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Há um conflito armado não internacional no Rio de Janeiro?

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Recent news from Rio de Janeiro are patently not good. A series of reports published by, among others, international non-governmental organizations which work with human rights and international humanitarian law (IHL) claim that violence levels in Rio de Janeiro are increasing¹. The reports mention unlawful killings committed both by the police and the organized crime, especially in peripheral areas such as Favelas. The situation has recently gotten worse as the president called for a military intervention in Rio de Janeiro state and also sanctioned a law “that transfers to the Military Court the ability to try human rights violations and crimes against life, such as killings and extrajudicial executions, carried out by military personnel against civilians”². The problem is that a Military Tribunal judging military personnel could be biased in favor of possible violations. On the subject, the Minister of Justice³ and also representatives of the Brazilian Military Police⁴ have used the term “war” in its political sense. This scenario is the reason for this research, which tries to answer the question as to whether this conflict between governmental forces, such as the Military Police and the Army, and the organized crime would amount to a non-international armed conflict (NIAC). This question can only be answered through another series of questions, such as (a) who decides whether a war – in its juridical sense, a NIAC – is taking place?, (b) who would be the parties to this possible conflict?, (c) what are the criteria used to decide on the existence of a NIAC? How does the threshold with regards to (i) the level of violence and (ii) the level of organization of the non-state armed group(s) work and apply to the case?. Additionally, this examination instigates other questions related to the consequences of a potential configuration of a NIAC in Rio de Janeiro, such as which (international) legal framework would be applicable to the scenario, e.g. the four Geneva Conventions of 1949 and their Additional Protocols.

This research gathers (a) case law from the relevant international tribunals such as the International Criminal Court, the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and other Special Tribunals, specifically on the examination of NIACs, as well as (b) relevant commentaries from the specialized doctrine linked to the subject. To help with the presentation of facts, local and international media reports are used, as well as important data from national and international non-governmental organizations which work with humanitarian and human rights law.

¹ Amnesty International Report 2017/2018, Brazil section. Available at <<https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>>. Accessed on June/2018.

² Amnesty International, AMR 19/7340/2017 Brazil. Available at <<https://www.amnesty.org/download/Documents/AMR1973402017ENGLISH.pdf>>. Accessed on June/2018.

³ João Paulo Chaleaux, “Ministro diz que Rio está em guerra. Quais seriam as regras, se estivesse”, **Nexo Newspaper** (February 20th 2018). Available at <<https://www.nexojornal.com.br/expresso/2018/02/20/Ministro-diz-que-Rio-est%C3%A1-em-guerra.-Quais-seriam-as-regras-se-estivesse>>. Accessed on June/2018.

⁴ María Martín, “Afinal, o Rio de Janeiro está ou não em guerra?”, **El País Newspaper** (Brazil) (August 18th 2017). Available at <https://brasil.elpais.com/brasil/2017/08/17/politica/1503007115_454270.html>. Accessed on June/2018.