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RIO DE JANEIRO, WAR ON ORGANIZED CRIME, IHL AND IHRL: WHAT CAN WE DO?

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ABSTRACT

Recent news about violence in the city of Rio de Janeiro are certainly rough. A series of reports published by international non-governmental organizations which work with international human rights law (IHRL) and international humanitarian law (IHL) claim that violence levels in Rio de Janeiro are currently rising. Those reports mention unlawful killings committed both by the State and (members of) the organized crime, especially in peripheral areas such as *favelas*. The situation in Rio de Janeiro (Situation) has recently gotten more violent as former president Michel Temer called for a military intervention in the state of Rio de Janeiro between February and December, 2018, giving the Brazilian army a “*carte blanche*” (“*carta branca*”). When commenting the subject, the former Minister of Justice and also representatives of the Brazilian Military Police have used the term “[civil] war” to describe the Situation. Now that the intervention is officially over, the newly elected president Jair Bolsonaro and governor of Rio de Janeiro Wilson Witzel want to continue fighting criminal organizations using aggressive rules of engagement. The use of this expression by Brazilian public authorities raises the question as to whether Rio de Janeiro is, in fact, “in war” or, more technically put, whether the Situation amounts to a non-international armed conflict (NIAC), as defined by the specialized doctrine on international humanitarian law, by international tribunals and by other international entities such as the United Nations Security Council. We proceed on the following order: first, (a) we briefly describe what is the current status of the Situation in Rio de Janeiro; second, (b) we expose what are the criteria generally accepted to describe a NIAC as such; third, (c) we discuss whether the Situation fits the aforementioned criteria and further discuss possible problems related to the classification of the Situation as a NIAC under IHL and IHRL, besides using a comparison with other similar case-studies such as Mexico and Colombia; fourth, (d) we discuss the opinion of interviewed experts; fifth, (e) we give our opinion as to whether IHL shall be applied to the Situation and suggest alternatives to the use of shoot-to-kill policing policies and military tactics in Rio de Janeiro. As for the methodology, we tried to use data and materials produced by Brazilian authors or authors who work in Brazil in an attempt to enhance and further develop the national literature on the subject. We proceeded as follows: (i) on the presentation of the Situation, we used local and international media reports, as well as data from national and international non-governmental organizations which work with humanitarian and human rights law in Brazil, starting from 1990 until today, with a preference for organizations which are present at Rio de Janeiro; (ii) on the selection of literature, we used primarily foreign authors simply because the literature on IHL and IHRL in Portuguese is comparatively scarce. We tried to collect works produced by authors with at least a PhD degree, with a special highlight to those recommended by a kind research assistant¹ from the Justus Liebig University in Giessen, Germany, who also teaches IHL. Citations from those selected works led to other important sources for this research; (iii) on the selection of jurisprudence from international tribunals, we analyzed cases which are frequently brought up by authors and tried to find related content within the Inter-American Human Rights system; (iv) on the interviews with specialists on the area, (I) first, we used the *Lattes* curricula platform to assess the most relevant researchers who teach IHL-related classes and/or predominantly research on the area within Brazil and (II) we contacted those selected researchers and, upon their agreement to participate, exchanged a series of questions and answers through e-mails.

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