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## THE LEGAL VALUE OF COMMON ARTICLE THIRD OF THE FOUR GENEVA CONVENTIONS OF 1949

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### ABSTRACT

The international prison texts dealing with the problem of non-international armed conflicts are confined, as they provide for the felony organization of these conflicts beginning with one orphan article, contained inside the four Geneva Conventions of 1949 (commonplace Article 3), similarly to the second one extra Protocol of 1977 (28 articles), particularly if we don't forget the growth on this kind of conflict and its widening scope at the prevailing time at the price of global armed conflicts, similarly to the ambiguity surrounding these felony texts on the one hand, that the dearth of worldwide interest to non-worldwide armed conflicts necessitates the necessity of evaluating the provisions of the regulation of non-global armed conflicts And particularly the legislative ones, represented through the 0.33 commonplace article between the 4 Geneva Conventions of 1949, that is the point of interest of our research, and the scale of the international safety it offers to the victims of these conflicts.

### Introduction

Non-international armed conflicts were considered until the signing of the four Geneva Conventions relating to the protection of victims of armed conflicts of 1949 from internal conflicts that are subject to the sovereignty of the absolute state, that is, subject to the internal laws of the state, except armed conflicts in which the rebels are recognized as combatants.

But after the Second World War, the size of non-international armed conflicts expanded and spread dramatically, which led to human rights being exposed to the most severe and ugly violations, which raised the interest of the international community and the International Committee of the Red Cross, which made great efforts to introduce this type of armed conflict in the field of international humanitarian law and to include those affected by it with humanitarian protection, to mitigate these conflicts and give them a humanitarian character. This was achieved with the conclusion of the four Geneva Conventions of 1949, which introduced non-international armed conflicts to a new phase, when an international regulation was adopted in a codified form for non-international armed conflicts, far from the system for the recognition of combatants, by Article Three common to them, which was considered as the dividing line between the traditional theory.<sup>1</sup> And the modern theory of non-international armed conflict, because it includes internationally recognized provisions that impose an obligation on the parties to the conflict to adhere to the provisions contained therein at the minimum level.

To study non-international armed conflicts according to that common article three, we decided to divide this topic into four demands. In the first, we deal with the adoption of the third common article and its importance, and we devote the second requirement to know the scope of this article's validity, then we deal with the legal basis for the binding of the third common article in a third requirement. Finally, we will address the most important pros and cons of the third common article in the fourth requirement.<sup>2</sup>

### **The primary requirement**

#### **Adoption of the commonplace 0.33 article and its importance**

If the legislation of commonplace Article 3 is taken into consideration one of the maximum essential developments added to global humanitarian law, but this did not come from a vacuum but become preceded via many long and complicated preparatory work, and we will try to clarify this thru sections. the second department to its significance, as follows:

#### **First department**

##### **Adoption of the common third article**

way to the efforts made via the worldwide red pass movement, and in particular the global Committee of the pink cross, which has made many efforts to take care of the sufferers of non-global armed conflicts, which gives for at the least humanitarian necessities. because 1921, the 10th global conference of the global purple move issued a chain of resolutions asserting the rights and duties of countrywide Societies and the global Committee of the purple pass in offering help to victims of inner conflicts.<sup>3</sup>

The 17th worldwide conference of the red pass, held in Stockholm in 1948, offered the draft not unusual Article two to the diplomatic conference held in Geneva in 1949, which become held to speak about the draft Geneva Conventions for the year

1949, and this convention fashioned a unique committee to talk about the draft commonplace Article Which sparked the longest dialogue a number of the two conferences in Geneva .<sup>4</sup>

Due to those differing positions of the two conferences, some delegations, as a 3rd birthday celebration, mediated among these doctrines and referred to as for the necessity of adopting a compromise answer that satisfies each facet, such as a restrained application of the ideas of those agreements. consequently, the global Committee of the crimson cross has organized any other proposed draft, which incorporates at the very least ideas This proposal was the outcome of the conciliatory opinions made by using some of the international locations collaborating on this conference, which was authorized by the Diplomatic convention of 1949 <sup>5</sup>, which dealt with in common Article international armed conflicts, while it turned into devoted to Article 3 common to non-global armed conflicts.

## **The second department**

### **The importance of Common Article Three**

The Common Article Three of the Geneva Conventions of 1949 represents the first serious attempt to formally establish the rules governing non-international armed conflicts, as it reflects the evolution of the rules of international humanitarian law applicable to this range of armed conflicts. This article was described for its importance as a "mini-convention" within the framework of the conventions. Geneva Four of 1949, as that is the only free-standing article whose scope of application is limited to internal armed conflicts. The International Court of Justice confirmed this statement when it stated that the rules in Article Three common to the four Geneva Conventions reflect the primary considerations of humanity applicable under customary law International law on any armed conflict.<sup>6</sup>

## **The second requirement**

### **The content of Common Article 3 and its scope of application**

After we touched upon the background to the adoption of the Geneva Conventions of 1949, we found that this enormous code, which mainly relates to international armed conflicts, did not address the subject of non-international armed conflicts except in one orphan article, which is Common Article Three, which is considered as a "mini-agreement" or an agreement. Within the four Geneva Conventions of 1949, to know the content of this article, and to determine the scope of its application, we will try to study this requirement through two sections. In the first section, we deal with the content of the third common article, and in the second section we deal with the scope of application of the third common article:

## **First department**

### **The content of the common third article**

Common Article Three came up with general rules, mainly related to the protection of victims of non-international armed conflicts, which are represented by the minimum humane treatment for all persons who do not directly participate in hostilities. This article requires that all persons who enjoy its protection be treated humanely in any way.

This article prohibits a group of acts absolutely and obligates the parties to armed conflict to abide by these prohibitions at all times and places without any discrimination, such as murder, torture, hostage-taking, and other actions. The second paragraph of Common Article 3 indicated that it should combine The wounded and sick are taken care of, and this is a consecration of a fundamental principle stipulated in the First Geneva Convention of 1864,<sup>7</sup> which is the principle of humanitarian protection for victims of armed conflicts, and this paragraph also authorized, on the other hand, any neutral humanitarian body such as the International Committee of the Red Cross to offer its services to the parties to the conflict This is not considered interference in the internal affairs of the state, and this text did not grant the International Committee of the Red Cross to carry out specific actions, as is the case in international armed conflicts, but granted it the right of a conditional or restricted humanitarian initiative, with the need for the warring parties to agree to provide their services.<sup>8</sup>

Common Article 3 also referred to the rule requiring respect for the sovereignty of states on whose territory that armed conflict is located, when it stipulated in its last paragraph that "the application of the foregoing provisions shall not affect the legal status of the parties to the conflict."

## **The second department**

### **Scope of application of Common Article third**

In this section, we will try to show the validity of the third common article in terms of the physical and personal scope, through two main points:

#### **First, The physical scope of the third common article**

Common Article 3 defined the scope of its material application, when it mentioned in its first sentence the description of "an armed conflict that does not have an international character, and which is taking place in the territories of one of the High Contracting Parties", and obliged each party to the conflict to apply the provisions contained therein, so it did not include this Article means a definition of a non-international armed conflict, to determine its field of material applicability, but rather the sentence mentioned above.

It is noted through the text of Common Article Three, that it referred to two criteria to determine the existence of this type of armed conflict, the first criterion is the geographical situation of armed conflict, as it must take place within the territory of one of the state's party to the Geneva Conventions of 1949, and the second criterion is the establishment of an armed conflict , The latter raised a fundamental problem related to defining the armed conflict itself, that is, when can we determine that a

situation constitutes an armed conflict, especially since the 1949 Geneva Conventions did not specify what is meant by armed conflict, including Common Article Three, and the term armed conflict is not Of an international character contained in Common Article Three, it includes several types of conflicts, such as guerrilla warfare, or the existing war between the government and some of its subjects .<sup>9</sup>If the Common Article 3 came in a general form to determine its material scope of application, contenting itself with referring to the armed conflict that is not of an international character only, but this text implicitly indicates that it requires that there be a minimum level of intensity or intensity in this armed conflict, such as any Another armed conflict in which armed forces from both sides confront each other.<sup>10</sup>

We conclude from this that the phrase "armed conflict not of an international character" refers to the ordinary meaning intended by Common Article 3, despite its ambiguity, to each of the armed conflicts that are characterized by the nature of hostilities between the warring parties, and to which the characteristics of armed conflicts apply. The international community in many fields, but it differs from it on the one hand that it takes place within the borders of the state's territory and among its citizens, without the interference of a foreign party.

## **Second, The personal sphere of the third common article**

Common Article 3 explicitly delineated its sphere in the first paragraph of the same article, when it referred to persons not taking a direct part in the hostilities.

Some argue that this paragraph includes three types of individuals to whom this article addresses:

1. Persons not taking a direct part in hostilities, whether they joined the rebel party or accompanied the combatants.
2. The combatants who laid down their arms or surrendered to the relevant authorities.
3. Individuals who are unable to continue fighting, due to injury, disease, or any other reason that prevents them from continuing the fighting,<sup>11</sup> meaning more precisely that the provisions of Common Article Three apply to all persons who do not have a positive role in hostilities, and these persons can be restricted to two categories Two basics:
  1. Members of the armed forces of each of the parties to the conflict, who surrendered their weapons or were removed from the fighting because of illness, wound, or capture, or for any other reason, meaning that every person is outside the battlefield and has no decisive effect on the outcome of the conflict between the two parties, and this indicates, Of course, the combatants who continue combat operations in the field are not covered by the international protection guaranteed by Common Article Three, regardless of the party to which they belong.
  2. Civilians who do not genuinely participate in the hostilities, and although Common Article Three did not explicitly include the term "civilians", the first paragraph referred to civilians implicitly, when it mentioned persons who do not directly participate in the hostilities .<sup>12</sup>

## **The third requirement**

### **The basis for adherence to Common Article Three for others**

The third common article differentiated between "the parties to the convention and the parties to the conflict," and in the first term, it meant states, while the second term refers to states and groups that are revolutionary, dissident or rebel. The parties to the Geneva Conventions of 1949, and whether they are bound to implement this article or not, and the same applies to the rebel party, so is he obligated to apply this article, and if so, what is the legal basis for this obligation.<sup>13</sup>

According to the foregoing, we found that this requirement is divided into two branches. In the first section, we deal with the legal basis for the obligation of the third common article for a country that is not a party to the Geneva Conventions, and in the second section we deal with the legal basis for the obligation of the third common article for the rebels as follows:

### **First department**

#### **The basis for the obligation for non-party states**

Common Article 3 states that "in the event of an armed conflict not of an international character in the territories of one of the High Contracting Parties ..." We note in this text an explicit reference to the fact that this article applies only to the states party to the Geneva Conventions of 1949. It follows from this that the provisions of international protection guaranteed by this article are only directed towards confronting non-international armed conflicts that break out in the territory of one of the contracting parties, based on the principle of relativity of treaties, which stipulates that international treaties are only binding on their contracting parties, and their effect does not extend to states. They are not parties to it, based on the Vienna Convention on the Law of Treaties which states that "treaties do not create rights or obligations for third countries without their consent".<sup>14</sup>

This is the general principle in applying this article. However, international jurisprudence took a different direction, in which it emphasized the possibility of applying Common Article Three to non-international armed conflicts that break out in the territory of countries not a party to the four Geneva Conventions, based on the customary rules of general international law.<sup>15</sup>

The international practice has affirmed the necessity of applying and respecting the rules of international humanitarian law, whether they are customary rules or the convention, as they are binding on states parties and non-parties to the convention due to its customary source, and this principle was also supported by the international judiciary. The principles of the law of nations apply in any armed conflict, whether or not that law is mentioned, and whether the parties to the conflict are parties to the agreement or not. This trend has strengthened the international practices of countries that were not a party to the four Geneva Conventions when non-international armed conflicts erupted in them, for example, the civil war in the Congo, Yemen and other countries, as the provisions of

Common Article Three were applied to the internal armed conflicts that broke out. In it, despite the lack of implementation of the Geneva Conventions, confronting them at the time.<sup>16</sup>

## **The second department**

### **The basis of commitment for the rebels**

Common Article third has made substantial progress about granting the international legal personality to the right of the rebels required by general international law, to apply its provisions to non-international armed conflicts, away from the system for the recognition of combatants that was in force under traditional international law. This article guaranteed The legal personality of the rebels, even if the status of combatants is not recognized by the existing government or any of the jealous states, and if this international personality is temporary and has a relative effect, meaning that its time scope is limited to the occurrence of non-international armed conflicts in the state's territory, as for its material scope, He proceeds to implement the minimum humanitarian principles contained in Common Article Three, without the rest of the provisions of the Geneva Conventions .<sup>17</sup>

But the establishment of the international legal personality in the right of the rebels does not mean that they are a party to the Geneva Conventions of 1949, but rather the state party to the conflict is alone a party to these conventions, and therefore it must automatically implement the obligations contained in Article Three common to these conventions, based on Article (26) of the Vienna Convention on the Law of Treaties which refers to "the obligation of any treaty in force for its parties, and they must implement it in good faith," because the contracting state has voluntarily become a party to the treaty, and based on this consent, it is bound by the provisions contained therein .<sup>18</sup> As for the rebel party in the armed conflict, the matter is somewhat different, as it is not a contracting party to the Geneva Conventions of 1949, so is it bound, like the state party to the conventions, to apply the provisions of Common Article Three?

If we refer to the text of Common Article Three, which indicates that (if an armed conflict not of an international character takes place in the territories of one of the High Contracting Parties, each party to the conflict is obligated to apply, as a minimum, the following provisions ....), we note that this text has stated The phrase (each party to the conflict), which means that it was addressed in the discourse to each of the parties to the conflict, as it allowed the rebellious party to the government to enter into international ties without requiring it to be an international legal entity. Also, Common Article Three is one of the most general texts contained in the Geneva Conventions, as it includes humanitarian principles. Therefore, it includes provisions that rise to the level of customary international law. Therefore, the provisions contained in Common Article 3 are considered customary law and represent the minimum humanitarian principles. , Which is not permissible for the warring parties to violate, and then the rebels must abide by it, and the International Criminal Tribunal for Rwanda went on in the ruling (Akaysu) that Common Article

Three reflects the principles of customary law and has acquired the status of customary international law, so it is binding During any internal armed conflict .<sup>19</sup>

The International Court of Justice confirmed this in its decision issued on (6/27/1986) in the case of Nicaragua and the United States, that the customary rules contained in the multilateral agreements are applied independently, and that the break from an international obligation will not affect the obligations of the parties under the principles of the law of nations, Human laws and requirements of public conscience .<sup>20</sup>

#### **Fourth requirement**

##### **Assessment of commonplace Article third**

Each prison system, whether worldwide or inner, can't be objectively integrated, as it is usually marred with the aid of deficiency and inaccuracy in some of its provisions, and this applies to the commonplace article third of the four Geneva Conventions of 1949, as it revealed the sensible fact of non-worldwide armed conflicts. After the access into the pressure of the not unusual Article three, some strengths and weaknesses were encountered at some point of the implementation phase.

We will try to make clear this through sections. within the first section, we cope with the benefits of the 1/3 not unusual article, and we commit the second phase to explain the disadvantages of the 1/3 commonplace article:

#### **First department**

##### **The positives of the third common article**

Commonplace Article third established a criminal device for inner armed battle situations and opened an extensive hole within the wall of countrywide sovereignty with the aid of setting up the precept of the criminal application of the requirements of humanity, every time there's a non-global armed war as a felony duty, and if its application depends on the reputation of the kingdom in which the armed battle applies. <sup>21</sup>

It set up a prison basis for the intervention of neutral humanitarian businesses, along with the worldwide Committee of the crimson cross or another impartial humanitarian organization, and those projects were rejected before the adoption of the Geneva Conventions of 1949, due to the fact they represent interference in the internal affairs of states which is not permissible. other, it accepted the events to the struggle to work to put into effect all or a number of the conventions (the four Geneva Conventions of 1949), by concluding special agreements to move past the minimum basic humanitarian concepts contained in not unusual Article three.<sup>22</sup> finally, it becomes clear from their provisions that they reflect the criminal cost of the provisions of normal global regulation, follow to internal armed conflicts as part of an international treaty, prohibit many illegal practices and movements beneath



the regulations of the regulation of warfare, and provide simple safety for all people who do not take part directly in hostilities and are suffering from her .<sup>23</sup>

## **The second department**

### **Downsides of commonplace Article third**

Regardless of the crucial blessings that characterize the common 0.33 article, but it was fallacious in a few areas and is marred through many deficiencies and deficiencies, and we will explain the most critical of these defects as follows:

1. commonplace Article 3 avoided offering an accurate definition of non-global armed war, for the cause of making use of its provisions in a clear, unambiguous and unambiguous way, and as a result of this it left the states events to the armed struggle wide discretionary energy in adapting whether certain facts represent a war Or not, armed warfare isn't always global, and this poses a prime challenge to the software of not unusual Article three, due to the fact states do not understand the lifestyles of an armed struggle on their territories unless their interest so requires .<sup>24</sup>

But, we accept as true with that the reluctance of not unusual Article 3 to define a non-worldwide armed war is a high-quality depend, because it did no longer specify the elements and types of the struggle, and consequently the stated article would be greater huge and flexible if as compared to the second one additional Protocol of 1977.

2. Common Article three got here without any legal guarantees that would ensure the implementation of its provisions because the important global oversight become absent for the motive of verifying that the government against which the insurrection erupted complied with the international duties it had been entrusted with, which endorsed the present authorities to arbitrarily adopt an armed battle to Its territory is according with the idea of commonplace Article 3, via its claim that there is no non-worldwide armed warfare at times, and that it has fulfilled its global obligations associated with the application of not unusual Article three at other times .<sup>25</sup>

3. The international safety assured by commonplace Article three became constrained most effective to people who do not take an immediate component within the hostilities, in addition to individuals who left or were taken out of the battlefield, and because of this it does now not apprehend individuals who take part in the hostilities as a combatant, irrespective of which party They belong to it, and different conditions that do not upward push to the level of civil battle .<sup>26</sup>

## **Conclusion**

After our study, we reached a set of findings and recommendations that can be summarized as follows:

1. The text of Common Article Three of the Four Geneva Conventions of 1949, which referred to the term armed conflicts, not of an international character, did not

define with any precise definition the armed conflicts, not of an international character, or lay down the conditions for their establishment.

2. Article three common to the four Geneva Conventions of 1949 is the first official international organization that subjected non-international armed conflicts to some degree of international regulation. Cases of violence, whether between government forces and dissident or rebel armed groups, or between these armed groups, and which have the characteristics of a collective character and a minimum of organization, are armed conflicts of a non-international character.

3. We also found that this article was of great importance, represented in the possibility of an agreement between the warring parties to implement all or some of the provisions contained in the four Geneva Conventions of 1949, and this in itself is a fundamental motivation in developing the rules of international humanitarian law, because it expresses the desire of the conflicting parties in the need to protect the victims of the conflict between them, especially civilians.

4. We found that Common Article Three is binding on all parties to the armed conflict, so that each party must respect the provisions contained in this article, and ensure its respect by its armed forces operating under its control, without any distinction between the obligations of states and those that it is the responsibility of armed groups, regardless of whether or not the state party to the conflict is a party to the Geneva Conventions of 1949, based on the customary character of this article.

## References

1. Aso Karim, State Criminal Responsibility for War Crimes in Internal Armed Conflicts, Iraq as a model, first edition, Mukriani Foundation for Research and Publishing, 2007.
2. Hazem Muhammad Atlam, Fundamentals of Public International Law - Persons of International Law -, First Edition, Dar Al-Nahda Al-Arabiya, Cairo, 2001.
3. Salah El-Din Amer, An Introduction to the Study of Public International Law, Dar Al-Nahda Al-Arabiya, Cairo University Press, 2007.
4. Riad Saleh Abu Al-Atta, The Prisoners' Case in the Light of International Humanitarian Law, The New University House, Alexandria, 2009.
5. Sherif Atlam, The role of the International Committee of the Red Cross in developing and developing the rules of international humanitarian law, Cairo, 2010.
6. Sherif Atlam, The role of the International Committee of the Red Cross in developing and developing the rules of international humanitarian law, Cairo, 2010.
7. Salah El-Din Amer, Armed Popular Resistance in Public International Law, Arab Thought House, Cairo, without a year of printing.
8. Amer Al-Zamali, Introduction to International Humanitarian Law, Arab Institute Publications, for Human Rights, Tunis, 1997.
9. Ali Hamid Al-Obaidi, An Introduction to the Study of Public International Law and International Humanitarian Law, The Legal Library, Baghdad, 2006.
10. Ali Sadiq Abu Haif, Public International Law, Al Ma'arif Institute, Alexandria, without a year of printing.
11. Ali Mukred Al-Awadi, International Organizations and Human Rights, Al-Sadiq Center Library, Sana'a, 2005.

- 12.Omar Saadallah, International Humanitarian Law, Documents and Opinions, First Edition, Majdalawi House, Amman, 2002.
- 13.Muhammad Hamad Al-Asbali, Prisoners of War Legal Center, Al Maarif facility, Alexandria, 2005.
- 14.Nizar Al-Anbaki, International Humanitarian Law, first edition, Wael Publishing House, Amman, 2010.
- 15.Essam Al-Attiyah, Public International Law, National Library, Baghdad, 1987.
- 16.Ali Hamid Al-Ubaid, An Introduction to the Study of Public International Law and International Humanitarian Law, The Legal Library, Baghdad, 2006.
- 17.The International Committee of the Red Cross, International Humanitarian Law - An answer to your questions, Sixth Edition, Cairo, 2007.
- 18.Muhammad Ghazi Nasser, Humanitarian Intervention in Light of Public International Law, First Edition, Al-Halabi Juridical Publications, 2010.
- 19.Mahmoud Sherif Bassiouni, The Customary Framework for International Humanitarian Law (Interventions, Gaps, and Ambiguities), research published in the book, International Humanitarian Law, a guide for national application, Dar Al-Mustaqbal Al-Arabi, Cairo, 2003.
- 20.Al-Insani Magazine, Protection of Civilians in Situations of Armed Conflict, published by the International Committee of the Red Cross, Issue 21, Cairo, 2002.
- 21.Ahmed Ghazi Fakhri Al-Harmzi, International Criminal Court for the Former Yugoslavia, Master Thesis, College of Law, University of Babylon, 1997.
- 22.Khaled Samman Jawad, Civilian Protection in Times of Non-International Armed Conflicts, PhD thesis, College of Law, University of Baghdad, 2005.
- 23.Salah Jabir Al-Busaisi, The Role of the International Court of Justice in Developing the Principles of International Humanitarian Law, PhD thesis, College of Law, University of Baghdad, 2006.
- 24.Brooklyn Journal of international law, War crimes in internal armedconflicts, Brooklyn law school, Cambridge university press, Number 1.2005.
- 25.Schindler and Jiri Tomen, the laws of Armed conflict, Henry Dunant institute Geneva, 1998.
26. An international committee of the Red cross, How is the Term "Armedconflict", Defined in International Humanitarian Law, Opinion paper, March 2008.