaration of war, despite the fact that large scale hostilities may occur between them.” Kleffner, *Peace Treaties*, supra note 86, at ¶ 7 (citations omitted).
not expressly define what constitutes an IAC, however. And different conceptions have arisen in practice and jurisprudence.98

For its part, Additional Protocol I of 1977 applies—in addition to the same situations as GCs I–IV99—to “armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.”100

In 1995, in relation to the dissolution of Yugoslavia, the Appeals Chamber of the ICTY held, with respect to the international-legal concept of IAC, that:

[A]n armed conflict exists whenever there is a resort to armed force between States .... [IHL] applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached.... Until that moment, [IHL] continues to apply in the whole territory of the warring States ..., whether or not actual combat takes place there.

Applying the foregoing concept of armed conflicts to this case, we hold that the alleged crimes were committed in the context of an armed conflict. Fighting among the various entities within the former Yugoslavia began in 1991, continued through the summer of 1992 when the alleged crimes are said to have been committed, and persists to this day. Notwithstanding various temporary cease-fire agreements, no general conclusion of peace has brought military operations in the region to a close. These hostilities exceed the intensity requirements applicable to ....

On their terms, these sections of the seminal Tadić decision by the ICTY Appeals Chamber seem to point to two approaches to the existence of an IAC to which IHL applies. The first encompasses situations “whenever there is a resort to armed force between States.”102 And the second includes situations where certain “hostilities exceed the intensity requirements applicable” to IACs.103 On numerous subsequent occasions, ICTY Trial Chambers and the ICTY Appeals Chamber have endorsed the first prong (that is, an IAC to which IHL applies “whenever there is a resort to armed force between States”).104 Certain military manuals, judges, and other

98. For its part, GC III recognizes that an IAC may exist where a state deploys not only a regular force but also an irregular force against another state so long as that force “belongs” (in such IHL-of-IAC terms) to the deploying state and the deploying state exercises sufficient control over it. Article 4(A)(2) GC III. This standard is “overall control” in the view of the Appeals Chamber of the ICTY. Prosecutor v. Tadić, Judgment, ICTY Appeals Chamber, IT-94-1-A, July 15, 1999, ¶¶ 122 and 131; but see Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Her. v. Serb. & Monte.), 2007 ICJ 43, 210 (Feb. 26).
99. Article 1(3) AP I.
100. Article 1(4) AP I. Article 3 AP I governs the temporal scope of application.
102. Id.
103. Id. (emphasis added).
104. See the citations in Boškoski, Trial Judgement, supra note 4, at ¶ 175 n.730.
actors have also referenced that prong. Reference to the second prong in the Tadić approach to the existence of an IAC to which IHL applies (that is, that hostilities must meet or exceed the “intensity requirements applicable” to IACs) is made far less frequently than to the first. In that light, it would appear that, under current international law, the requisite-intensity approach constitutes the alternative view of when an IAC to which IHL applies comes into existence.

In any event, the intensity of hostilities between two or more states may have significance with respect to the applicability of the law of neutrality. According to Bothe, the “fundamental changes” brought about through the law of neutrality “are not triggered by every armed incident, but require an armed conflict of a certain duration and intensity.” Bothe argues that, while it is not possible to establish this threshold in a general way, “the threshold of application of the law of neutrality is probably higher than that for the rules of the law of war relating to the conduct of hostilities and the treatment of prisoners, which are applicable also in conflicts of less intensity.”

Finally, at least according to some commentators, where a state uses force

105. It is noted and excerpted, but not expressly endorsed, in U.K. Min. of Def., The Joint Service Manual of the Law of Armed Conflict ¶ 15.3.1 (2004) [hereinafter, “U.K., Joint Service Manual”]. It is also recalled, in passing, by Judge Simma, of the ICJ, in his separate opinion in Democratic Republic of the Congo v. Uganda. Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), 2005 I.C.J. 116, 341 (Dec. 19), ¶ 23 (Sep. Op. Judge Simma). The logic of the first prong of the Tadić IAC yardstick tracks the ICRC’s Commentaries on GCs I–IV. See GC I 1952 Commentary, supra note 68, at 32 (stating that “[a]ny difference arising between two States and leading to the intervention of members of the armed forces is an armed conflict within the meaning of article 2 [of GCs I–IV], even if one of the Parties denies the existence of a state of war”) (emphasis added); accord GC II 1960 Commentary, supra note 68, at 28; GC III 1960 Commentary, supra note 68, at 23; GC IV 1958 Commentary, supra note 68, at 20. For its part, the U.S. Department of Defense's Law of War Manual (Dec. 2016) states—though not in the exact terminology of the first prong of the Tadić holding—that IACs, include “any situation in which there is hostile action between the armed forces of two parties, regardless of the duration, intensity or scope of the fighting.” Law of War Manual, supra note 44, at § 3.4.2 (emphasis added; citations omitted). With respect to armed conflict at sea, see Article 1 INTERNATIONAL INSTITUTE OF HUMANITARIAN LAW, SAN REMO Manual on International Law Applicable to Armed Conflicts at Sea, http://www.icrc.org/ihl.nsf/FULL/560?OpenDocument (stating that “[t]he parties to an armed conflict at sea are bound by the principles and rules of international humanitarian law from the moment armed force is used”) (emphasis added).

106. Nonetheless, the authors of an International Law Association report argue that at least two characteristics are found with respect to all armed conflicts (whether of an international or non-international character): (1) the existence of organized armed groups (2) engaged in fighting of “some intensity.” See ILA, Meaning of Armed Conflicts, supra note 14, at 320.

107. This required-intensity approach to IAC has been criticized on the grounds (among others) that “[t]o import an intensity requirement into the definition of international armed conflicts is effectively to assert that no law governs the conduct of military operations below that level of intensity, including the opening phase of hostilities.” Dapo Akande, Classification of Armed Conflicts: Relevant Legal Concepts, in INTERNATIONAL LAW AND THE CLASSIFICATION OF Conflicts 41 (Elizabeth Wilmshurst ed., 2012) [hereinafter, “Akande, Classification”].


110. Id.
directed at a non-state organized armed group in the territory of a foreign state without that foreign state's consent, a double classification cannot be excluded.\textsuperscript{111} Under this logic, both an IAC (between the attacking state and the foreign state, even though the hostile action is not directed between the armed forces of those respective states) and a NIAC (between the attacking state and the organized non-state armed group) may arise.\textsuperscript{112}

**Belligerent Occupation**

Under Article 42 of the Regulations concerning the Laws and Customs of War on Land annexed to Convention (IV) respecting the Laws and Customs of War on Land of 1907 (Hague Regulations), “[t]erritory is considered occupied when it is actually placed under the authority of the hostile army. [¶] The occupation extends only to the territory where such authority has been established and can be exercised.”\textsuperscript{113} In addition to applying with respect to declared wars and IACs, GCs I–IV “shall also apply to all cases of partial or total occupation of the territory” of a state party, even if the “occupation meets with no armed resistance.”\textsuperscript{114} Questions have arisen as to whether “occupation” and “occupied territory” in GC IV mean the same thing as “belligerent occupation” under Article 42 of the Hague Regulations and under customary international law.\textsuperscript{115}

In discussing how belligerent occupations may end, Dinstein divides the practice into two categories: a complete end or a partial end.\textsuperscript{116} Ways he identifies to bring

\textsuperscript{111} See Akande, *Classification*, supra note 107, at 75.

\textsuperscript{112} See also GC I 2016 Commentary, supra note 68, at ¶ 261 (stating that, “[i]n some cases, the intervening State may claim that the violence is not directed against the government or the State's infrastructure but, for instance, only at another Party it is fighting within the framework of a transnational, cross-border or spillover non-international armed conflict. Even in such cases, however, that intervention constitutes an unconsented-to armed intrusion into the territorial State's sphere of sovereignty, amounting to an international armed conflict within the meaning of common Article 2(1) [of GCs I–IV]”) (citing to Akande, *Classification*, supra note 107, at 74–75).

\textsuperscript{113} Regulations Respecting the Laws and Customs of War on Land, Annex to Convention (IV) Respecting the Laws and Customs of War on Land, October 18, 1907, 36 Stat. 2295 [hereinafter, “Hague Regulations”]. In the authentic (French) language of the treaty: “Un territoire est considéré comme occupé lorsqu'il se trouve placé de fait sous l'autorité de l'armée ennemie. [¶] L'occupation ne s'étend qu'aux territoires où cette autorité est établie et en mesure de s'exercer.”

\textsuperscript{114} Common Article 2(2) GCs I–IV; see also Article 1(3) AP I.

\textsuperscript{115} See, e.g., Akande, *Classification*, supra note 107, at 45–46. Drawing on GC I 1952 Commentary, supra note 68, the ICTY has distinguished between these standards in relation to obligations to the civilian population:

*The application of the law of occupation as it affects 'individuals' as civilians protected under [GC] IV does not require that the occupying power have actual authority. For the purposes of those individuals’ rights, a state of occupation exists upon their falling into 'the hands of the occupying power.' Otherwise civilians would be left, during an intermediate period, with less protection than that attached to them once occupation is established.*

Prosecutor v. Mladen Naletilic, aka "Tuta," and Vinko Martinovic, aka “Štela,” Judgement, ICTY Trial Chamber, IT-98-34-T, Mar. 31, 2003, ¶ 221. Thus, at least according to one scholar, "differing legal tests are applicable in determining whether the law of occupation applied, depending on whether the situation concerned individuals or other issues, such as property." Philip Leach, *South Ossetia (2008)*, in *International Law and Classification of Conflict* 341 (Elizabeth Wilmshurst ed., 2012).

\textsuperscript{116} See also Grignon, *L'applicabilité Temporelle*, supra note 13, at 101–43.
about a complete end include a treaty of peace; prescription; withdrawal from occupied territory; or a binding decision of the U.N. Security Council. And ways Dinstein identifies to bring about a partial end—"in the sense that it is finished in a segment of an occupied territory but continues in others"—include:

- An agreement between the parties, which might, though not necessarily, be in the form of a peace treaty;
- A tide of hostilities, as "the front line of the two Belligerent Parties may crest and recede alternately;" or
- A unilateral declaration of the occupying power.

**Agreements between Parties**

Agreements between two or more adverse parties to an IAC might address such issues as suspending hostilities, terminating war, or (re)establishing peaceful relations. Such agreements have taken various forms, including ceasefires (or truces), armistices, peace treaties, and final settlements.

117. According to Dinstein,

It is theoretically possible that war is terminated (either by a treaty of peace, which neglects to advert to the fate of the occupied territory, or otherwise), hostilities are long over, yet the actual occupation continues as before, without the displaced sovereign or anybody else challenging this reality. Under such conditions, there may ultimately be a 'continuous and peaceful display of State authority during a long period of time', in the words of the Arbitrator M. Huber, in 1928, in the *Island of Palmas* case. If so, title may be acquired by the State in charge through prescription, although that would be contingent on a peaceful and uncontested possession over a protracted period of time through presumed acquiescence.


118. See Dinstein, *Belligerent Occupation*, supra note 117, at 273 (pointing to Resolution 1546 (2004), in which the Council welcomed the fact that the occupation will end by the end of June 2014, at which point Iraq will reassert its full sovereignty as a result of the formation of a "fully sovereign and independent Interim Government," and emphasizing that—even if, in practice, the occupation has come to a close only "notionally" due to the continued presence and combat operations of Coalition forces, which, in theory, since the end of June 2014, continue their presence in Iraq at the invitation of the new Iraqi Government—"since Resolution 1546 is a binding decision, adopted by the Security Council under the aegis of Chapter VII of the Charter of the United Nations, it must be seen as 'overriding the rules of IHL on this subject,' due to the "combined effect of Articles 25 and 103 of the Charter." Id. (citations omitted).

119. Id. at 274.

120. Giving the example of the 1979 Treaty of Peace between Israel and Egypt yet emphasizing that, "[a]s long as the Occupying Power does not relinquish in toto its effective control in a particular segment of an occupied territory, the occupation there is not really over." Id. at 275.

121. Yet emphasizing that "[t]he loss of effective control over a distinct portion of the occupied territory denotes the end of occupation there, regardless of the position elsewhere." Id. at 276.

122. Though accentuating—through the example of the situation concerning the Gaza Strip—that such a declaration must be strictly scrutinized to determine whether the facts underlying it actually finish the occupation in a segment of an occupied territory. Id. at 276–280.

123. According to Valentina Azarova and Ido Blum,

Truce is the oldest term, which originally had a religious connotation. A 'Truce of God' (*Treuga Dei*) was a measure by which the Catholic Church suspended warfare on certain days for religious reasons.
In general, a suspension of hostilities—which, under the traditional view, is often termed a truce, an armistice, or a ceasefire—is an agreed cessation of fighting within a period of armed conflict.\textsuperscript{124} GC I contemplates, for example, that parties to an IAC to which that instrument applies might agree to suspend hostilities in order to establish arrangements aimed at permitting:

- The removal, exchange, or transport of the wounded left on the battlefield;
- The removal or exchange of the wounded and sick from a besieged or encircled area; or
- The passage of medical and religious personnel and equipment en route to a besieged or encircled area.\textsuperscript{125}

Practice suggests that a suspension of hostilities may be general (applicable to the entire IAC) or limited (applicable only to a portion of the IAC).

Kleffner argues that “peace treaties \textit{stricto sensu} are agreements concluded between belligerent States in written form and governed by international law that bring to an end the formal or material state of war between them.”\textsuperscript{126} (As explored in Section 5, peace agreements are not limited to instruments concluded between states but can also include agreements with non-state parties as well.) Examples of peace treaties include those between Israel and Egypt (1979)\textsuperscript{127} and between Israel and Jordan (1994).\textsuperscript{128} Eritrea and Ethiopia concluded a “Peace Agreement” in 2000.\textsuperscript{129} Peace treaties may include a final settlement of all outstanding disputes. But practice also demonstrates that it is possible to forgo the ironing out of certain outstanding political or other issues in a peace treaty and instead to reserve those issues for a separate final settlement.\textsuperscript{130}

IHL treaties do not prescribe the order of steps or the timeline along which parties to an IAC must elect to make war-terminating agreements. In certain cases, such as with respect to the U.S. and Germany concerning WWII, decades have spanned the promulgation of an official statement on the end of a state of war in the legal sense and the adoption of an agreement fully restoring relations between the states:

- Congress passed a joint resolution declaring war on Germany, which the

\textsuperscript{124.} Id. at ¶ 1.
\textsuperscript{125.} Article 15(2)–(3) GC I.
\textsuperscript{126.} Kleffner, \textit{Peace Treaties}, \textit{supra} note 86, at ¶ 1.
\textsuperscript{130.} See, e.g., Treaty on the Final Settlement with Respect to Germany, Sept. 12, 1990, 29 I.L.M. 1186 (1990).
President signed on December 11, 1941;\textsuperscript{131}

- President Truman proclaimed—despite the continued existence of “a state of war”—the “cessation of hostilities of World War II” as of noon on December 31, 1946;\textsuperscript{132}

- The state of war with the “Government of Germany” was terminated on October 19, 1951 by Joint Resolution of Congress;\textsuperscript{133} yet

- The U.S. and Germany never signed a peace treaty, and the final settlement came into effect around five decades after the termination of the state of war.\textsuperscript{134}

A starker illustration arises with respect to Japan and Russia (formerly the Union of Soviet Socialist Republics) concerning WWII. Those states issued a Joint Declaration on October 19, 1956 that ended the state of war and restored “peace, friendship and good-neighbourly relations between them.”\textsuperscript{135} But, as of February 2017, a final settlement between Japan and Russia remains elusive, due in part to a territorial dispute primarily revolving around the issue of sovereignty of certain Kuril Islands.\textsuperscript{136}

Some ambiguity lies in the current international-legal position of armistices and ceasefires in relation to war termination. The main issue is whether such war-suspending agreements may (only) halt hostilities or may (also) function as armed-conflict-terminating instruments.\textsuperscript{137} A practical manifestation of that interpretative
disagreement—which might entail significant implications with respect, among other things, to the *jus ad bellum*—concerns the ceasefire provision of U.N. Security Council Resolution 687 (1991), addressing the Persian Gulf War, especially whether that formulation effectively functioned, in the circumstances, in a role similar to that of a traditional peace treaty.  

Traditionally, armistices were conceptualized as suspending hostilities between the relevant warring states. The U.S. Department of Defense’s *Law of War Manual* (Dec. 2016)—according to which an “armistice is not a partial or a temporary peace; it is only the suspension of military operations to the extent agreed upon by the parties to the conflict”—aligns with that approach. Yet, since the WWII cases of Italy, Romania, and Hungary, at least some armistices have been interpreted to have effectively functioned as war-terminating instruments. Additional examples of armistices purportedly functioning in this way include certain practice pertaining to Israel and some Arab states (1948); Egypt and Israel (1949); and the Korean peninsula (1953).

For its part, the Royal Australian Air Force’s *Operations Law for RAAF Commanders* states that “[t]he clearest way of ending hostilities is by a peace treaty. This may follow the unconditional surrender of a party.” Yet, the RAAF’s

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*as a legal state of hostilities between parties may continue, despite the conclusion of an armistice agreement*)

(emphasis added; citations omitted).

138. See infra footnotes 351–53 and accompanying text.
140. *Law of War Manual, supra* note 44, at § 12.11.1.2 (and further stating that “[w]ar as a legal state of hostilities between parties may continue, despite the conclusion of an armistice agreement. [¶] In some cases, however, armistice agreements may be intended to be a prelude to peace treaties. In some cases, armistice agreements may persist for a long time”). *Id* (citations omitted).
142. *Id.* at 43 (citations omitted).
143. See U.K., *Joint Service Manual, supra* note 105, at ¶ 310 n.25 (stating that, “[i]n 1951, the UN Security Council refused to accept Egypt’s claim to be exercising belligerent rights in respect of shipping passing through the Suez Canal over two years after the 1949 armistice had put an end to the full-scale hostilities between Israel and Egypt.”).
144. Military Armistice in Korea and Temporary Supplementary Agreement, signed on and entry into force on July 27, 1953, 4 U.S.T. 234 [hereinafter, “Armistice in Korea”]; but compare Dinstein, *War, supra* note 13, at 43–44 (stating that the Armistice in Korea, *supra* this note, terminated the Korean War, although it “did not produce peace in the full meaning of the term. The [Armistice in Korea] combined [in the words of Article II] ‘concrete arrangements for cease-fire and armistice’ jointly. But the crux of the matter (proclaimed in the Preamble) is that the Agreement has ‘the objective of establishing an armistice which will insure a complete cessation of hostilities and of all acts of armed force in Korea until a final peace settlement is achieve’. The Agreement makes it crystal clear that (in the words of Article V) it will ‘remain in effect until expressly superseded either by mutually acceptable amendments and additions or by provision in an appropriate agreement for a peaceful settlement at a political level between both sides’. The thesis (advanced in 1992) that ‘the Korean War is still legally in effect’, [*sic* is untenable”) (citations omitted) with *Law of War Manual, supra* note 44, at § 12.11.1.3 n.162 (citing to evidence that that agreement is still in force).
Operations Law for RAAF Commanders further states that “armed conflicts also end when a general armistice is declared. This could result in a permanent end of fighting, if ratified by political authorities.”146

In any event, the broader point should not be eclipsed: in relation to an IAC, states recognize the capability of the parties to enter agreements that may impose obligations at various stages of—and that, depending on the terms, might end—the armed conflict. Of course, following the more objective, fact-based approach to the existence of an IAC, for the application of IHL to cease with respect to a particular IAC pursuant to a war-terminating instrument, the adoption of that instrument must be accompanied by the actual end of hostilities. Otherwise, under the objective approach to the existence of an IAC, IHL will continue to apply in relation to the ongoing IAC between the parties.147

This sub-section outlines IHL treaty provisions pertaining to the end of IAC and to the cessation of the applicability of (a portion of) IHL in relation to IAC.

IHL Treaty Provisions on the End of Military Operations Other Than in a Belligerent Occupation
Under Article 6(2) of GC IV, “[i]n the territory of Parties to the conflict, the application of [GC IV] shall cease on the general close of military operations.”148 Article 3(b) of AP I similarly provides that “the application of [GCs I–IV and AP I] shall cease, in the territory of Parties to the conflict, on the general close of military operations….”149 Yet neither GC IV nor AP I defines the component concepts of the “general close” and “military operations.” At least according to the U.S. Department of Defense’s Law of War Manual (Dec. 2016), “[i]n most cases, the general close of military operations [in the sense of Article 6(2) GC IV] will be the final end of all fighting between all those concerned.”150

be informed immediately as to the terms of any cessation of hostilities”).

146.  Id.
147.  Recall that the temporal demarcation of the end of conflict may entail implications in the domestic-legal system, which we do not address here.
148.  Emphasis added. See also Tadić, Decision on Interlocutory Appeal, supra note 101, at ¶ 70 (stating that, “[n]otwithstanding various temporary cease-fire agreements, no general conclusion of peace has brought military operations in the region to a close”) (emphasis added).
149.  Emphasis added. Along the lines of Article 6(2) of GC IV and Article 3(b) of AP I, the U.K. Ministry of Defence’s The Joint Service Manual of the Law of Armed Conflict (2004) states that “[t]he law of armed conflict applies from the beginning of an armed conflict until the general close of military operations.” U.K., Joint Service Manual, supra note 105, at ¶ 3.10. This statement appears in the part of the Manual concerning “The Beginning and End of Application” and does not distinguish between IACs and NIACs. In the section on the applicability of Common Article 3 of GCs I–IV, that Manual notes and excerpts the definition of IAC and NIAC—including the temporal parameters—laid down in Tadić, Decision on Interlocutory Appeal, supra note 101, at ¶ 70, but does not expressly endorse it. See id. at ¶ 15.3.1.
150.  Law of War Manual, supra note 44, at ¶ 10.3.4 (emphasis added) (citing to GC IV 1958 Commentary, supra note 68, at 62: “What should be understood by the words ‘general close of military operations’? In the opinion of the Rapporteur of Committee III, the general close of military operations was ‘when the last shot has been fired.’ There are, however, a certain number of other factors to be taken into account. When the struggle takes place between two States the date of the close of hostilities is fairly
For its part, the ICRC defines, in this context, “military operations” as “the movements, manoeuvres and actions of any sort, carried out by the armed forces with a view to combat.”\textsuperscript{151} According of the ICRC’s \textit{Commentary on GC I} (2016), “[e]ven in the absence of active hostilities,”\textsuperscript{152} military operations such as “redeploying troops along the border to build up military capacity or mobilizing or deploying troops for defensive or offensive purposes” will justify maintaining the classification of the situation as an [IAC].”\textsuperscript{153}

**IHL Treaty Provisions pertaining to the End of Occupation**

Four different sets of formulations that pertain to the end of application \textit{rationae temporis} in relation to situations of occupation have been expressly laid down in three IHL instruments: one in the Hague Regulations; two in the Geneva Conventions of 1949; and another in Additional Protocol I.

The part of the Hague Regulations that deal with belligerent occupation temporally affix two sets of obligations—one pertaining to submarine cables and another pertaining to private property susceptible to direct military use—to “when peace is made.”\textsuperscript{154} First, under Article 54 of the Hague Regulations, “[s]ubmarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed except in the case of absolute necessity. Such cables must likewise be restored and compensation fixed \textit{when peace is made}.”\textsuperscript{155} Second, under Article 53(2) of the Hague Regulations,

All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depots of arms, and generally, all kinds of ammunition of war, may be seized, even if they belong to private individuals, but must be restored and compensation fixed \textit{when peace is made}.”\textsuperscript{156}

The obligation is thus to both restore and pay compensation, irrespective of whether certain factual scenarios, such as a long occupation, would in practice make it
easy to decide: it will depend either on an armistice, a capitulation or simply on \textit{debellatio}. On the other hand, when there are several States on one or both of the sides, the question is harder to settle. It must be agreed that in most cases the general close of military operations will be the final end of all fighting between all those concerned); see also Grignon, \textit{L’appliabilité Temporelle}, supra note 13, at 275–81.

151. \textit{Commentary on the APs}, \textit{supra} note 68, at 67.

152. On the relationship between the notion of the cessation of (active) hostilities and the general close of military operations, as those concepts are laid down in GC III, GC IV, and AP I, see Grignon, \textit{L’appliabilité Temporelle}, \textit{supra} note 13, at 281–82.

153. GC I 2016 \textit{Commentary}, \textit{supra} note 68, at ¶ 279.

154. In the original French text: “à la paix.” The Hague Regulations also fix temporal standards concerning such issues as release of prisoners of war, but those have been superseded by subsequent treaties.

155. Emphasis added.

156. Emphasis added. According to the U.S. Department of Defense’s \textit{Law of War Manual} (Dec. 2016), private property susceptible of direct military use includes cables, telephone and telegraph facilities, radio, television, telecommunications and computer networks and equipment, motor vehicles, railways, railway plants, port facilities, ships in port, barges and other watercraft, airfields, aircraft, depots of arms (whether military or sporting), documents connected with the conflict, all varieties of military equipment (including that in the hands of manufacturers), component parts of, or material suitable only for use in, the foregoing, and, in general, all kinds of war material.

\textit{Law of War Manual}, \textit{supra} note 44, at § 11.18.6.2 (citation omitted).
difficult, if not impossible, to restore the property.

Article 6(3) of GC IV provides that “[i]n the case of occupied territory, the application of [GC IV] shall cease one year after the general close of military operations.” 157 That same paragraph also lays down that “the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of the present Convention: 1 to 12, 27 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, 143.” 158 These latter obligations—concerning the exercise of the functions of government subsequent to the period one year after the general close of military operations—have been characterized, by commentators, as a “hard core” of “post-hostilities” obligations. Those provisions pertain, for example, to:

- The continued function of the Protecting Power; 162
- Humane treatment; 163
- Rights as against change by annexation or arrangement with the local authorities so long as occupation lasts; 164
- Transfers, evacuation, and deportation; 165
- Prohibitions against certain compulsory service and protection of workers; 166
- Respect for property; 167
- Facilitating relief programs; 168
- Criminal proceedings; 169 and
- Access by Protecting Powers and the ICRC. 170

Notably, Article 78 of GC IV (concerning internment) is not included in this list of “hard core” “post-hostilities” obligations. 171

In the Advisory Opinion concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (2004), the ICJ interpreted the temporal trigger of Article 6(3) of GC IV: “[s]ince the military operations leading to the occupation of the West Bank in 1967 ended a long time ago, only those Articles of

157. Emphasis added. See infra this section regarding the provisions in Article 6 of GC IV concerning protected persons whose release, repatriation or re-establishment may take place after such dates.
158. Emphasis added.
162. Article 9 GC IV.
163. Articles 27, 29–34 GC IV.
164. Article 47 GC IV.
165. Article 49 GC IV.
166. Articles 51 and 52 GC IV.
167. Article 53 GC IV.
168. Articles 59, 61–63 GC IV.
169. Articles 64–77 GC IV.
170. Article 143 GC IV.
171. See Dinstein, Belligerent Occupation, supra note 117, at 282.
[GC IV] referred to in [Article 6(3)] remain applicable in that occupied territory.”

Yet, in critiquing that analysis, commentators emphasize that Article 6(3) of GC IV does not expressly tether those obligations to the military steps leading up to the occupation. Rather, Article 6(3) of GC IV lays down obligations for the “duration” of the period wherein the Occupying “Power exercises the functions of government in [occupied] territory.” (As noted above, also in relation to Article 6(3) of GC IV, the application of other GC IV occupation obligations cease to apply one year after the general close of military operations.)

Under Article 3(b) of AP I, “the application of [GCs I–IV and AP I] shall cease ... in the case of occupied territories, on the termination of the occupation.” Thus, as Dinstein explains, for contracting parties to AP I—though not for states that have not contracted into AP I, at least as a matter of treaty law—“the temporal application of [GC IV] in its entirety is extended until the actual termination of the occupation.”

### IHL Treaty Provisions pertaining in relation to IAC to the End of Deprivation of Liberty of Prisoners of War, Civilian Internees, and Certain Other Persons Deprived of Liberty

Various IHL treaties establish different formulations in relation to the temporal point at which deprivation of liberty of an individual in connection with an IAC shall cease and the extent, if any, of ongoing protections beyond the termination of the relevant conflict.

#### Protections until Final Release, Repatriation, or Re-establishment

Under Article 5 of GC I, with respect to a designated protected person who has fallen into the hands of the enemy, GC I shall apply until that person's final repatriation. Similarly, under Article 5(1) of GC III, “[GC III] shall apply to the persons referred to in [Article 4 of GC III] from the time they fall into the power of the enemy and until their final release and repatriation.” Under Article 6(4) of GC IV, “[p]rotected persons whose release, repatriation or re-establishment may take place after [GC IV as a whole otherwise ceases to apply, whether in the territory of the parties to the conflict or in occupied territory] shall meanwhile continue to benefit by [GC

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173. This ICJ reasoning has been criticized as “bewildering” because it implies that the “military operations leading up to the occupation” is the temporal benchmark relevant to the “hard core” Article 6(3) GC IV obligations. See Dinstein, Belligerent Occupation, supra note 117, at 283.

174. Emphasis added.

175. Emphasis added. See infra regarding the Article 3(b) AP I provision concerning persons whose final release, repatriation or re-establishment takes place thereafter.


177. This section does not address, for instance, the position concerning medical personnel under GC I.

178. See generally Scholdan, The End of Active Hostilities, supra note 13.

179. Article 5 GC I.

IV].”  

And under Article 3(b) of AP I, “persons [whose final release, repatriation or re-establishment takes place after the general close of military operations or, in the case of occupied territories, on the termination of the occupation] shall continue to benefit from the relevant provisions of [GCs I–IV and of AP I] until their final release, repatriation or re-establishment.”

**Prisoners of War**

Under Article 118(1) of GC III, “[p]risoners of war shall be released and repatriated without delay after the cessation of active hostilities.”  

Article 118(2) of GC III provides that, “[i]n the absence of stipulations to [that] effect in any agreement concluded between the Parties to the conflict with a view to the cessation of hostilities, or failing any such agreement, each of the Detaining Powers shall itself establish and execute without delay a plan of repatriation in conformity with the principle laid down in [Article 118(1) of GC IV].”

The drafters of the “without delay after the cessation of active hostilities” standard set down in Article 118(1) of GC III did not define what constitutes “the cessation of active hostilities.” Yet guidance in interpreting this provision might be found, in part, by recalling the context in which the provision was written. In short, the drafters of Article 118(1) of GC III were aiming to revise the provisions concerning the release of POWs established in two earlier treaties, the relevant portions of which had proven unclear, imprecise, or otherwise undesirable. First, Article 20 of the Hague Regulations provided that “[a]fter the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible.”

And second, Article 75(1) of the 1929 Convention on Prisoners of War (which was superseded by GC III) provided that:

*When belligerents conclude an armistice convention, they shall normally cause to be included therein provisions concerning the repatriation of prisoners of war. If it has not been possible to insert in that convention such stipulations, the belligerents shall, nevertheless, enter into communication with each other on the question as soon*  

181. On the scope and aim of this provision, see GC IV 1958 Commentary, supra note 68, at 64 (“stating that “[t]he time when the Convention as a whole ceases to apply, both in the territory of the Parties to the conflict and in occupied territory, may quite conceivably come before the protected persons have been able to resume a normal existence, especially if they have to be repatriated or assisted to resettle. In the territory of the Parties to the conflict, for example, if internees are not immediately released, the rules laid down in the [GC IV] must obviously continue to apply to them, and if the State decides to repatriate certain enemy nationals, whether interned or not, their repatriation must be carried out in accordance with the [GC IV]. Similarly, in occupied territories, where an Occupying Power considers it necessary to prolong the internment of certain persons after the time limit of one year has expired, the persons concerned will continue to enjoy all their rights under the Convention”). With respect to who qualifies as a protected civilian, see, e.g., Elizabeth Salmón, *Who Is a Protected Civilian?* in The 1949 Geneva Conventions: A Commentary (Andrew Clapham, Paola Gaeta, and Marco Sassòli eds., 2015) [hereinafter, “Salmón, Protected Civilian”].
182. Emphasis added.
183. See generally Sassòli, Prisoners of War, supra note 13.
184. Emphasis added.
185. Emphasis added. The remaining provisions in Article 118 of GC III concern bringing such measures to the knowledge of prisoners of war and costs of repatriations.
186. Emphasis added.
as possible. In any case, the repatriation of prisoners shall be effected as soon as possible after the conclusion of peace.\textsuperscript{187}

Compared to the provisions in Article 20 of the Hague Regulations and Article 75(1) of the 1929 Convention on Prisoners of War, “the cessation of active hostilities” formulation established in Article 118(1) obliges parties to, at a minimum, release prisoners of war at a time prior to a conclusion of peace.

But what, exactly, marks “the cessation of active hostilities” laid down in Article 118(1) of GC III? Varying interpretations are articulated in two military manuals. On one hand, the U.K. Ministry of Defence’s The Joint Service Manual on the Law of Armed Conflict (2004) states that the “[c]essation of active hostilities’ is a question of fact and does not depend on the existence of an armistice agreement. Active hostilities have ceased where there is no immediate expectation of their resumption.”\textsuperscript{188} That Manual also stipulates that “[c]essation is not affected by isolated and sporadic acts of violence.”\textsuperscript{189}

On the other hand, the U.S. Department of Defense appears to take a somewhat different approach.\textsuperscript{190} In relation to “the cessation of active hostilities” formulation established in Article 118(1) of GC III, the U.S. Department of Defense’s Law of War Manual (Dec. 2016) first points out that, “[a]ccording to Lauterpacht, the phrase ‘cessation of active hostilities’ probably does not refer to a situation that leaves open the possibility of a resumption of struggle, but to a situation in which it is out of the question for hostilities to resume.”\textsuperscript{191} The Manual then states that, in the sense of Article 118(1) of GC III, “[the cessation of active hostilities] is the complete end of the fighting with clearly no probability of resumption of hostilities in the near future.”\textsuperscript{192} The Manual further indicates, in relation to Article 118(1)


\textsuperscript{188}. U.K., Joint Service Manual, supra note 105, at ¶ 8.169 (emphasis added; and noting, in relation to the second sentence excerpted, that “[f]ollowing the Indo-Pakistan conflict 1971, the Indian government initially refused to repatriate the more than 90,000 Pakistanis held as [prisoners of war], on the grounds that a renewal of hostilities could not be excluded. Repatriation did not in fact begin until late 1973, almost two years after the cessation of active hostilities. Similarly, after the Iran–Iraq conflict of 1980–88, repatriation did not begin until 1990”). \textit{Id}.

\textsuperscript{189}. \textit{Id}.

\textsuperscript{190}. See also Section 7 concerning considerations as to POW status (or not) in U.S. cases regarding certain war-on-terror detainees.

\textsuperscript{191}. \textit{Law of War Manual}, supra note 44, at § 9.37.2 (citing to LASSA OPPENHEIM, INTERNATIONAL LAW, Volume II: Disputes, War and Neutrality 613 (§275) (H. Lauterpacht ed., 7th ed., 1952) (“Probably the phrase ‘cessation of active hostilities’ in the sense of Article 118 [of GC III] refers not to suspension of hostilities in pursuance of an ordinary armistice which leaves open the possibility of a resumption of the struggle, but to a cessation of hostilities as the result of total surrender or of such circumstances or conditions of an armistice as render it out of the question for the defeated party to resume hostilities”)).

\textsuperscript{192}. \textit{Law of War Manual}, supra note 44, at § 9.37.2 (citing to 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 71–72 (1977) (excerpting the following: ‘Is the phrase ‘end of active hostilities’ to be interpreted as referring to situations where it is clear that active hostilities have definitely stopped and will not be resumed, for example, as the result of surrender, or can it be interpreted in a more flexible way so as to take account of situations where the pattern has been an alternation of military operations and peaceful periods? If, once again, one refers to the Second World War which directly influenced the specific wording
of GC III, that “[t]he cessation of active hostilities may also be understood as describing the point in time when belligerents feel sufficiently at ease about the future that they are willing to release and repatriate all POWs.”\textsuperscript{193} The Manual also states in this context that “[t]he cessation of active hostilities may result from a capitulation or agreement, but such an agreement is not required if there is no prospect that hostilities will resume.”\textsuperscript{194} Finally, the Manual indicates, with respect to the “without delay” formulation in Article 118(1) of GC III, that “[t]his requirement … does not affect the practical arrangements that must be made to ensure that repatriation takes place in a safe and orderly manner in accordance with the requirements of [GC III].”\textsuperscript{195} (As a point of comparison, recall that the Manual states that, “[i]n most cases, the general close of military operations [which, under Article 6(2) of GC IV, marks when the application of GC IV shall cease, with certain exceptions] will be the final end of all fighting between all those concerned.”\textsuperscript{196})

\textsuperscript{193.} Id. at n.886 (emphasis in the quotation already appearing in the Law of War Manual).

\textsuperscript{194.} Id. at n.887 (noting that alterations to the quote appear in the original).

\textsuperscript{195.} Id. at § 9.37.2 (citing to Edward R. Cummings, Acting Assistant Legal Adviser for African Affairs, Memorandum of Law to Chester A. Crocker, Assistant Secretary of State for African Affairs, Sept. 21, 1984, III Cumulative Digest of the United States Practice in International Law 1981–1988, 3471, 3474 (excerpting the following: under GC III, "the 'cessation' concept describes the point in time that belligerents feel sufficiently … [at ease] about the future that they are willing to release all prisoners of war and civilian internees"). Id. at n.887 (noting that alterations to the quote appear in the original).

\textsuperscript{196.} Id. at § 9.37.2 (citing to GC III 1960 Commentary, supra note 68, at 550 (excerpting the following: "The text as finally adopted states that the repatriation must take place 'without delay after the cessation of active hostilities.' This requirement does not, of course, affect the practical arrangements which must be made so that repatriation may take place in conditions consistent with humanitarian rules and the requirements of [GC III], as defined in Article 119, paragraph 1, below, which refers to Articles 46 to 48 (relating to transfer)).")

Commentators have helped shed additional light on what marks "the cessation of active hostilities" under Article 118(1) of GC III. At least according to Sassòli, for instance, "[t]he crucial question is when active hostilities actually end. A mere suspension of hostilities is not sufficient; but even when there is an apparent end to hostilities, the future cannot be predicted and resumption is always possible." Sassòli, Prisoners of War, supra note 13, at 1046 (emphasis original; citation omitted).

\textsuperscript{196.} Id. at § 10.3.4 (emphasis added) (citing to and excerpting GC IV 1958 Commentary, supra note 68, at 62). Commentators have also compared "the cessation of active hostilities" provision in Article 118(1) of GC III (concerning POWs) and "the general close of military operations" formulation laid down in two provisions of GC IV and in one provision of AP I. (Recall that "the general close of military operations" provision pertains: under Article 6(2) of GC IV to the cessation of GC IV in the territories of the parties; under Article 6(3) of GC IV to the cessation of GC IV in the case of occupied territory one year after that close; and under Article 3(b) of AP I to the cessation, with certain exceptions, of AP I in the territory of the parties to the conflict.) Sassòli argues that "ongoing troop movements do not preclude there being an end to active hostilities." Sassòli, Prisoners of War, supra note 13, at 1046–47. For his part, Dinstein—in comparing temporal formulations in Article 118(1) of GC III and Article 6(3) of GC IV—contends that "[t]here is every reason to believe that [t]he general close of military operations may occur after the cessation of active hostilities." Dinstein, Belligerent Occupation, supra note 117, at 282 (citing to Commentary on the APs, supra note 68, at 65, 68; internal
With respect to the “without delay” portion of the formulation set down in Article 118(1) of GC III, the Eritrea-Ethiopia Claims Commission (EECC) stated that, “given their everyday meaning and the humanitarian object and purpose of [GC] III, these words [“without delay”] indicate that repatriation should occur at an early time and without unreasonable or unjustifiable restrictions or delays.”  

But, at the same time, the EECC noted, “repatriation cannot be instantaneous. Preparing and coordinating adequate arrangements for safe and orderly movement and reception, especially of sick and wounded prisoners, may be time-consuming.” Finally in this connection, the EECC stated that “there must be adequate procedures to ensure that individuals are not repatriated against their will.”

In combination, Articles 109 and 110 of GC III establish, among other things, a different temporal formulation (compared to “the cessation of active hostilities” laid down in Article 118 of GC III) with respect to certain seriously wounded and seriously sick prisoners of war. For instance, under Article 110 of GC III, the following persons shall be “repatriated direct”:

1. Incurably wounded and sick whose mental or physical fitness seems to have been gravely diminished.
2. Wounded and sick who, according to medical opinion, are not likely to recover within one year, whose condition requires treatment and whose mental or physical fitness seems to have been gravely diminished.
3. Wounded and sick who have recovered, but whose mental or physical fitness seems to have been gravely and permanently diminished.

Article 109 of GC III also contains provisions concerning arrangements in neutral countries for certain sick and wounded prisoners of war. It further contains a prohibition on repatriating an eligible sick or injured prisoner of war against his will during hostilities. Article 110 of GC III additionally lays down stipulations concerning, among other things, agreements on the conditions that prisoners of war accommodated in a neutral country must fulfill in order to permit those prisoners’ repatriation.

Under Article 119(4) of GC III, “[p]risoners of war against whom criminal proceedings for an indictable offence are pending may be detained until the end of such proceedings, and, if necessary, until the completion of the punishment.” The next sentence of Article 119(4) of GC III provides that “the same shall apply to

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198. Id.
199. Id. (citing to Howard S. Levine, Prisoners of War in International Armed Conflict, 59 Int’l L. Stud. 421–29 (1977)).
200. Emphasis added.
201. Emphasis added.
prisoners of war already convicted for an indictable offence.”

GC III also contains provisions concerning the temporal period pertaining to adjustments between the belligerents with respect to, for instance, certain payments made to prisoners of war. The U.K. Ministry of Defence’s *The Joint Service Manual of the Law of Armed Conflict* (2004) summarizes these GC III obligations thusly: “Advances of pay, compensation payments, and payments made in their own states under [Article 63 of GC III], [sic] are considered to be made on behalf of the state on which prisoners of war depend and so are a matter for adjustment between the states concerned at the close of hostilities.”

Finally with respect to temporal formulations established in IHL treaties concerning prisoners of war, Article 85(4)(b) of AP I provides that, “when committed wilfully and in violation of” one of the GCs I–IV or of AP I, “unjustifiable delay in the repatriation of prisoners of war” shall be regarded as a grave breach of AP I and thus also a war crime under AP I.

**Protected Persons under GC IV and Certain Other Persons Not Qualifying as POWs under AP**

As noted above, Article 6(2)–(4) of GC IV contains provisions on when protections under that convention cease to apply. Article 6(2) of GC IV provides that, “[i]n the territory of Parties to the conflict, the application of [GC IV] shall cease on the general close of military operations.” Article 6(3) of GC IV stipulates that

[i]n the case of occupied territory, the application of [GC IV] shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of [GC IV]: 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, 143.

And, under Article 6(4) of GC IV, “[p]rotected persons whose release, repatriation or re-establishment may take place after [GC IV as a whole otherwise ceases to apply, whether in the territory of the parties to the conflict or in occupied territory] shall meanwhile continue to benefit by [GC IV].”

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203. See infra regarding this provision with respect to civilians.

204. Pursuant to Article 85(5) AP I. The ICRC’s *Commentary* on this provision states that “[t]he grave breach within the meaning of sub-paragraph [Article 85(4)(b)] consists, in the case of prisoners of war, in failure to comply with Articles 109 or 118 of [GC III] without valid and lawful reasons justifying the delay.” *Commentary on the APs*, supra note 68, at 1001 (citation omitted).


206. On the scope and aim of this provision, see *GC IV 1958 Commentary* supra note 68, at 64 (stating that “[t]he time when the Convention as a whole ceases to apply, both in the territory of the Parties to the conflict and in occupied territory, may quite conceivably come before the protected persons have been able to resume a normal existence, especially if they have to be repatriated or assisted to resettle. In the territory of the Parties to the conflict, for example, if internees are not immediately released, the rules laid down in the Convention must obviously continue to apply to them, and if the State decides to repatriate certain enemy nationals, whether interned or not, their repatriation must be carried out in accordance with the Convention. Similarly, in occupied territories, where an Occupying Power considers it necessary
Over all, GC IV deals unevenly with protection of civilians. The thumbnail version is that the bulk of provisions in GC IV pertain to “protected persons,” including in occupied territories. (Nonetheless, a key part of GC IV—Articles 13–26 (Part II)—applies to the whole population of the countries in conflict.) Such “protected persons” are defined under Article 4(1) of GC IV as “those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.”

GC IV lays down a number of temporal formulations—not least regarding deprivation of liberty—concerning those “protected persons.” Before identifying those formulations, however, it is helpful to review two GC IV provisions concerning grounds for deprivation of liberty of protected persons. First, under Article 42(1) of GC IV, where internees are detained in a state party’s own territory, “[t]he internment or placing in assigned residence of protected persons may be ordered only if the security of the Detaining Power makes it absolutely necessary.”

And second, in occupied territory, under Article 78(1) of GC IV, “[i]f the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment.”

In three provisions, GC IV affixes the release of protected persons deprived of liberty or the lifting of certain other restrictive measures concerning those persons’ property to the following temporal formulation: “as soon as possible after the close of hostilities.”

- Under Article 46(1) of GC IV, “[i]n so far as they have not been previously withdrawn, restrictive measures taken regarding protected persons [including depriving them of liberty pursuant to Article 42(1) of GC IV] shall be cancelled as soon as possible after the close of hostilities;”

- Article 46(2) of GC IV stipulates that “[r]estrictive measures affecting [protected persons’] property shall be cancelled, in accordance with the law of the Detaining Power, as soon as possible after the close of hostilities;” and

- Under Article 133(1) of GC IV, “[i]nternment shall cease as soon as possible after the close of hostilities.”

In addition, two other provisions of GC IV lay down temporal formulations concerning the release of certain protected persons. First, under Article 132(1) of...
GC IV, “[e]ach interned person shall be released by the Detaining Power as soon as the reasons which necessitated his internment no longer exist.”\(^\text{213}\) And second, Article 133(2) of GC IV establishes that

\[ \text{[i]nternees in the territory of a Party to the conflict, against whom penal proceedings are pending for offences not exclusively subject to disciplinary penalties, may be detained until the close of such proceedings and, if circumstances require, until the completion of the penalty. The same shall apply to internees who have been previously sentenced to a punishment depriving them of liberty.} \(^\text{214}\) \]

GC IV does not, however, expressly define what constitutes “the close of hostilities.” For their part, two military manuals articulate approaches according to which the phrase “the close of hostilities”—as laid down in Articles 46(1), 46(2), and 133(1) of GC IV—should be construed, in practice, in the same sense as “the cessation of active hostilities” formulation established in Article 118(1) of GC III concerning POWs.

First, the U.K. Ministry of Defence’s The Joint Service Manual of the Law of Armed Conflict (2004) states that, “[a]lthough the term used in [GC IV] is ‘close of hostilities’, in practice, this would mean the same as the phrase ‘cessation of active hostilities’ used in [Article 118(1) of GC III].”\(^\text{215}\) And second, the U.S. Department of Defense’s Law of War Manual (Dec. 2016) states that “[t]he phrase ‘close of hostilities’ [in GC IV] should be understood in the same sense as the phrase ‘cessation of active hostilities’ in [Article 118(1) of GC III].”\(^\text{216}\) To support that position, the latter Manual cites to the ICRC’s Commentary on GC IV.\(^\text{217}\) That Commentary, in turn, states that

\[ \text{[t]he expression ‘the close of hostilities’ [in GC IV] should be taken to mean a state of fact rather than the legal situation covered by laws or decrees fixing the date of cessation of hostilities. The similar provision concerning prisoners of war speaks of ‘the cessation of active hostilities’ and the wording of the paragraph here should be understood in the same sense.} \(^\text{218}\) \]

Certain commentators do not agree with this approach, however. Oswald, for instance, argues that “[t]he qualitative difference between each of the phrases is clear. The phrase ‘close of hostilities’ suggests that hostilities have ended but that peace has not yet been established.”\(^\text{219}\) On the other hand, “cessation of active

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\(^{213}\) Emphasis added. Article 132(2) GC IV lays down that “[t]he Parties to the conflict shall, moreover, endeavour during the course of hostilities, to conclude agreements for the release, the repatriation, the return to places of residence or the accommodation in a neutral country of certain classes of internees, in particular children, pregnant women and mothers with infants and young children, wounded and sick, and internees who have been detained for a long time.”

\(^{214}\) Emphasis added. Article 133(3) GC IV provides that “[b]y agreement between the Detaining Power and the Powers concerned, committees may be set up after the close of hostilities, or of the occupation of territories, to search for dispersed internees.” And Article 134 GC IV provides that “[t]he High Contracting Parties shall endeavour, upon the close of hostilities or occupation, to ensure the return of all internees to their last place of residence, or to facilitate their repatriation.” Emphasis added.


\(^{216}\) Law of War Manual, supra note 44, at ¶ 10.35.1.1.

\(^{217}\) Id. at ¶ 10.35.1.1 n.631 (citing to GC IV 1958 Commentary, supra note 68, at 514–515).

\(^{218}\) GC IV 1958 Commentary, supra note 68, at 514–515.

\(^{219}\) Oswald, Internment, supra note 13, at 1378 (citations omitted).
hostilities,” he contends, “suggests either that some military operations are still being conducted, or that hostilities exist but are not ‘active,’ and therefore armed conflict might break out sporadically and that military operations continue, albeit at a less intense level.”

Even if those two phrases—“the cessation of active hostilities” in Article 118(1) of GC III and “the close of hostilities” in GC IV—were understood in the same sense, however, that would not necessarily end the inquiry. That is because, as explained above, “the cessation of active hostilities” established in Article 118(1) of GC III is subject to differing interpretations. Thus, the implementation of those interpretations might lead to different points in time at which the deprivation of liberty of persons under GC III or GC IV should cease.

Moreover, in this context, “the close of hostilities” is only part of the relevant phrase in Articles 46(1), 46(2), and 133(1) of GC IV. The first part of that phrase—“as soon as possible”—merits scrutiny as well. Oswald, for instance, poses the question of whether “‘as soon as possible’ [in those relevant provisions of GC IV] mean[s] that internees must be released within a particular time frame which is objectively determined, or is it the case that the time frame is a matter for the Detaining Power to determine?” Oswald’s review of “[t]he practice of states suggests that ‘as soon as possible’ is most often determined subjectively, after the parties have reached an agreement as to when they will release internees.”

For its part, Article 3(b) of AP I, as noted above, pertains to, among other things, “persons whose final release, repatriation or re-establishment takes place” after GCs I–IV and AP I cease to apply. In particular, under Article 3(b) of AP I, “[t]hese persons [that is, those whose final release, repatriation or re-establishment takes place after GCs I–IV and AP I cease to apply] shall continue to benefit from the relevant provisions of [GCs I–IV and of AP I] until their final release, repatriation or re-establishment.”

But what about individuals who, in relation to an IAC, fall into the hands of a party to the conflict but who qualify neither for prisoner-of-war status under GC III or AP I nor for “protected person” status under GC IV? One approach—established in certain cases in the ICTY and the ICC—considers allegiance or ethnicity (not nationality) as a relevant criterion for obtaining “protected person” status. Yet it is far from clear that states have endorsed this interpretation.

220. Id.
221. Id. at 1377.
222. Id. Oswald points out that “[p]revious agreements between states have, for example, not stipulated a time period for release of internees, required release of internees after a particular event occurs, or required release at the ‘earliest possible date’” Id. (citations omitted). But he also notes that there are “some examples where Detaining Powers have had to release internees ‘without delay’ or ‘immediately.’” Id. (citations omitted).
223. Recall that, according to Article 3(b) of AP I, the application of GCs I–IV and AP I shall, but for the following exception, “cease, in the territory of Parties to the conflict, on the general close of military operations and, in the case of occupied territories, on the termination of the occupation.”
224. Emphasis added.
225. Due, for instance, to not fulfilling the nationality criterion under Article 4(1) of GC IV for that “protected person” status.
226. See Salmón, Protected Civilian, supra note 181, at 1142–45.
AP I addresses the underlying issue, at least with respect to contracting parties. Under Article 45(3) of AP I, “[a]ny person who has taken part in hostilities, who is not entitled to prisoner-of-war status and who does not benefit from more favourable treatment in accordance with [GC IV] shall have the right at all times to the protection of Article 75 [of AP I].” In turn, Article 75(4) of AP I stipulates that—“[e]xcept in cases of arrest or detention for penal offences”—“[a]ny person arrested, detained or interned for actions related to the armed conflict … shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.” And Article 75(6) of AP I lays down that “[p]ersons who are arrested, detained or interned for reasons related to the armed conflict shall enjoy the protection provided by [Article 75 of AP I] until their final release, repatriation or re-establishment, even after the end of the armed conflict.”

Finally with respect to temporal formulations concerning repatriation of persons protected under AP I, Article 85(4)(b) of AP I provides that, “when committed wilfully and in violation of” one of GCs I–IV or of AP I, “unjustifiable delay in the repatriation of … civilians” shall be regarded as a grave breach of AP I and thus also as a war crime under AP I.


Two provisions in Protocol II of the Convention on Certain Conventional Weapons (CCW) (as amended) expressly affix temporal formulations—especially “the cessation of active hostilities,” though without defining the phrase—to obligations concerning mines, booby-traps, and certain other devices. In particular, Article 9(2) of that instrument affixes various recording-related obligations to the...
period “immediately after the cessation of active hostilities.” And Article 10(1) of Protocol II of the CCW (as amended) provides that, “[w]ithout delay after the cessation of active hostilities, all minefields, mined areas, mines, booby-traps and other devices shall be cleared, removed, destroyed or maintained in accordance with” Articles 3(2) and 5 of that instrument.

**IHL Treaty Provisions concerning End-of-IAC Obligations pertaining to Explosive Remnants of War**

Protocol V of the CCW establishes obligations concerning certain explosive remnants of war. A number of those obligations arise “after the cessation of active hostilities,” though that phrase is not expressly defined in the instrument. In particular, Article 3(1)–(3) of Protocol V of the CCW affixes certain obligations concerning clearance, removal, or destruction of explosive remnants of war to the period “after the cessation of active hostilities.” That same temporal formulation

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1. All information concerning minefields, mined areas, mines, booby-traps and other devices shall be recorded in accordance with the provisions of the Technical Annex.

2. All such records shall be retained by the parties to a conflict, who shall, without delay, after the cessation of active hostilities, take all necessary and appropriate measures, including the use of such information, to protect civilians from the effects of minefields, mined areas, mines, booby-traps and other devices in areas under their control. [¶] At the same time, they shall also make available to the other parties or parties to the conflict and to the Secretary-General of the United Nations all such information in their possession concerning minefields, mined areas, mines, booby-traps and other devices laid by them in areas no longer under their control; provided, however, subject to reciprocity, where the forces of a party to a conflict are in the territory of an adverse party, either party may withhold such information from the Secretary-General and the other party, to the extent that security interests require such withholding, until neither party is in the territory of the other. In the latter case, the information withheld shall be disclosed as soon as those security interests permit. Wherever possible, the parties to the conflict shall seek, by mutual agreement, for the release of such information at the earliest possible time in a manner consistent with the security interests of each party.

Emphasis added.


233. See supra for a discussion on the phrase in relation to Article 118(1) of GC III.

234. In particular, under Article 3 of CCW Protocol V:

1. Each High Contracting Party and party to an armed conflict shall bear the responsibilities set out in this Article with respect to all explosive remnants of war in territory under its control. In cases where a user of explosive ordnance which has become explosive remnants of war, does not exercise control of the territory, the user shall, after the cessation of active hostilities, provide where feasible, inter alia technical, financial, material or human resources assistance, bilaterally or through a mutually agreed third party, including inter alia through the United Nations system or other relevant organisations, to facilitate the marking and clearance, removal or destruction of such explosive remnants of war.

2. After the cessation of active hostilities and as soon as feasible, each High Contracting Party and party to an armed conflict shall mark and clear, remove or destroy explosive remnants of war in affected territories under its control. Areas affected by explosive remnants of war which are assessed pursuant to paragraph 3 of this Article as posing a serious humanitarian risk shall be accorded priority status for clearance, removal or destruction.

3. After the cessation of active hostilities and as soon as feasible, each High Contracting Party and party
is also attached to some of the obligations established in Article 4(2) of Protocol V of the CCW, which concerns recording, retaining, and transmission of certain information.\footnote{235}

**IHL Treaty Provisions concerning Temporal Aspects of Denunciation or Withdrawal**

Many IHL treaties contain provisions concerning temporal aspects of denunciation or withdrawal. It bears emphasis, however, that, to the extent the substantive provisions of the relevant IHL treaty are accepted as representing customary international law, denunciation of or withdrawal from that treaty would not impair the duty of the state to fulfill the obligations to which the state is otherwise subject, including through customary international law.\footnote{236}

The denunciation provisions in GCs I–IV establish temporal formulations concerning the end of application of the relevant convention(s) as a matter of treaty law. Pursuant to Articles 63(1) of GC I, 62(1) of GC II, 142(1) of GC III, and 158(1) of GC IV, “[e]ach of the High Contracting Parties shall be at liberty to denounce the [relevant] Convention.” As established by Articles 63(3) of GC I, 62(3) of GC II, and 142(3) of GC III,

The denunciation shall take effect one year after the notification thereof has been made …. However, a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect.

\footnote{235}{In particular, under Article 4(2) of the CCW Protocol V:

High Contracting Parties and parties to an armed conflict which have used or abandoned explosive ordnance which may have become explosive remnants of war shall, without delay after the cessation of active hostilities and as far as practicable, subject to these parties' legitimate security interests, make available such information to the party or parties in control of the affected area, bilaterally or through a mutually agreed third party including inter alia the United Nations or, upon request, to other relevant organisations which the party providing the information is satisfied are or will be undertaking risk education and the marking and clearance, removal or destruction of explosive remnants of war in the affected area.

Emphasis added. Article 4(3) of Protocol V of the CCW stipulates that “[i]n recording, retaining and transmitting such information, the High Contracting Parties should have regard to Part 1 of the Technical Annex.”}

\footnote{236}{See, e.g., Article 43 VCLT.}
INDEFINITE WAR

until peace has been concluded, and until after operations connected with the release and repatriation of the persons protected by the present Convention have been terminated.\(^{237}\)

GC IV contains a similar provision.\(^{238}\) Under Article 99(1) of AP I, “[i]n case a High Contracting Party should denounce this Protocol, the denunciation shall only take effect one year after receipt of the instrument of denunciation.” Yet, also pursuant to Article 99(1) of AP I, if

on the expiry of that year the denouncing Party is engaged in one of the situations referred to in [Article 1 of AP I], the denunciation shall not take effect before the end of the armed conflict or occupation and not, in any case, before operations connected with the final release, repatriation or re-establishment of the persons protected by [GCs I–IV or AP I] have been terminated.\(^{239}\)

The Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Adoption of an Additional Distinctive Emblem (AP III) also contains provisions concerning temporal elements of denunciation.\(^{240}\) Under Article 14(1) of AP III, “[i]n case a High Contracting Party should denounce [AP III], the denunciation shall only take effect one year after receipt of the instrument of denunciation.” Yet, also under that same article, “[i]f … on the expiry of that year the denouncing Party is engaged in a situation of armed conflict or occupation, the denunciation shall not take effect before the end of the armed conflict or occupation.”\(^{241}\)

With respect to the CCW, Article 9(1) lays down that “[a]ny High Contracting Party may denounce [the CCW] or any of its annexed Protocols by so notifying the Depositary.” However, Article 9(2) of the CCW stipulates, in part, that “[a]ny such denunciation shall only take effect one year after receipt by the Depositary of the notification of denunciation.” That same article also provides that if

on the expiry of that year the denouncing High Contracting Party is engaged in one of the situations referred to in [Article 1 of the CCW], the Party shall continue to be bound by the obligations of [the CCW] and of the relevant annexed Protocols until the end of the armed conflict or occupation and, in any case, until the termination of operations connected with the final release, repatriation or re-establishment of the person protected by the rules of international law applicable in armed conflict, and in the case of any annexed Protocol containing provisions concerning situations in which peace-keeping, observation or similar functions are performed by United Nations forces or missions in the area concerned, until the termination of those functions.\(^{242}\)

\(^{237}\) Emphasis added.

\(^{238}\) Article 158(3) GC IV provides that “[t]he denunciation shall take effect one year after the notification thereof has been made…. However, a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded, and until after operations connected with the release, repatriation and re-establishment of the persons protected by [GC IV] have been terminated.” Emphasis added.

\(^{239}\) Emphasis added.


\(^{241}\) Emphasis added.

\(^{242}\) Emphasis added.
ICTY Jurisprudence concerning the End of IAC and the Termination of the Applicability of IHL to IAC

Few international bodies or courts have formulated general international-legal standards concerning when an IAC ends and when IHL no longer applies in relation to that conflict. The ICTY is one exception. In 1995, in its influential Tadić decision, the ICTY Appeals Chamber held—and numerous ICTY Trial Chambers have since endorsed the approach—that

an armed conflict exists whenever there is a resort to armed force between States …. [IHL] applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached…. Until that moment, [IHL] continues to apply in the whole territory of the warring States …, whether or not actual combat takes place there.\(^\text{243}\)

The ICTY’s “general conclusion of peace” formulation concerning the end of application of IHL to an IAC is endorsed in the U.K. Ministry of Defence’s The Joint Service Manual of the Law of Armed Conflict (2004), which explains, in a footnote, that “[t]his [ICTY formulation] does not necessarily mean on the conclusion of a formal peace treaty.”\(^\text{244}\)

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243. Tadić, Decision on Interlocutory Appeal, supra note 101, at ¶ 70 (emphasis added). The Appeals Chamber intimated that certain IHL treaty-based obligations may extend beyond the cessation of fighting. Id. at ¶ 67 (stating that “[t]he definition of ‘armed conflict’ varies depending on whether the hostilities are international or internal but, contrary to Appellant’s contention, the temporal and geographical scope of both internal and international armed conflicts extends beyond the exact time and place of hostilities. With respect to the temporal frame of reference of international armed conflicts, each of the four Geneva Conventions contains language intimating that their application may extend beyond the cessation of fighting. For example, both Conventions I and III apply until protected persons who have fallen into the power of the enemy have been released and repatriated”) (citing to Articles 5 GC I and 5 GC III).

**SUMMARY TABLE**

Certain IHL Treaty Provisions and ICTY Formulations concerning the End of International Armed Conflict

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<th>Issue</th>
<th>IACs Other Than Belligerent Occupations</th>
<th>Belligerent Occupations</th>
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<tr>
<td>Concerning certain persons deprived of liberty (but not including, e.g., medical personnel under GC I)</td>
<td>GCs III &amp;/or IV (1949)</td>
<td>&quot;In the case of occupied territory, the application of [GC IV] shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of the present Convention: 1 to 32, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, 143(4) Protected persons whose release, repatriation or re-establishment may take place after such dates shall meanwhile continue to benefit by [GC IV].&quot; (Art. 63(4) GC IV); &quot;Protected persons who have been accused of offences or convicted by the courts in occupied territory, shall be handed over at the close of occupation, ...&quot; (Art. 133(1) GC IV)</td>
</tr>
<tr>
<td>General applicability of IHL and general termination of grave-breaches &amp; war-crimes periods (other than persons deprived of liberty after the conflict)</td>
<td>GC IV (1949)</td>
<td>&quot;In the territory of Parties to the conflict, the application of [GC IV] shall cease on the general close of military operations.&quot; (Art. 6(2) GC IV)</td>
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<tr>
<td>GCs III &amp;/or IV (1949)</td>
<td>&quot;In the case of occupied territory, the application of [GC IV] shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of the present Convention: 1 to 32, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, 143(4) Protected persons whose release, repatriation or re-establishment may take place after such dates shall meanwhile continue to benefit by [GC IV].&quot; (Art. 63(4) GC IV); &quot;Protected persons who have been accused of offences or convicted by the courts in occupied territory, shall be handed over at the close of occupation, ...&quot; (Art. 133(1) GC IV)</td>
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<td>AP I (1977)</td>
<td>&quot;Persons who are arrested, detained or interned for reasons related to the armed conflict shall enjoy the protection provided by [Art. 75 AP I] until final release, repatriation or re-establishment, even after the end of the armed conflict.&quot; (Art. 75(6) AP I; see also Art. 75(3) AP I)</td>
<td>&quot;persons [whose] final release, repatriation or re-establishment takes place after the termination of the occupation] shall continue to benefit from the relevant provisions of [GCs I-IV and AP I] until their final release, repatriation or re-establishment.&quot; (Art. 3(b) AP I)</td>
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<tr>
<td>ICTY (1995)</td>
<td>HLG continues to apply &quot;until general conclusion of peace is reached&quot; (ICTY, Tadic, 1995, ¶ 70; though more specific IHL treaty-based provisions may extend the duration of the relevant obligation [implied by reference to GCs I and III in id. at ¶ 67]</td>
<td>Relevant provisions cease to apply &quot;In the case of occupied territories, on the termination of the occupation&quot; (Art. 3(b) AP I); see also Art. 8(b) AP I)</td>
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<tr>
<td>Certain submarine cables</td>
<td>Hague Regulations (1907)</td>
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<tr>
<td>Seized private &quot;munitions de guerre&quot; and certain related items</td>
<td>Hague Regulations (1907)</td>
<td>No relevant provision</td>
</tr>
<tr>
<td>Minefields, mines and booby-traps</td>
<td>CCW Protocol II (as amended 1996)</td>
<td>Various recording-related obligations are affixed to the period &quot;immediately after the cessation of active hostilities&quot; (Art. 92(2) CCW Protocol II); &quot;[f]or a period of 20 years from the end of the conflict or the occupation, as the case may be, the parties shall not destroy, dismantle, defuse or otherwise render unusable any ordnance, mines, booby-traps and other devices maintained in accordance with Articles 32 and 35 (Art. 10(1) CCW Protocol II)&quot;</td>
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<tr>
<td>Explosive remnants of war</td>
<td>CCW Protocol V (2003)</td>
<td>&quot;After the cessation of active hostilities and as soon as feasible, each High Contracting Party and party to an armed conflict shall mark and clear, remove or destroy explosive remnants of war in affected territories under its control.&quot; (Art. 3(2) CCW Protocol V); &quot;After the cessation of active hostilities and as soon as feasible, each High Contracting Party and party to an armed conflict shall [certain] following measures in affected territories under its control, to reduce the risks posed by explosive remnants of war&quot; (Art. 32(3) CCW Protocol V); certain Contracting Parties and parties to an armed conflict &quot;shall, without delay after the cessation of active hostilities and as far as practicable, subject to these parties’ legitimate security interests, make available certain information to the party or parties in control of the affected area&quot; (Art. 4(2) CCW Protocol V)</td>
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<tr>
<td>Denunciation or withdrawal</td>
<td>GCs I-IV (1949)</td>
<td>&quot;a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been declared, and, until after operations connected with the release and repatriation of the persons protected by the present Convention have been terminated.&quot; (Art. 63(3)(b)(i) &amp; (ii) GCs III; see also article 138(3) GC IV)</td>
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<td>AP I (1977)</td>
<td>&quot;If ... on the expiry of that year the denouncing Party is engaged in one of the situations referred to in Article 1, the denunciation shall not take effect before the end of the armed conflict or occupation and, in any case, before operations connected with the final release, repatriation or re-establishment of the persons protected by the Conventions or this Protocol have been terminated.&quot; (Art. 9(6) AP I); see also Art. 14(1) AP II</td>
<td>&quot;If ... on the expiry of that year the denouncing High Contracting Party is engaged in one of the situations referred to in Article 1, the Party shall continue to be bound by the obligations of this Convention and and of the relevant annexed Protocols until the end of the armed conflict or occupation and, in any case, until the termination of operations connected with the final release, repatriation or re-establishment of the person protected by the rules of international law applicable in armed conflict, and in the case of any annexed Protocol containing provisions concerning situations in which peace-keeping, observation or similar functions are performed by United Nations forces or missions in the area concerned, until the termination of those functions.&quot; (Art. 3(5) CCW)</td>
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<td>CCW (1980)</td>
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