

**The Concept of "Attack" in Armed Conflicts:
A Study of the Ntaganda Case before the
International Criminal Court
(Original Research)**

Aghil Mohammadi *

Amir Abbas kiani **

Masoud Zamani ***

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Extended Abstract

Armed conflicts are battlegrounds where opposing parties strive for dominance using various military and non-military strategies. The use of lethal force often determines the success or failure of each side. International Humanitarian Law (IHL) seeks to regulate these acts by imposing restrictions on methods of warfare and standardizing the conduct of belligerents to mitigate the harm caused by war. One of the most crucial tactics employed in combat is the "attack"; a method through which parties aim to inflict harm and secure victory.

The International Committee of the Red Cross (ICRC) first introduced the term "attack" in its 1956 *Draft Rules for the Limitation of the Dangers incurred by the Civilian Population in Time of War*, defining it as "violent acts against the enemy by armed forces, whether offensive or defensive." This concept was further codified in Article 49(1) of Additional Protocol I (1977) to the Geneva Conventions, where an attack is described as "acts of violence against the adversary, whether in offense or defense."

Despite these definitions, ambiguities persist concerning the scope of an attack, its legal boundaries, and how it is applied in armed conflicts. Key questions include: How do the manner, intent, and consequences of a violent act influence its classification as an attack? Can an act still qualify as an

* Corresponding Author, Assistant Professor of International Law. Department of Public and International Law. School of Law and Political Sciences. Shiraz University, Shiraz, Iran, mohammadiaghil10@yahoo.com

** L.L.M in International Law, School of Law and Political Science, Shiraz University, amirkiya12@gmail.com

*** Assistant Professor of International Law, Department of Political Science, Faculty of Art, University of British Columbia - Vancouver, BC, mzaman06@mail.ubc.ca



attack when the perpetrator has already gained control over the adversary's persons or property, contrary to the prevailing view that an absence of hostile control is a key condition for defining an attack?

These issues were central to the 2019 *Ntaganda* case before the International Criminal Court (ICC). The Trial Chamber adopted a narrow interpretation, determining that violent acts against a hospital and church in the Democratic Republic of the Congo could not be classified as attacks due to Ntaganda's control over the sites. In contrast, Prosecutor Fatou Bensouda argued for a broader interpretation, considering the violent acts as attacks regardless of control.

This article employs a descriptive-analytical approach, examining Article 49(1) alongside the *Ntaganda* case to explore the definition of "attack" in armed conflicts.

It concludes that the drafters of Additional Protocol I intended a narrow interpretation of "attack," applying only to certain behaviors that meet the specific criteria of Article 49. Expanding this interpretation could lead to the misclassification of behaviors such as looting or property confiscation as attacks, which would be inconsistent with the established principles of IHL. Such actions should be regarded as separate criminal offenses.

However, the broad phrasing of "acts of violence" in Article 49 provides interpretive flexibility, enabling a wider range of actions to be categorized as attacks. Modern interpretations often prioritize the harmful outcome of a violent act when determining whether it constitutes an attack.

The article ultimately asserts that achieving the goals of IHL, particularly civilian protection, requires evaluating acts of violence based on their type, result, and the perpetrator's intent. Any act, whether involving kinetic or non-kinetic force, that aims to directly harm the adversary, even without resulting damage, should be classified as an attack. Moreover, the absence of hostile control over the opposing party's persons or property remains a key criterion.

Finally, the article argues that "attack," as defined in Article 8(2)(e)(iv) of the ICC Statute, aligns with the general understanding set out in Article 49(1). While the Prosecutor in the *Ntaganda* case sought a more specific interpretation regarding the protection of cultural property and hospitals, the nature of the targeted property should not affect whether an act is deemed an attack, especially as other provisions in Article 8 criminalize actions such as property destruction and looting.

Keywords

Armed Conflicts, Article 49(1) of Additional Protocol I, Attack, Act of Violence, Control, Ntaganda Case, International Criminal Court

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