

## The Legal Definition of War

*Kelvin Lester K. Lee*

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Part I of this Article starts by laying the background that waging war is an inherent prerogative of sovereign states. As a consequence, world history is replete with accounts of violence and destruction wreaked by wars. Even religion sanctions resolution of disputes through armed conflicts. However, as much as suffering and devastation is the obvious result of wars, the same certainty cannot be had with regard to its legal definition under international law.

Such subjectivity in the legal definition of war can be attributed to the volatility of international law which leads to constant changing of classic war doctrines. Furthermore, states, in recent practice, have been engaging in armed combat, to achieve various political agenda, without admitting the existence of war. Thus, the Author justifies its significance of proposing a legal definition of war by establishing the latter's technicality and the triggering of the operation of international law governing the same. In other words, armed conflicts falling under a legal definition of war will call for the application of international law standards, sanctions, or even approval. Therefore, a study and proposal of a legal definition of war is necessary.

Part II, by and large, discusses the State of War Doctrine. Essentially, under said doctrine, a state, in the international arena, is deemed engaged in war, whenever there is a formal declaration to such effect, whether from the offensive or the defensive side. But modern day practice of engaging in armed combats renders the mentioned doctrine obsolete. The presence of war cannot now be determined by the subjective will of one of the parties due to the trend of refusal of states to recognize the presence of war despite the existence of armed conflict. Consequently, it is claimed that it is a settled norm today that under international law, a declaration of war need not be made for the latter's existence to be recognized.

Part III sets out to draft the legal definition of war. It begins with a discussion of the different treaties governing war or armed conflicts. Then, it tackles international law customs on war, both of the past and the modern. Customary international law on war underwent a metamorphosis only in the 20th century, which prohibited the use of force and thus impliedly, a prohibition against war. In order to ascertain the characteristics of war, The Author also surveys significant conflicts of the state practice of war. International and municipal pivotal cases provide for a rich analysis on the

subject matter of war. Lee also considers the characteristics of war towards an applicable definition of war.

Part IV arrives at a legal definition of war using Professor Detter's work as a framework and adding to this other elements that have been deemed to imply that a state of war exists. These additional elements were culled from jurisprudence in international law, statutory construction and the meanings of words, and other sources of international law such as conventions and treaties. The legal definition the Author arrives at is broken down as follows: War is (1) a sustained armed conflict; (2) that threatens the existence of the government of a state or an equivalent juridical entity; (3) which involves protracted and intense armed violence; (4) between States and/or organized belligerent factions; and (5) consisting of combatants that answer to a responsible military or non-military command.

Part V is an application of the Author's proposed legal definition of war in a series of conflicts. Under the definition, Israel's invasion of Lebanon in 2006 may be considered a war because it met all the criteria of the definition. America's War on Terror did not meet the initial requisites of the definition and the Author concluded that America is not "at war" with terrorism. However, the armed conflicts entered into by the U.S. in Afghanistan and in Iraq complied with all the requisites of the definition such that even if there was no official or subjective declaration of war, by applying the proposed definition, it can be reasonably inferred that a state of war did exist in both situations.

Finally, the Author brings home the proposed definition and applies it to the Philippines' conflicts with Muslim separatist groups and with the Communist Party of the Philippines. Neither conflict passed the requisites of the proposed definition and, therefore, no state of war existed or exists in either case. In sum, the case studies demonstrate that the proposed definition can be used to objectively determine if a state of war exists in a conflict and the corresponding legal effects of a state of war would apply.

The Author concludes that international law must adapt to the creation of a legal definition of war because to do otherwise could possibly cripple the legalities of a state of war. The first step in any academic discussion is to arrive at a definition and the lack of a legal definition of war in international law leads to ambiguity that hinders the application of the legal effects of war. Lee argues that defining war in its legal sense may help to end war.

As an epilogue, the Author recommends how the his proposed definition might be applied in international law by codifying such a definition in the same manner that the definition of aggression was codified and ratified by the UN General Assembly. The Article ends with a Draft Resolution on the Definition of War.