

Is Rio de Janeiro preparing for war? Combating organized crime versus non-international armed conflict

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Abstract

The idea that Rio de Janeiro has been plunged into an actual “war” against organized crime is widely discussed and is supported by an ever-increasing number of people in Brazil. Not surprisingly, such discourse has led to less protection for the civilian population, particularly in the so-called favelas, while allowing security forces to carry out operations with even greater relative impunity. This article argues that although urban violence in Rio de Janeiro is indeed a serious problem, it does not reach the threshold required to be considered a non-international armed conflict.

Keywords: non-international armed conflict, IHL, organized crime, police, armed forces.

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Introduction

Over the past decade, the idea that the city of Rio de Janeiro has been plunged into a “war against organized crime” has gained traction amongst an ever-increasing

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number of Brazilian officials, especially from the executive and Armed Forces. The motivation behind this emerging trend is twofold: it aims to lower international human rights standards when carrying out security operations targeting organized crime in Rio de Janeiro's so-called *favelas* (shanty towns), and to shield security forces from prosecution when they use excessive force against the *favelas'* residents.

In Rio de Janeiro, urban violence stemming from organized crime is an integral part of daily life, and for many, it seems like an insurmountable challenge. Faced with strong, well-equipped and well-organized criminal groups, security forces have failed to stand up to the task at hand and instead have decided to fight extreme violence with extreme violence, with its obvious consequences to the population.

Those who support the concept of an ongoing “war” in Rio de Janeiro back their argumentation in a rather unstructured way, based on a number of “criteria” which can include the death toll, the calibre of the armaments used by the organized criminal groups, and the areas which they control.

Given the failure of the police to tackle organized crime in Rio de Janeiro, the federal government has deployed the Armed Forces to the city to support, and sometimes replace, the work of the police. In peacetime, the Brazilian Constitution allows for such deployment in special circumstances.¹

Fuelled by mounting militarized rhetoric from government officials and a section of the media, many *cariocas* (residents of Rio de Janeiro) have shown support for the use of lethal force against organized criminal groups and see it as an acceptable alternative to proper law enforcement operations. This warmongering narrative is particularly worrisome when the war expression “collateral damage” is carelessly used by security forces to try to justify extrajudicial killings.

While some decision-makers assert that the situation in Rio de Janeiro amounts to a non-international armed conflict (NIAC), others argue that international human rights standards should be lowered while combating organized crime in the *favelas*, which these criminal groups have elected to use as their base.

This article will argue that although violent crime in Rio de Janeiro is indeed a serious problem calling for a robust State response, the threshold required for the situation to be qualified as a NIAC is not met.

Welcome to Rio De Janeiro: The daily life of *cariocas*

The word “contrast” could very well define the so-called “Marvellous City”, as Rio de Janeiro is known to Brazilians and visitors alike. The city is a combination of sea,

1 Constitution of the Federative Republic of Brazil, 5 October 1988 (Brazilian Constitution), Art. 142; Complementary Law 97/1999, modified by Complementary Law 117/2004 and Complementary Law 136/2010, available at: www.planalto.gov.br/ccivil_03/leis/lcp/lcp97.htm (all internet references were accessed in April 2023).

mountains, lagoons and the largest urban tropical forest in the world.² For the population, however, this contrast also translates to unfair income distribution and access to housing, transport, health care, sanitation, education and security, and is better defined as plain inequality.³

The city of Rio de Janeiro has a land area of 1,200,329 square kilometres and an estimated population of 6,775,561,⁴ of which 45.6% are male and 54.4% are female.⁵ The vast majority of *favela* residents are of African descent.^{6,7}

A *favela* is a cluster of dwellings that are disorderly, inadequately built, and lacking in access to essential public services.^{8,9} Rio de Janeiro's largest *favelas* are found on the hillsides and are characterized by precarious housing conditions, basic sanitation and little to no access to security, health care and education.¹⁰

There are 1,074 *favelas* in Rio de Janeiro.¹¹ Their combined population is estimated at 1,434,975, approximately 22% of the city's population.¹² Among the largest and best-known *favelas* are Rocinha, with 69,356 inhabitants; Rio das Pedras, with 54,793 inhabitants; Jacarezinho, with 37,839 inhabitants; the cluster of seventeen *favelas* called Complexo da Maré, with 129,770 inhabitants; and another cluster of thirteen *favelas* called Complexo do Alemão, with 69,143 inhabitants. Although the average demographic density of the city is 5,556 inhabitants per square kilometre,¹³ the region with the highest demographic density is in Rocinha, with 48,258 inhabitants per square kilometre.¹⁴

In terms of security, the more affluent and touristic areas of the city enjoy ostensive policing, a method of employing the police force in public security activities, strategically developed to generate visual impact and provide a deterrent effect in which police are identified at a glance, either by the uniform or

2 See Unidades de Conservação no Brasil, "Parque Estadual da Pedra Branca", available at: <https://uc.socioambiental.org/pt-br/arp/1288>; Unidades de Conservação no Brasil, "Parque Nacional da Tijuca", available at: <https://uc.socioambiental.org/pt-br/arp/996>.

3 See Casa Fluminense, "Inequality Map", 2020, available at: http://casafuminense.org.br/wp-content/uploads/2020/07/mapa-da-desigualdade-2020-final_compressed.pdf.

4 2021 data from the Brazilian Institute of Geography and Statistics (Instituto Brasileiro de Geografia e Estatística, IBGE), available at: www.ibge.gov.br/cidades-e-estados/rj/rio-de-janeiro.html.

5 2019 data from the Data.rio website of the Pereira Passos Municipal Institute of Urbanism, available at: www.data.rio/pages/rio-em-sntese-2.

6 More information on Afro-Brazilians can be found on the Minority Rights Group International website, available at: <https://minorityrights.org/minorities/afro-brazilians/>.

7 See above note 3. See also Will Carless, "A Brazilian Student Mapped Out Rio's Racial Segregation. What He Found Was Startling", *The World*, 5 November 2015, available at: <https://theworld.org/stories/2015-11-02/brazilian-student-mapped-out-rios-racial-segregation-what-he-found-was-startling>.

8 Definition given by the IBGE.

9 In Rio de Janeiro, the word "community" has been used to talk about these spaces in order to include their aspect of conviviality and reduce the immediate association between *favelas* and violence.

10 See IBGE, "Favelas resistem e propõem desafios para urbanização", 20 February 2018, available at: <https://agenciadenoticias.ibge.gov.br/agencia-noticias/2012-agencia-de-noticias/noticias/20080-favelas-resistem-e-propoem-desafios-para-urbanizacao>.

11 See above note 5.

12 See above note 5.

13 See above note 5.

14 See above note 5.

by the equipment, armament or vehicle.¹⁵ In some *favelas*, police presence is haphazard and is often limited to patrolling the *favela*'s main entrance.¹⁶

Organized criminal groups are embedded in Rio de Janeiro's *favelas*, and there are two types of *favelas*: those controlled by drug traffickers and those controlled by private militia groups (akin to mafia-style criminal operations). Violent crime rates are highest in the *favelas*, with frequent exchanges of fire either between rival factions fighting for control or between criminal groups and security forces.¹⁷

The feeling of insecurity is much greater among *favela* residents than among those living outside the *favelas*.¹⁸ Exchanges of fire in such densely populated areas frequently result in casualties and serious bodily harm, including to children, and interruptions of access to already scarce public services such as schools and hospitals.¹⁹ Criminal factions entice and arm children and adolescents to work for them, especially on drug trafficking, and may threaten businesses and residents considered to be non-compliant with the "law" they impose in the *favelas* they control.²⁰ Both drug traffickers and militia groups feed a very well-oiled corruption scheme of officials, which is single-handedly the main obstacle to confronting organized criminal factions in Rio de Janeiro.²¹

15 See State of Santa Carina Military Police, *Ostensive Police Techniques Manual*, 2011, available at: www.scribd.com/document/354007014/Manual-de-Policimento-Ostensivo.

16 According to a report by the Office of the Prosecutor of the State of Rio de Janeiro, the pattern of police action prioritizes the fight against drug trafficking and the fight in the *favelas*, instead of preventive actions such as patrolling criminal spots and ostensive policing. See Centro de Pesquisas do Ministério Público do Estado do Rio de Janeiro, *Letalidade policial no Rio de Janeiro em 10 pontos*, 26 September 2019, available at: www.mprj.mp.br/documents/20184/540394/letalidade_policial_no_rio_de_janeiro_em_10_pontos_1.pdf.

17 See below note 20; Grupo de Estudos dos Novos Ilegalismos (GENI), *Police Killings*, Fluminense Federal University, May 2022, available at: https://geni.uff.br/wp-content/uploads/sites/357/2022/05/2022_Relatorio_Chacinas-Policiais_Geni_ALT2.pdf.

18 See below note 20. See also Rafael Soares, "Favelas têm taxa de homicídios por tiros três vezes maior do que as demais áreas do Rio", *Extra*, 21 August 2017, available at: <https://extra.globo.com/casos-de-policia/favelas-tem-taxa-de-homicidios-por-tiros-tres-vezes-maior-do-que-as-demais-areas-do-rio-21728048.html>.

19 See International Committee of the Red Cross (ICRC), "Programa Acesso Mais Seguro", 7 July 2016, available at: www.icrc.org/pt/document/o-programa-acesso-mais-seguro.

20 See Luke Dowdney, *Children of Traffic*, Federal University of Rio de Janeiro, 2003, available at: http://necvu.com.br/wp-content/uploads/2020/11/DOWDNEY_Criancas-do-Trafico-2003.pdf; Favelas Observatory, *Rotas de fuga*, 2009, available at: https://of.org.br/wp-content/uploads/2016/03/RotasdeFuga_Pesquisa.pdf; Observatório Legislativo da Intervenção Federal na Segurança Pública do Estado do Rio de Janeiro (OLERJ), "Grupos criminosos armados no estado do Rio de Janeiro", available at: <http://olerj.camara.leg.br/retratos-da-intervencao/grupos-criminosos-armados-no-estado-do-rio-de-janeiro>; Luiza Franco, "Maioria dos jovens do RJ entra no tráfico para ajudar a família", *Globo.com*, 31 July 2018, available at: <https://epocanegocios.globo.com/Brasil/noticia/2018/07/jovens-do-rj-entram-no- trafico-para-ajudar-familia-e-ganhar-muito-dinheiro.html>.

21 See Fluminense Federal University, *The Expansion of Militias in Rio de Janeiro: Use of State Force, Housing Market and Armed Groups*, May 2021, available at: https://geni.uff.br/wp-content/uploads/sites/357/2021/04/boll_expansao_milicias_RJ_v1.pdf. See also Andréa Ana do Nascimento, "A corrupção policial e seus aspectos morais no contexto do Rio de Janeiro", *Brazilian Journal of Public Security*, Vol. 5, No. 9, 2011, available at: www.forumseguranca.org.br/storage/revista_09.pdf; Henrique Coelho and Márcia Brasil, "PMs investigados pelo MP criaram no WhatsApp o grupo 'Os Mercenários', com imagem do filme", *Globo.com*, 26 May 2022, available at: <https://g1.globo.com/rj/rio-de-janeiro/noticia/2022/05/26/pms-investigados-pelo-mp-criaram-no-whatsapp-o-grupo-os-mercenarios-com-imagem-do-filme.ghtml> (collective interview with the Special Task Force in Combating Organized Crime of the Office of Public Ministry of the State of Rio de Janeiro).

The “militarization” of security: The escalation of warmongering rhetoric and the role of the Armed Forces

Public security is a duty of the State and must be provided by the police at the federal and regional levels.²² However, the possibility for the Armed Forces to undertake law and order roles in peacetime is prescribed in the Brazilian Constitution²³ under exceptional circumstances and under specific legislation.²⁴ The decision to deploy the military domestically is the responsibility of its supreme commander, the president, on his own initiative or at the request of the Supreme Court, Senate or Lower House,²⁵ and should only occur when the chief of the Executive Branch (at federal or regional levels) formally recognizes that law enforcement actions carried out by the police are unavailable, non-existent, or insufficient.²⁶

The participation of the Brazilian Armed Forces in the United Nations Stabilization Mission in Haiti (MINUSTAH) from 2004 onwards paved the way for renewed attempts by officials, including within the Armed Forces, and politicians to justify the use of military personnel in law enforcement operations instead of the police.²⁷ The image presented to Brazilians of troops successfully providing a stable and safe environment in Haiti²⁸ made the environment favourable for the use of the military in the fight against domestic crime. The message was that the Armed Forces could do in the *favelas* what they were doing in Haiti; to a layperson’s eye, law enforcement operations look similar to those carried out in countries such as Haiti.²⁹

22 Brazilian Constitution, above note 1, Art. 144.

23 *Ibid.*, Art. 142.

24 Complementary Law 97/1999, above note 1.

25 *Ibid.*, Art. 15, para. 1.

26 *Ibid.*, Art. 15, para. 3.

27 The defence minister of Brazil stated in 2008 that the military had the expertise to deal with urban problems considering the Army’s operations in Haiti, where civilians mingle with criminal gangs, and that he intended to create a statute for the Armed Forces to act in *favelas*. “Jobim quer criar estatuto para que as Forças Armadas atuem em favelas”, *Extra*, 14 December 2010, available at: <https://extra.globo.com/noticias/brasil/jobim-quer-criar-estatuto-para-que-as-forcas-armadas-atuem-em-favelas-526306.html>. See also Natali Hoff and Ramon Blanco, *From Haiti to Rio de Janeiro and Vice Versa: Pacification as Peacebuilding in a Brazilian Way*, paper presented at the 44th Meeting of the National Association of Graduate Studies and Research in Social Sciences, 2020, available at: <https://rbed.abedef.org/rbed/article/view/75254>; Najla Nassif Palma, “Peacekeeping (in Haiti) and Justice (in Brazil): A Reflection on the Impact of MINUSTAH on the Brazilian Military Legal System”, in Instituto Igarape, *Brasil e Haiti: Reflexões sobre os 10 anos da missão de paz e o futuro da cooperação após 2016*, January 2015, available at: <https://igarape.org.br/wp-content/uploads/2015/01/Artigo-estrategico-13-Minustah-final3-1.pdf>.

28 In 2017, the Brazilian chancellor referred to the Brazilian participation in Haiti as a success story (“Missão da ONU no Haiti foi ‘sucesso’, afirma Aloysio Nunes”, *Estado de Minas*, 2 June 2017, available at: www.em.com.br/app/noticia/internacional/2017/06/02/interna_internacional,873845/missao-da-onu-no-haiti-foi-sucesso-afirma-aloysio-nunes.shtml); the Brazilian Army organized an international symposium called “Brazil in Haiti: A Success Story 2004–2017” (Luiz Padilha, “Simpósio Internacional ‘Brasil no Haiti, um caso de sucesso’”, *Defesa Aerea & Naval*, 9 October 2017, available at: www.defesaareanaval.com.br/aviacao/simposio-internacional-brasil-no-haiti-um-caso-de-sucesso); and the Army and the think tank Instituto Igarape organized the publication *Brazil’s Participation in MINUSTAH (2004–2017)*, issued in November 2017 (available at: <https://igarape.org.br/wp-content/uploads/2018/03/Brazils-Participation-in-MINUSTAH-2004-2017.pdf>).

It was in this context that, in 2004 and 2010, changes were made to Complementary Law 97/99, regarding the organization, preparation and deployment of the Armed Forces.³⁰ The use of troops in law enforcement operations became possible when security forces are considered unavailable, non-existent or insufficient for the regular performance of their mission.³¹

In December 2010, these legislative changes, linked with the existing political alignment in the spheres of government, gave rise to an unprecedented agreement between the Federal Executive Power (the Union) and the state of Rio de Janeiro, allowing the use of the Armed Forces to fight crimes in the city's *favelas*.³² The role of the military acting in a domestic environment was also reinforced by major events in Rio de Janeiro at which troops provided security.³³ Since then, the line between the distinctive roles of the police and the military in law enforcement has been blurred.

In order to contextualize the main law enforcement activities carried out by the armed forces in Rio de Janeiro, we will now track the rise of warmongering rhetoric and the government's main attempts to fight crime in Rio de Janeiro over the past fifteen years.

The police force in the state of Rio de Janeiro is divided into the Military Police, an ostensive uniformed institution that has the function of policing to preserve public order and the safety of people and property, and the Civil Police, an institution that has the function of the judiciary police and investigation of criminal infractions.³⁴ Both these branches of the police have militarized forces³⁵ that normally carry out operations in *favelas*. These specialized units of the police, which are not subordinated to the Armed Forces in peacetime, have armoured vehicles, heavy weapons and helicopters.

In 2007, the then secretary of public security of the state of Rio de Janeiro declared that "police action is not violent by design. We don't go there to seek to entice violence, but every time we go there, we are repelled." Referring to the

29 See Eduardo Italo Pesce and Iberê Mariano da Silva, "Armed Forces and Law Enforcement Actions", *Monitor Mercantil*, 28 July 2008, available at: <https://monitormercantil.com.br/foruas-armadas-e-garantia-da-lei-e-da-ordem/>.

30 See above note 28.

31 Complementary Law 97/1999, above note 1, Art. 15, para. 3.

32 Law enforcement actions were provided in Rio de Janeiro by troops in Complexo do Alemão from 2010 to 2012, in Complexo da Maré from 2014 to 2015, and with no defined area from July 2017 to December 2018. On the agreement between the Federal Executive Power and the state of Rio de Janeiro, see also "Cabral e Jobim assinam acordo para ação do Exército no Alemão", *Globo.com*, 23 December 2010, available at: <https://g1.globo.com/politica/noticia/2010/12/cabral-e-jobim-assinam-acordo-para-acao-do-exercito-no-alemao.html>.

33 Examples of large events in Rio de Janeiro in which troops provided security: the Pan American Games (2007), the World Military Games (2011), the Rio+20 Conference (2012), the Confederations Cup (2013), Pope Francis' visit (2013), World Youth Day (2013), the World Cup (2014) and the Olympic and Paralympic Games (2016).

34 See the Military Police website, available at: <https://sepm.rj.gov.br/>; and the Civil Police website, available at: www.policiacivilrj.net.br/.

35 The specialized unit in the Military Police is the Batalhão de Forças Especiais (see: www.facebook.com/bopeoficial.pmerj/); in the Civil Police, the specialized unit is the Coordenadoria de Recursos Especiais (see: www.facebook.com/COREPCERJ/).

need to use force, he stated that “we cannot make a cake without breaking some eggs”.³⁶ This type of reference made by decision-makers contributed to the idea of the necessity of a greater militarization of the police.

In 2008, the implementation of the so-called “Pacifying Police Units” (PPUs) began. This project of the State Government of Rio de Janeiro was aimed at taking over and occupying the *favelas* with police in order to disrupt the criminal factions, introduce community policing, and open the way for essential public services.³⁷ At that time, the debate about using military personnel to support the police in fighting crime was gaining more traction and popular support.

Given the levels of urban violence and its ensuing effects in the daily lives of *favela* residents, the International Committee of the Red Cross (ICRC) developed and implemented a scheme called the Rio Project in some *favelas* from 2009 to 2013.³⁸ This was a set of initiatives in partnership with municipal and State agencies, neighbourhood associations and the Brazilian Red Cross aimed at mitigating the humanitarian consequences of urban armed violence to the population. The experience resulted in combined activities in health care and education that sought to enhance the resilience of people living and/or working in *favelas* in Rio de Janeiro. The Safer Access to Essential Public Services³⁹ project was such a success that, at the request of local governments, this methodology was replicated in other Brazilian cities.

In November 2010, the Armed Forces effectively joined the fight against crime in Rio de Janeiro due to a series of criminal attacks that paralyzed the city. These attacks occurred in reaction to the law enforcement project that was in the process of being implemented, with buses burned, police booths machine-gunned, and exchanges of fire. The attacks served to justify a robust military operation that included combat vehicles and helicopters and led to the occupation of the Vila Cruzeiro and Complexo do Alemão *favelas* by the Military Police and Civil Police of Rio de Janeiro, the Federal Police and a large contingent of military troops.⁴⁰ At the time, the spokesperson for the Military Police, an institution that has the function of preserving public order and the safety of people and property, unapologetically declared that the police did not start this “war” but would

36 See “Para Beltrame, desarticular cv é a prioridade”, *Globo.com*, 27 June 2007, available at: <https://g1.globo.com/Noticias/Brasil/0,,AA1574684-5598,00-PARA+BELTRAME+DESARTICULAR+CV+E+A+PRIORI DADE.html>.

37 See OLERJ, “Unidade de Polícia Pacificadora, UPP”, available at: <http://olerj.camara.leg.br/retratos-da-intervencao/unidade-de-policia-pacificadora-upp>.

38 See ICRC, “Projeto Rio: Programas ajudaram a reduzir as consequências humanitárias da violência no Rio de Janeiro”, 12 October 2016, available at: www.icrc.org/pt/document/projeto-rio.

39 See ICRC, “Programa Acesso Mais Seguro”, 7 July 2016, available at: www.icrc.org/pt/document/o-programa-acesso-mais-seguro.

40 See TV Brasil, “Retrospectiva a ocupação do Complexo do Alemão”, *YouTube*, 27 December 2010, available at: www.youtube.com/watch?v=CKprHc4jHW8. See also Carlos Alberto de Lima, *The 583 Days of the Pacification of the Penha and Alemão Complexes*, Agência 2A Comunicação, Rio de Janeiro, 2012; “Polícia e Militares invadem Complexo do Alemão”, *BBC News Brasil*, 28 November 2010, available at: www.bbc.com/portuguese/noticias/2010/11/101128_rio_invasao_fn.

emerge victorious.⁴¹ The new idea was that military troops would occupy the *favelas* in a “pacification”⁴² effort in order to continue the rollout of the PPUs. The Armed Forces thus delimited an area of operation to be occupied by military personnel for an extended period. In this area, the military was tasked with carrying out ostensive policing with powers to arrest and detain, in theory without prejudice to the police force. In typical UN peacekeeping mission fashion, the military started civic-social activities with the community in cooperation with non-governmental organizations and agencies.⁴³

The so-called “pacification” forces remained in Complexo do Alemão⁴⁴ from 2010 to 2012, and in Complexo da Maré⁴⁵ from 2014 to 2015. Although there was some initial success, over the time the “pacification” policy started to fail because it was focused on a militarized perspective and was carried out by police and military personnel who lacked training and experience in community policing.⁴⁶ Armed confrontations with criminals multiplied, and the policy often did not result in basic sanitation and education being delivered to the communities. In addition, the systemic and rampant corruption of government and law enforcement officials contributed to turning the PPU’s promise into failure.⁴⁷

An important symbol of this downfall of the pacification policy was the Amarildo case. In 2013, the bricklayer Amarildo Dias de Souza, 42 years old and a resident of Rocinha, was taken by policemen of that *favela*’s PPU due to suspicion of involvement with drug trafficking and was never seen again.

41 See Ana Cláudia Costa, Gustavo Goulart and Vera Araújo, “Com apoio da Marinha, estado prepara ação na Vila Cruzeiro para acabar com atentados”, *Extra Notícias*, 24 November 2010, available at: <https://m.extra.globo.com/noticias/rio/com-apoio-da-marinha-estado-prepara-acao-na-vila-cruzeiro-para-acabar-com-atentados-21899.html>.

42 See Conor Foley, *Pelo Telefone: Rumors, Truths and Myths in the “Pacification” of the Favelas of Rio de Janeiro*, Humanitarian Action in Situations Other than War (HASOW) Discussion Paper No. 8, International Relations Institute, Catholic University of Rio de Janeiro (IRI-PUC), March 2014, available at: <https://igarape.org.br/wp-content/uploads/2016/04/Pelo-telefone-Rumors.pdf>.

43 See Frank Müller and Andrea Steinke, “Criminalising Encounters: MINUSTAH as a Laboratory for Armed Humanitarian Pacification”, *Global Crime*, Vol. 19, No. 3–4, 2018. See also Moacir Fabiano Schmitt, Valentina Gomes Haensel Schmitt and Luis Moretto Neto, “Cultural Conflicts in the Pacification Process in the Complexo do Alemão/Rio de Janeiro”, *Review of the Superior School of War*, Vol. 31, No. 63, 2016.

44 See Ministry of Defence, “Forças Armadas permanecerão no complexo do Alemão enquanto for necessário, garante Jobim”, 9 May 2011, available at: www.gov.br/defesa/pt-br/centrais-de-conteudo/noticias/ultimas-noticias/09052011-defesa-forcas-armadas-permanecerao-no-complexo-do-alemao-enquanto-for-necessario-garante-jobim.

45 See Ministry of Defence, “Ocupação das Forças Armadas no Complexo da Maré acaba hoje”, 30 June 2015, available at: www.gov.br/defesa/pt-br/centrais-de-conteudo/noticias/ultimas-noticias/ocupacao-das-forcas-armadas-no-complexo-da-mare-acaba-hoje.

46 See Esther Werling, *Rio’s Pacification: Paradigm Shift or Paradigm Maintenance?*, HASOW Discussion Paper No. 11, IRI-PUC, August 2014, available at: <https://igarape.org.br/wp-content/uploads/2016/04/Rio%E2%80%99s-Pacification-.pdf>.

47 See Guilherme Azevedo, “UPP fracassou porque só ela não basta, diz ex-secretário nacional de Segurança”, *UOL Notícias*, 6 January 2017, available at: <https://noticias.uol.com.br/cotidiano/ultimas-noticias/2017/01/06/upp-fracassou-porque-so-ela-nao-basta-diz-ex-sub-da-seguranca-do-rj.htm> (interview with a former national secretary of public security). See also by Security and Citizenship Studies Centre, “The Failure of the PPUs”, 1 July 2017, available at: <https://cesecseguranca.com.br/participacao/falencia-das-upps/>.

According to the charges, he was tortured to death inside the PPU.⁴⁸ Since then, the project of the PPUs has definitely lost the support of public opinion.⁴⁹

In July 2017, cashing in on the infrastructure that had been set up in the city for the security of the 2016 Olympic Games and still envisioning a militarized solution for public security, Rio de Janeiro was chosen by the Federal Government to be the test bed for yet another law enforcement experiment, in which the Armed Forces would support the implementation of the National Security Plan.⁵⁰ At that time, a reserve general who had been the military commander of UN peacekeeping missions in Haiti and the Democratic Republic of the Congo held the title of national public security secretary.⁵¹

In August 2017, the chief of the Institutional Security Cabinet within the Office of the President (a general) declared that there was a “war” in Rio de Janeiro and that “undesirable incidents” were foreseeable.⁵² The general added that the success of military participation in law enforcement operations depended on support given by society in general, as well as on the media’s adherence to the narrative.

Unlike what had taken place in Complexo do Alemão and Complexo da Maré previously, the new military “law enforcement” operations were redesigned for short-term actions, with large contingents and without prior notice of deployment. The military was to provide “dynamic stabilization”, with a base far away, a base close by and, if necessary, incursions to enable police work, such as serving arrest and search and seizure warrants in *favelas* controlled by criminal factions. The military troops also removed barricades and performed typical police duties, like ostensive patrols and approaching civilians for body searches.⁵³

In October 2017, the commander of the Brazilian Army, who was a critic of the Armed Forces’ participation in law enforcement activities, concerned with the legal security of troops and using war terminology, stated that the cost of “collateral damage of innocent civilians” should be carefully considered and

48 The commander of the Rocinha PPU and twelve other policemen were convicted for torture followed by death, concealment of a human body, and procedural fraud. See “Caso Amarelado”, *Globo.com*, 28 October 2021, available at: <https://memoriaglobo.globo.com/jornalismo/coberturas/caso-amarildo/noticia/caso-amarildo.ghtml>.

49 See above note 47.

50 See Decree of 28 July 2017, available at: www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/dsn/Dsn14485.htm#textoimpresso.

51 See Murilo Ramos, “Gen Santos Cruz é novo Secretário Nacional de Segurança Pública”, *Época*, 20 April 2017, available at: <http://epoca.globo.com/politica/expresso/noticia/2017/04/governo-desiste-de-indicar-beltrame-para-secretaria-nacional-de-seguranca-publica.html>; “Santos Cruz: General na linha de frente”, *Diálogo Américas*, 19 June 2017, available at: <https://dialogo-americas.com/pt-br/articles/santos-cruz-general-na-linha-de-frente/#.YzB3kXbMLIU>.

52 Cecília Olliveira, “‘Verdadeiramente assustador’: Ex-Comandante da PMERJ critica visão de general sobre ocupação militar no Rio”, *The Intercept Brasil*, 4 August 2017, available at: <https://theintercept.com/2017/08/04/verdadeiramente-assustador-ex-comandante-da-pmerj-critica-visao-de-general-para-a-ocupacao-militar-no-rio/>.

53 See Gabinete da Intervenção Federal, “Comando Conjunto e Secretaria de Segurança realizam operações conjuntas em diferentes partes do RJ”, 9 May 2018, available at: www.intervencaofederalrj.gov.br/imprensa/notas-oficiais/comando-conjunto-e-secretaria-de-seguranca-realizam-operacoes-conjuntas-em-diferentes-partes-do-rj. See also the rules of engagement for troops in law enforcement actions, available at: <https://s3-sa-east-1.amazonaws.com/nexojournal/www/docs/Engajamento+oficial.pdf>.

evaluated.⁵⁴ This general pointed out that the Army is understandably equipped with artillery capable of a high degree of lethality, range and transfixation ability, and has little experience and training with regard to deployment in urban, densely populated areas.

Even so, and increasingly marking this idea of a “war against crime”, in 2018, the then president signed an unprecedented “federal intervention” decree⁵⁵ with the aim of ending a crisis of public order, and appointed an active-duty Army general as the “intervener”.⁵⁶ This exceptional, temporary and specific measure as provided by the Constitution,⁵⁷ which did not imply any suspension or restriction of fundamental rights, lasted from February to December 2018 and had as its main objectives (1) the restoration of the operational capacity of the local security forces, and (2) the gradual reduction of crime rates and, consequently, an improvement in the perception of security in Rio de Janeiro.⁵⁸

The general in charge appointed another active-duty general, who commanded the military occupation in Complexo da Maré, to be Rio de Janeiro’s public security secretary. The military took over the command of the police forces and, during the Federal Intervention in Public Security in Rio de Janeiro, military values and governance were strengthened in the public security forces.⁵⁹ At the time, reinforcing a warmonger perspective in public security, the minister of justice compared the Federal Intervention to an asymmetrical war.⁶⁰ The minister added that there is no war that is not lethal.

In the same month that the Federal Intervention was made official, the president created the Ministry of Public Security and appointed the then defence minister to this portfolio.⁶¹ Additionally, the president appointed a general to lead the Ministry of Defence, effectively putting an end to a twenty-year-old tradition of having civilians as the head of defence.⁶² The governor of the state of

54 See Luis Kawaguti, “Comandante do Exército diz que insegurança jurídica pode inibir ação de tropas no Rio”, *UOL Notícias*, 2 October 2017, available at: <https://noticias.uol.com.br/cotidiano/ultimas-noticias/2017/10/02/comandante-do-exercito-diz-que-e-preciso-debater-efeitos-colaterais-do-combate-ao-crime-organizado.htm>.

55 See Decree No. 9.288, 16 February 2018, available at: www.planalto.gov.br/ccivil_03/_Ato2015-2018/2018/Decreto/D9288.htm#textointpressao.

56 On 16 February 2018, the president of Brazil, Michel Temer, appointed as intervenor General Walter Souza Braga Netto, then commander of the Eastern Military Command covering the states of Rio de Janeiro and Espírito Santo and part of the state of Minas Gerais. See *ibid*.

57 Brazilian Constitution, above note 1, Art. 34(III).

58 To learn more about the Federal Intervention in Public Security in Rio de Janeiro, see the Strategic Plan at: www.intervencaoefederalrj.gov.br/arquivos/plano-revisado.pdf.

59 “General Richard Nunes será o secretário de Segurança do RJ”, *Globo.com*, 22 February 2018, available at: <https://g1.globo.com/rj/rio-de-janeiro/noticia/general-richard-nunes-sera-o-secretario-de-seguranca-do-rj.ghtml>.

60 “‘Não há guerra que não seja letal’, diz ministro da Justiça sobre intervenção no Rio”, *Estado de Minas*, 20 February 2018, available at: www.em.com.br/app/noticia/politica/2018/02/20/interna_politica,938791/nao-ha-guerra-que-nao-seja-letal-diz-ministro-da-justica.shtml.

61 Alex Rodrigues, “Jungmann vai chefiar novo Ministério da Segurança Pública”, Agência Brasil, 26 February 2018, available at: <https://agenciabrasil.ebc.com.br/politica/noticia/2018-02/jungmann-vai-chefiar-novo-ministerio-da-seguranca-publica>.

62 “Silva e Luna é efetivado no cargo de ministro da Defesa”, *Globo.com*, 13 June 2018, available at: <https://g1.globo.com/politica/noticia/silva-e-luna-e-efetivado-no-cargo-de-ministro-da-defesa.ghtml>.

Rio de Janeiro, when justifying the acceptance of military troops in law enforcement, stated that Rio de Janeiro alone could not “win the war”.⁶³

Vila Kennedy, a *favela* with 41,555 inhabitants controlled by the Comando Vermelho drug trafficking group, located in the west of the city, was chosen by the military as a kind of laboratory during the federal military intervention.⁶⁴ For about three months, the military had a continuous presence during the day in the *favela*, breaking down barricades, policing together with the military police, and officially supporting the Civil Police in carrying out arrest warrants. This methodology did not give the expected results and was not replicated elsewhere.⁶⁵

The general in charge of the Federal Intervention declared that the role of the Armed Forces in Rio de Janeiro’s law enforcement was not a war but cited the need for police training to avoid civilian casualties that he called “collateral damage”. By employing this typical war expression used to refer to the death of civilians on the battlefield, the general strengthened the atmosphere of militarization of the police.⁶⁶

The investments made by the Federal Government during the Federal Intervention contributed to the re-equipment of the Military Police and the Civil Police but were insufficient for a full operational restoration.⁶⁷ Despite a reduction in crime rates that year, there was an increase in extrajudicial killings.⁶⁸

To guide the behavioural norms of the military in law enforcement activities, especially regarding the progressive and/or differentiated use of force and the exercise of police power with regard to civilians, a protocol was elaborated and baptized the “rules of engagement”,⁶⁹ a term borrowed from UN peacekeeping missions in which Brazilian had troops participated, especially MINUSTAH.

The need to face criminals and not enemies, to deal with protests and to be sensitive to the social problems and cultural aspects of the region challenged the

63 Bernardo Caram, Guilherme Mazui and Roniara Castilhos, “Pezão diz que Rio, sozinho, não consegue deter guerra de facções”, *Globo.com*, 16 February 2018, available at: <https://g1.globo.com/rj/rio-de-janeiro/noticia/pezao-diz-que-rio-sozinho-nao-consegue-deter-guerra-de-faccoes.ghtml>.

64 Julia Dias Carneiro, “Nascida da remoção de favelas, Vila Kennedy vive ‘dêjà-vu’ após virar bairro-piloto de intervenção no Rio”, *BBC News Brasil*, 12 April 2018, available at: www.bbc.com/portuguese/brasil-43720716.

65 Marcela Lemos, “Com rotina de tiroteios, ‘laboratório da intervenção’ vê aumento de mortes”, *UOL Notícias*, 7 March 2018, available at: <https://noticias.uol.com.br/cotidiano/ultimas-noticias/2019/02/14/laboratorio-da-intervencao-vila-kennedy.htm>.

66 “Isso não é uma guerra, diz General Braga Netto sobre Rio”, *UOL Notícias*, 2 September 2018, available at: www.band.uol.com.br/videos/isso-nao-e-uma-guerra-diz-general-braga-netto-sobre-rio-16532776.

67 Federal Government of Brazil, “Qual o Legado da Intervenção Federal para o Estado do Rio de Janeiro?”, available at: www.intervencaoafederalrj.gov.br/imprensa/copy_of_legado-da-intervencao-federal-na-area-de-seguranca-publica-do-estado-do-rio-de-janeiro.

68 In 2018, the number of deaths caused by State agents was 36% higher than the previous year. See the database of the Institute of Public Security, available at: www.ispvisualizacao.rj.gov.br/. See also Human Rights Watch, “Brasil: Letaliade policial bate recorde no Rio”, 19 December 2018, available at: www.hrw.org/pt/news/2018/12/19/325453.

69 Rules of Engagement for Operation Rio de Janeiro, Ministerial Directive 16/2017, 21 July 2017.

Army.⁷⁰ The rules of engagement were improved over the course of law enforcement actions, moving away from more warlike terms and incorporating the terminology and principles best suited to actions of a police nature.⁷¹ During the Federal Intervention, the Brazilian Military Prosecutor's Office, a civilian institution composed only of civilian prosecutors working in the Brazilian military justice system, recommended specific training in human rights for military troops engaged in law enforcement actions and the development of a protocol for interacting with the population, especially with regard to the most vulnerable groups.⁷² However, although there are guidelines in law enforcement actions⁷³ and training with non-lethal weapons in the Armed Forces, troops are not traditionally and effectively prepared to interact with the population, but rather to neutralize the enemy.

Since the end of the Federal Intervention in December 2018, there are no longer law enforcement operations against crime carried out by the military in the city. The Federal Executive Branch has called for greater legal protection for military personnel fighting crime before such operations can resume.⁷⁴

An event that marked the Executive's greatest caution in placing troops on the streets of Rio de Janeiro was the Guadalupe case. In April 2019, not acting on a law enforcement mission, but used for law enforcement purposes, eight military personnel fired eighty-two rifle shots at a civilian car they thought was being used by criminal to flee a crime scene in the Guadalupe neighbourhood. As a result, they killed the driver, injured the passenger and killed a passer-by that came to the car to offer help.⁷⁵

70 Tahiane Stochero, "Para Exército, ocupar Alemão é mais difícil que guerra e missão no Haiti", *Globo.com*, 15 August 2012, available at: <https://g1.globo.com/brasil/noticia/2012/08/para-exercito-ocupar-alemao-e-mais-dificil-que-guerra-e-missao-no-haiti.html>.

71 Expressions such as "hostile act" or "hostile intent" were replaced by "threatening act" or "threatening intent", and expressions such as "adversary" or "enemy" were replaced by "agent disturbing public order". See Rules of Engagement for the Pacification Force in Rio de Janeiro, Ministerial Directive 15/2010, 4 December 2010, available at: www.gov.br/defesa/pt-br/arquivos/File/2010/mes12/regras.doc.

72 Walter Souza Braga Netto, "Protocolo de abordagem em operações durante a Intervenção Federal", 23 April 2018, available at: www.mpm.mp.br/portal/wp-content/uploads/2018/06/pgjm-protocolo-abordagem-23-4-18.pdf.

73 See Ministry of Defence, *Garantia da lei e da ordem*, 2013, available at: www.gov.br/defesa/pt-br/arquivos/File/doutrinamilitar/listadepublicacoesEMD/md33a_ma_10a_gloa_1a_ed2013.pdf.

74 As will be seen later, the Federal Executive Branch has presented bills to the Congress intending to "tighten" the interpretation of what would constitute a situation of threat or aggression in which security agents (police or troops in law enforcement actions) would be allowed to use force, including lethal force, exempting themselves from criminal liability for excesses committed. With regard to military personnel, see Luis Kawaguti, "Bolsonaro defende segurança jurídica para militares envolvidos em tiroteios", *UOL Notícias*, 7 March 2019, available at: <https://noticias.uol.com.br/politica/ultimas-noticias/2019/03/07/bolsonaro-defende-seguranca-juridica-para-militares-envolvidos-em-tiroteios.htm>.

75 One officer and seven non-commissioned officers were convicted by the military justice. The defence appealed to the Superior Military Court, which has not yet judged the appeal. See Cleber Rodrigues, Lucas Madureira and Leandro Resende, "Oito militares do Exército são condenados por mortes de músico e catador no RJ", *CNN Brasil*, 14 October 2021, available at: www.cnnbrasil.com.br/nacional/oito-militares-do-exercito-sao-condenados-por-mortes-de-musico-e-catador-no-rj/; "Homem morre após ser baleado em ação do Exército na Zona Oeste do Rio", *Globo.com*, 7 April 2019, available at: <https://g1.globo.com/rj/rio-de-janeiro/noticia/2019/04/07/homem-morre-apos-carro-ser-atingido-em-acao-do-exercito-na-zona-oeste-do-rio.ghtml>.

Turning back to the Regional Executive Branch, in January 2019, the new governor of Rio de Janeiro changed the recent integrated structure organized by the Armed Forces during the Federal Intervention and dismantled the State's Secretariat of Public Security, splitting it into one secretariat for the Civil Police and another for the Military Police.⁷⁶ This initiative produced an empowerment of the police forces to act independently, viewed by some critics as harmful to integrated public security policies.⁷⁷

While politically distancing himself from the Federal Intervention commanded by the military, the governor began his term by investing heavily in the war narrative in public security. In his inauguration speech, he said that a “war on drugs” would be declared and that drug dealers would be treated as “terrorists”.⁷⁸ He then rolled out militarized police interventions characterized by high levels of police brutality.⁷⁹ The governor even created, by decree, the rank of general for the Military Police and Fire Department,⁸⁰ but a month later he had to back out of this due to legal impediments.⁸¹

The situation of exacerbated urban violence in Rio de Janeiro is also a concern of the highest court of the judicial power. Arguing that the security policy of the state of Rio de Janeiro was marked by “excessive and increasing lethality of police action”, at the end of 2019, a political party filed a lawsuit in the Supreme Court for breach of fundamental precept. Known as ADPF 635 but nicknamed “ADPF of the *Favelas*”, it was intended to recognize and remedy serious violations of fundamental constitutional rights. Civil society quickly joined the suit. In a nutshell, the Supreme Court ordered that the state of Rio de Janeiro should produce a plan to reduce police lethality and investigate and mitigate human rights violations committed by security forces including the Military Police and Civil Police. This plan was to include objective measures, specific timelines, and the necessary resources for its implementation.⁸²

76 See Decree 46.544, 1 January 2019, available at: <http://aeerj.net.br/file/2019/Decreto-46544-estrutura%20de%20governo.pdf>; Luiza Damé, “Witzel confirma extinção da Secretaria de Segurança Pública”, Agência Brasil, 12 December 2018, available at: <https://agenciabrasil.ebc.com.br/politica/noticia/2018-12/witzel-confirma-extincao-da-secretaria-de-seguranca-publica>.

77 See Bruna Fantti, “Fim da Secretaria de Segurança divide opiniões”, O Dia, available at: <https://odia.ig.com.br/rio-de-janeiro/2018/11/5589101-fim-da-secretaria-de-seguranca-divide-opinioes.html>.

78 “‘Traficantes serão tratados como terroristas’, diz Witzel em cerimônia de transmissão de governo”, *R7 Notícias*, 2 January 2019, available at: <https://recorDTV.r7.com/cidade-alerta-rj/videos/traficantes-serao-tratados-como-terroristas-diz-witzel-em-cerimonia-de-transmissao-de-governo-18022020>.

79 “‘Guerra às drogas’ de Witzel tem ‘altos níveis de violência’ e ‘violações de direitos humanos’, diz Anistia”, *Globo.com*, 27 February 2020, available at: <https://g1.globo.com/rj/rio-de-janeiro/noticia/2020/02/27/guerra-as-drogas-de-witzel-tem-altos-niveis-de-violencia-e-violacoes-de-direitos-humanos-diz-anistia.ghtml>.

80 Rafael Sores, “Witzel cria a patente de general para Polícia Militar e bombeiros”, *Globo.com*, 31 July 2019, available at: <https://oglobo.globo.com/rio/witzel-cria-patente-de-general-para-policia-militar-bombeiros-23846463>.

81 Quintino Gomes Freire, “Witzel acaba com general na PM e no Corpo dos Bombeiros”, *Diário do Rio*, 6 September 2019, available at: <https://diariodorio.com/witzel-acaba-com-general-na-pm-e-no-corpo-dos-bombeiros/>.

82 Public Ministry of the State of Rio de Janeiro (MPRJ), “ADPF 635”, available at: www.mprj.mp.br/adpf-635; Supreme Federal Court, “ADPF 635”, available at: <https://portal.stf.jus.br/processos/detalhe.asp?incidente=5816502>.

ADPF 635 also addresses the following issues: prohibition of using helicopters as a platform for shooting “targets” on the ground; protection of schools; guarantees of civilian oversight over security policies; access to justice and full participation of civil society in investigations into cases of extrajudicial killings; and systemic prosecution in cases of crimes committed by security agents.⁸³

In June 2020, the Supreme Court ordered the temporary suspension of police raids in the *favelas* during the COVID-19 pandemic, except in exceptional cases that must be duly justified and accompanied by robust due diligence measures to prevent further danger to the population, the provision of health services, and humanitarian action, and subject to communication to the Public Prosecutor’s Office.⁸⁴

Police lethality decreased by 34% in 2020,⁸⁵ but despite the Supreme Court’s decision, security operations continued,⁸⁶ often motivated by pure retaliation for the killing of a police officer and/or attacks against police units.⁸⁷ Since May 2021, Rio de Janeiro has recorded three of the four most lethal police operations in the city’s entire history. During this period, seventy people (sixty-nine civilians and one police officer) were killed in just three police incursions in *favelas*.⁸⁸

Coming back to the scope of the Regional Executive Branch, at the beginning of the 2022 election year, the current governor of Rio de Janeiro State launched the Integrated City project in the *favelas* of Jacarezinho and Muzema. This is a kind of re-edition of the PPU, but without the participation of the military. The programme is officially aimed at taking back control from drug traffickers and militia and serving as a model of police occupation and joint work on social actions. However, it has been criticized for a lack of transparency and the absence of consultation with local leaders or even city government officials.⁸⁹

83 See Supreme Federal Court, “STF determina condições para operações policiais em comunidades no Rio de Janeiro”, 19 August 2020, available at: <https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=449833&ori=1>; MPRJ, above note 82.

84 Supreme Federal Court, above note 83.

85 Daniel Veloso Hirata *et al.*, “Efeitos da suspensão de operações policiais no RJ”, *Fonte Segura*, available at: <https://fontesegura.forumseguranca.org.br/efeitos-da-suspensao-de-operacoes-policiais-no-rj-2/>.

86 See “Polícias do Rio de Janeiro realizaram duas operações em favelas por dia desde decisão do STF restringindo ações”, *Folha de Pernambuco*, 23 July 2022, available at: www.folhape.com.br/noticias/policias-do-rio-realizaram-duas-operacoes-em-favelas-por-dia-desde/234718/.

87 Daniel Veloso Hirata, Carolina Christoph Grillo and Renato Dirk, *Efeitos da Medida Cautelar na ADPF 635 sobre as operações policiais na Região Metropolitana do Rio de Janeiro*, GENI, Fluminense Federal University, June 2020, available at: https://geni.uff.br/wp-content/uploads/sites/357/2021/02/2020_Relatorio-efeitos-da-Liminar.pdf.

88 The deadliest police operation in the history of Rio de Janeiro took place in May 2021, in the Jacarezinho *favela*. It resulted in the deaths of twenty-eight people, including a police officer. See Pauline Almeida, “Um ano após operação com 28 mortos, quatro policiais foram denunciados no Rio”, *CNN Brasil*, 6 May 2022, available at: www.cnnbrasil.com.br/nacional/um-ano-apos-operacao-com-28-mortos-quatro-policiais-foram-denunciados-no-rio. See also “Em 14 meses, Rio registra 3 das 4 operações mais letais da história, com mais de 70 mortos”, *Globo.com*, 22 July 2022, available at: <https://g1.globo.com/rj/rio-de-janeiro/noticia/2022/07/22/em-14-meses-rio-registra-3-das-4-operacoes-mais-letais-da-historia.ghtml>.

89 See Gabriel Barreira and Henrique Coelho, “Cidade Integrada: O que se sabe, o que falta saber e quais os principais desafios do projeto”, *Globo.com*, 19 January 2022, available at: <https://g1.globo.com/rj/rio-de>

As we have seen, in the last fifteen years, with or without military personnel carrying out law enforcement actions, a “war approach”⁹⁰ has prevailed in the conduct of public security policies in Rio de Janeiro.

In this context, some voices defend the existence of a low-intensity NIAC in the city of Rio de Janeiro and the consequent applicability of international humanitarian law (IHL) in the police/military interventions in *favelas*, or at least a “grey zone conflict”⁹¹ in which the international human rights standard on the use of force⁹² is not sufficient to fight organized crime. This war narrative is not official but can be found among some members of the armed forces, police, prosecutors and even judges.⁹³ The word “war” is also frequently used in the media to refer to extreme urban violence in Rio de Janeiro. In August 2017, a newspaper even created a specialized editorial section called “War in Rio”.⁹⁴

Urban violence in Rio de Janeiro and the threshold for a non-international armed conflict

Although the extreme urban violence in Rio de Janeiro has been popularly described as a “war”, it does not reach the threshold of intensity of violence and level of organization of non-State armed groups required to be considered a NIAC. Accordingly, IHL should not be used as a legal basis to justify militarized interventions, particularly by a military that has a track record of excessive use of force and extrajudicial killings.

janeiro/noticia/2022/01/19/cidade-integrada-o-que-se-sabe-do-novo-projeto-de-ocupacao-no-rj-e-quais-os-principais-desafios.ghtml.

- 90 In 2009, UN Special Rapporteur Philip Alston had already spoken of a “war approach” adopted by Rio de Janeiro’s government. See Philip Alston, *Promotion and Protection of All Human Rights, Civil, Political, Economical, Social and Cultural Rights Including the Right to Development: Report of the Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions. Addendum: Mission to Brazil*, UN Doc. A/HRC/11/2/Add.2, 23 March 2009, para. 27.
- 91 This term is used to describe “political-military” confrontations between States and armed groups that persist below and sometimes at the threshold of conventional conflict. See Michael John-Hopkins, *The Rule of Law in Crisis and Conflict Grey Zones: Regulating the Use of Force in a Global Information Environment*, Routledge, Abingdon, 2018.
- 92 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, 7 September 1990, available at: www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement.
- 93 Carlos Frederico de Oliveira Pereira, “Grey Zones and Crime Suppression: Between International Human Rights Law and International Law of Armed Conflicts”, *Small Wars Journal*, 2 May 2020, available at: <https://smallwarsjournal.com/jrnl/art/gray-zones-and-crime-suppression-between-international-human-rights-law-and-international>; Carlos Frederico de Oliveira Pereira, *Gangues territoriais e direito internacional dos conflitos armados*, Editora Juruá, Curitiba, 2016; Flávia Ximenes Aguiar de Sousa, *O emprego das em forças armadas situações de conflitos internos graves*, Editora Dialética, São Paulo, 2021; Adriano Alves Marreiros, *Guerra à polícia: Reflexões sobre a ADPF 635*, Editora EDA, Campinas, 2021; Leonardo Novo Oliveira Andrade de Araújo, *Relatos de mais um combatente em uma guerra sem vitória*, Editora Icone, São Paulo, 2020.
- 94 The newspaper justified the creation of the war editorial by saying that it was a way to “shout” to society that urban violence in Rio de Janeiro cannot be trivialized. See “Isso não é normal”, *Extra*, 16 August 2017, available at: <https://extra.globo.com/casos-de-policia/guerra-do-rio/isso-nao-normal-21711104.html>.

For fear of legitimizing insurgencies, losing control of internal order and undermining sovereignty, States are reluctant to produce a comprehensive set of rules that regulate NIACs. The main norms that refer to this type of armed conflict are set out in Article 3 common to the four Geneva Conventions of 1949 (armed conflict not of an international character occurring in the territory of one of the High Contracting Parties) and Additional Protocol II of 1977 (armed conflict which takes place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups with command, territorial control, the ability to carry out sustained and concerted military operations and the capacity to respect IHL). The Rome Statute of the International Criminal Court added other elements to the notion of NIAC in 1998 (protracted armed conflict between governmental authorities and organized armed groups or between such groups). Brazil is bound by these treaties.

Those who assert that the city of Rio de Janeiro is immersed in a low-intensity NIAC argue that (1) there is a “war on crime”, a “drug war” or a “criminal insurgency” in which the death toll is greater than many situations of armed conflict, (2) the State has used the military in the fight against crime, (3) the criminals use weapons normally used in armed conflicts, (4) the armed groups are well organized, and (5) the armed groups have control over the *favelas*.⁹⁵

The arguments in favour of applying IHL to the situation in Rio de Janeiro are based on the need to provide more “legal certainty” to police and military personnel who fight violent crime, the need to prevent prosecutions in the event of use of lethal force against criminals, the possibility of prosecuting criminals for war crimes, and greater and more specific legal protection for the *favela* populations.⁹⁶

In the following sections, an analysis will be made of the situation in Rio de Janeiro from the perspective of the criteria required for the characterization of a NIAC. Some comments will then be presented on the inadequacy of the arguments in favour of the applicability of IHL.

Intensity

To evaluate the degree of intensity of armed confrontations, certain aspects can be taken into account, such as the number of casualties, the duration of individual confrontations, the extent of destruction, the type of weapons and combat methods used, the type of forces taking part in the fighting and the number of troops deployed, the number of civilians forced to leave their homes, the attention of international bodies such as the UN Security Council, and even the attempt by representatives of such organizations to broker a ceasefire

95 See C. F. de Oliveira Pereira, “Grey Zones and Crime Suppression”, above note 93; Eduardo Bittencourt Cavalcanti, “Quando haverá um conflito armado no Rio de Janeiro: Os cenários cariocas e o marco legal aplicável à violência de fato vivenciada na cidade”, *Revista do Ministério Público Militar*, Vol. 44, No. 31, 2019, available at: <https://revista.mpm.mp.br/artigos/?ideducacao=31>. See also below note 98.

96 See above notes 93 and 95 and below note 98.

agreement.⁹⁷ A “convincing combination”⁹⁸ of these indicative factors is required to qualify a situation of violence as a NIAC.

In addition, the ICRC has introduced a new approach to coalitions of non-State armed groups. An aggregated intensity for qualifying a NIAC can be assessed based on whether organized armed groups have objectively and effectively adopted a collective approach to fighting a common enemy.⁹⁹

Number of deaths

The number of deaths resulting from crime in Rio de Janeiro is alarming and may even exceed the number of victims in some armed conflicts. Some 1,338 homicides were recorded in the city in 2018, 1,134 in 2019, 957 in 2020 and 790 in 2021.¹⁰⁰ If we consider the metropolitan region of Rio de Janeiro, which includes the capital and twenty-one surrounding municipalities, the numbers of homicides reached 3,577 in 2018, 2,928 in 2019, 2,405 in 2020 and 2,133 in 2021.¹⁰¹ This data does not include violent deaths stemming from unidentified causes.

Although Rio de Janeiro is not one of the top ten most violent states in the country,¹⁰² the state of Rio de Janeiro has the most lethal police force in Brazil. Official deaths caused by the police in the city of Rio de Janeiro totalled an alarming 558 in 2018 and 726 in 2019.¹⁰³ During the coronavirus pandemic, and the prohibition of police operations in the *favelas*¹⁰⁴ by the Supreme Court, there were 415 deaths in 2020 and 458 deaths in 2021. In the metropolitan region, there were 1,381 deaths in 2018, 1,647 in 2019, 1,089 in 2020 and 1,214 in 2021.¹⁰⁵

As noted previously, the police force in Rio de Janeiro is divided into the Military Police and the Civil Police. The operations conducted by the Civil Police in the *favelas* against drug trafficking groups that result in killings are proportionally more lethal than those of the Military Police.¹⁰⁶

The Rio de Janeiro police force is also the one that suffers the most losses in the country. In the state of Rio de Janeiro there were 111 police officers killed in

97 International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Ramush Hadadinaj et al.*, Case No. IT-04-84-T, Judgment (Trial Chamber I), 3 April 2008, para. 394.

98 Sven Peterke, “Urban Insurgency, ‘Drug War’ and International Humanitarian Law: The Case of Rio de Janeiro”, *Journal of International Humanitarian Legal Studies*, Vol. 1, No. 1, 2010.

99 See Jelena Nikolic, Thomas de Saint Maurice and Tristan Ferraro, “Aggregated Intensity: Classifying Coalitions of Non-State Armed Groups”, *Humanitarian Law and Policy Blog*, 7 October 2020, available at: <https://blogs.icrc.org/law-and-policy/2020/10/07/aggregated-intensity-classifying-coalitions-non-state-armed-groups/>.

100 Data from the Institute of Public Security, available at: www.ispvisualizacao.rj.gov.br/.

101 *Ibid.*

102 See Centro de Pesquisas do Ministério Público do Estado do Rio de Janeiro, above note 16. See also Eduardo Santos, “Estudo revela que 10 das cidades mais perigosas do Brasil, 9 estão no Nordeste; confira a lista”, *Portal de Prefeitura*, 24 February 2023, available at: <https://portaldeprefeitura.com.br/2023/02/24/estudo-revela-que-das-10-cidades-mais-perigosas-do-brasil-9-estao-no-nordeste-confira-lista/>.

103 Data from the Institute of Public Security, available at: www.ispvisualizacao.rj.gov.br/.

104 See the case *Ação de Descumprimento de Preceito Fundamental* 635 currently in progress at the Supreme Federal Court.

105 Data from the Institute of Public Security, available at: www.ispvisualizacao.rj.gov.br/.

106 GENI, above note 17.

2018, sixty-seven in 2019, sixty-five in 2020¹⁰⁷ and forty-one in 2021.¹⁰⁸ Most of the deaths of police officers took place in the city of Rio de Janeiro, when the officers were off duty.¹⁰⁹

Regarding military personnel engaged in law enforcement actions, since 2010, thirty-two civilians have been killed by troops and four military personnel have died in armed confrontations with criminals.¹¹⁰

Although it is estimated that half of the murders investigated in the capital and the metropolitan region of Rio de Janeiro since 2016 have had some connection to different criminal organizations,¹¹¹ the reasons behind killings in the city are often not known.

The state of Rio de Janeiro has one of the lowest intentional homicide investigation resolution rates in Brazil. In fact, only 21.2% of homicides registered in 2018 had been solved by the end of 2020.¹¹² Among other problems, the low resolution rate prevents analysts from discovering the exact proportion of crimes committed by traffickers and militia. It is not even possible to know whether the majority of homicides in the state are due to organized crime or interpersonal reasons.¹¹³

Lastly, without disregard to the gravity of the situation, in comparison to other urban areas in the world, Rio de Janeiro was not among the fifty most violent cities in 2022.¹¹⁴ Since 1 January 2019, there have been no new law

107 Institute of Public Security, *Police Killings in the State of Rio de Janeiro: Overview of the Last Five Years (2016–2020)*, available at: http://arquivos.proderj.rj.gov.br/isp_imagens/uploads/TD05_2021-VPERJ-Vitimizacao policial.pdf.

108 See Gabriel Sestrem, “Assassinatos de policiais caem 22% no Brasil; números seguem elevados, dizem especialistas”, *Gazeta do Povo*, 16 April 2022, available at: www.gazetadopovo.com.br/vida-e-cidadania/assassinatos-de-policiais-caem-22-no-brasil-numeros-seguem-elevados-dizem-especialistas/; Carolina Heringer and Diego Amorim, “Sete em cada dez policiais mortos no Rio nos últimos cinco anos por causas não naturais foram assassinados”, *Extra*, 22 September 2021, available at: <https://extra.globo.com/casos-de-policia/sete-em-cada-dez-policiais-mortos-no-rio-nos-ultimos-cinco-anos-por-causas-nao-naturais-foram-assassinados-25207526.html>.

109 See Cristina Índio do Brasil, “Maioria dos policiais mortos no Rio de forma violenta estava de folga”, Agência Brasil, 22 September 2021, available at: <https://agenciabrasil.ebc.com.br/direitos-humanos/noticia/2021-09/maioria-dos-policiais-mortos-no-rio-de-forma-violenta-estava-de-folga>.

110 See Natalia Viana, *Dano Colateral: A intervenção dos militares na segurança pública*, Editora Objetiva, Rio de Janeiro, 2021. See also “Exército é acusado de matar inocentes em operações de segurança pública”, Centre for Security and Citizenship Studies, 2018, available at: <https://cesecseguranca.com.br/participacao/exercito-e-acusado-de-matar-inocentes-em-operacoes-de-seguranca-publica/>.

111 Leslie Leitão and Carlos de Lannoy, “RJ tem 1,4 mil favelas dominadas por criminosos, aponta relatório”, *Globo.com*, 6 July 2020, available at: <https://g1.globo.com/rj/rio-de-janeiro/noticia/2020/07/06/rj-tem-14-mil-favelas-dominadas-por-criminosos-aponta-relatorio.ghtml>.

112 See Institute of Public Security, *Taxa de elucidação criminal: Contribuições para um indicador nacional com base na experiência do estado do Rio de Janeiro*, available at: http://arquivos.proderj.rj.gov.br/isp_imagens/uploads/Textodiscuss%C3%A3oTaxaElucidCriminal.pdf.

113 See Luã Marinatto and Rafael Soares, “A Polícia civil só resolve um homicídio a cada oito no Rio, que tem uma das piores taxas de elucidação do país”, *O Globo*, 11 September 2021, available at: <https://soudapaz.org/noticias/o-globo-policia-civil-so-resolve-um-homicidio-a-cada-oito-no-rio-que-tem-uma-das-piores-taxas-de-elucidacao-do-pais/>.

114 The Mexican non-governmental organization Seguridad, Justicia y Paz has drawn up a ranking of the fifty most violent urban areas in the world, based on the number of people and the number of homicides in each city. Ten Brazilian cities appear in the ranking; in descending order of violence, these are Mossoró (RN), Salvador (BA), Manaus (AM), Feira de Santana (BA), Vitória da Conquista (BA), Natal

enforcement operations led by the Armed Forces in support of or to replace the police in the city, and, as seen above, the number of homicides committed by criminals in the metropolitan region of the city of Rio de Janeiro has been falling since 2018, notwithstanding the fact that killings attributed to the police have increased.¹¹⁵

Due to the circumstances seen above, the high number of casualties resulting from violent criminality in Rio de Janeiro does not exactly fit as an indicative factor of a NIAC.

Duration of confrontations

Clashes between criminal factions, or between them and the police, are very frequent and sometimes have a considerable duration. They can range from hours to days of armed violence.¹¹⁶ There are even apps to alert people about the places where shootings happen in real time in Rio de Janeiro.¹¹⁷ In 2021, 2,510 shootings were recorded in the city, most of them in the *favelas*.¹¹⁸ Taking into account that this tragic situation has remained relatively stable for years,¹¹⁹ it is possible to conclude that armed confrontations are, therefore, of a permanent character in the *favelas cariocas*.

Although international jurisprudence has already recognized the existence of instant NIACs,¹²⁰ this permanent environment of armed confrontation could be seen as an indicative factor for qualifying as a NIAC. However, these clashes in the *favelas* of Rio de Janeiro involve violence between criminals or between them and specialized police forces, and the type of forces participating in the fighting is also an important element to be evaluated when considering a situation as an armed conflict. As already seen, the involvement of the Armed Forces in law enforcement actions in Rio de Janeiro is not regular, and when it happens, it is to support missions of a police nature.

(RN), Fortaleza (CE), Recife (PE), Maceió (SE) and Teresina (PI). See Gilson Garret Jr, “As 50 cidades mais violentas do mundo (o Brasil tem 10 na lista)”, *Portal Exame*, 27 March 2023, available at: <https://exame.com/mundo/as-50-cidades-mais-violentas-do-mundo-o-brasil-tem-10-na-lista/>. See also Seguridad, Justicia y Paz, *Metodología del ranking (2022) de las 50 ciudades más violentas del mundo*, 20 February 2023, available at: http://geoenlace.net/seguridadjusticiaypaz/archivo/d86357_e0cc9ce8f0.pdf.

115 See above notes 105 and 106.

116 See Paula Bianchi, “Jacarezinho, no Rio, tem 7 mortos em 9 dias de confrontos entre traficantes e policiais”, *UOL Notícias*, 20 August 2017, available at: <https://noticias.uol.com.br/cotidiano/ultimas-noticias/2017/08/20/jacarezinho-tem-7-mortos-em-9-dias-de-confrontos-entre-trafficantes-e-policiais.htm>; “Confronto entre policiais e traficantes já dura seis dias no Rio de Janeiro”, *SBT Brasil*, 11 December 2021, available at: www.sbtnews.com.br/noticia/sbt-brasil/190323-confronto-entre-policiais-e-trafficantes-ja-dura-seis-dias-no-rio-de-janeiro.

117 See the websites of Fogo Cruzado (Crossfire), available at: <https://fogocruzado.org.br/>; and Onde Tem Tiro (Where There Is Shooting), available at: www.ondetemtiroteio.com.br/.

118 See Fogo Cruzado, *Relatório anual 2021: Região Metropolitana do Rio de Janeiro*, 2022, available at: <https://fogocruzado.org.br/dados/relatorios/relatorio-anual-grande-rio-2021>.

119 See below note 130.

120 See Inter-American Commission on Human Rights (IACHR), *Juan Carlos Abella v. Argentina*, Case No. 11.137, 18 November 1997, para. 156, available at: www.cidh.oas.org/annualrep/97eng/argentina1137.htm.

Extent of material destruction

Though the situation in Rio de Janeiro is very serious and intense armed clashes occur either between criminal factions that dispute territory or between such factions and the police, the material destruction resulting from violent criminality or the State response is not comparable to what is seen in other NIACs.¹²¹

An immense amount of ammunition can be fired in a single confrontation in the *favelas*,¹²² and gunshot damage to walls and cars frequently occurs. In more extreme cases, there are reports of buses, trucks and even gas stations being burned down in disputes between criminal factions or in protests against police operations.¹²³ However, there is little reliable data available to verify the actual scale of material destruction resulting from this extreme urban violence, and such a survey would be necessary to classify this aspect as an indicative factor of a NIAC.

Weaponry

Criminal groups in Rio de Janeiro use high-calibre weapons, some of which are normally restricted to the Armed Forces. In 2019, 2,502 firearms and 974 explosives were seized from criminals in the city of Rio de Janeiro. Of these, 338 (13%) of the firearms were rifles and 525 (53%) of the explosives were grenades.¹²⁴ The lack of strict oversight of the arms trade and effective investigations into the theft, loss and trafficking of arms and ammunition contribute to this escalation of arms.¹²⁵

121 In the Syrian civil war, as of November 2017, there were a total of 109,393 detected damaged structures. 2016 witnessed the highest damage with a total count of 77,568 structures; 37% of the detected structures are moderately damaged, 35.3% are severely damaged and the remaining 27.7% are destroyed. Aleppo accounts for 32.7% of the total count of damaged structures. See Ameen Najjar, "Damage Caused by the Syrian Civil War: What the Data Say", *Towards Data Science*, 27 June 2018, available at: <https://towardsdatascience.com/damage-caused-by-the-syrian-civil-war-what-the-data-say-ebad5796fca8>.

122 See "Confronto no Alemão foi tão intenso que munição do BOPE acabou em 2 horas", *O Tempo*, 22 July 2022, available at: www.otempo.com.br/brasil/confronto-no-alemao-foi-tao-intenso-que-municao-do-bope-acabou-em-2-horas-1.2703929.

123 See Luana Alves, "Postos de combustíveis são incendiados na Zona Oeste; polícia investiga atuação de milicianos", *Globo.com*, 11 November 2021, available at: <https://g1.globo.com/rj/rio-de-janeiro/noticia/2021/11/11/combustiveis-incendio.ghtml>. See also "Rio de Janeiro tem ônibus queimados após ação policial", *Jornal do Comércio*, 3 May 2017, available at: www.jornaldocomercio.com/_conteudo/2017/05/galeria_de_imagens/560441-rio-de-janeiro-tem-onibus-queimados-apos-acao-policial.html. Erick Guimarães, "Rio: 7 ônibus são queimados em confronto entre traficantes rivais", *R7 Notícias*, 3 October 2019, available at: <https://noticias.r7.com/rio-de-janeiro/rio-7-onibus-sao-queimados-em-confronto-entre-trafficantes-rivais-04102019>.

124 Institute of Public Security, *Overview of Firearms and Explosive Device Seizures in the State of Rio de Janeiro in 2019*, available at: http://arquivos.proderj.rj.gov.br/isp_imagens/uploads/Panorama-Armas-de-fogo2020.pdf.

125 See "Entidades apontam falhas no sistema de controle de armas no Brasil que permitem a compra de pistolas e fuzis por criminosos", *Jornal Nacional*, 22 July 2022, available at: <https://g1.globo.com/jornal-nacional/noticia/2022/07/22/entidades-apontam-falhas-no-sistema-de-controle-de-armas-no-brasil-que-permitem-a-compra-de-pistolas-e-fuzis-por-criminosos.ghtml>.

To tackle this destructive potential, the police have carried out some robust operations in the *favelas* with specialized – and militarized – units that have armoured vehicles, heavy weapons and helicopters.¹²⁶ During some periods, as seen above, military personnel have also been engaged in law enforcement actions in order to provide a “safe” environment for the police work (execution of arrest and search and seizure warrants).¹²⁷

The use of heavy weapons could be seen as an indicator of high-intensity confrontation, but when this factor is combined with others, the picture of a NIAC does not hold up clearly.

Troops deployed

As already mentioned, armed clashes in the *favelas* of Rio de Janeiro involve violence between groups of criminals or between such groups and specialized police forces, but the Armed Forces have carried out some police operations.

The military contingent deployed in the last law enforcement mission in Rio de Janeiro between July 2017 and December 2018 was very large, with some operations in *favelas* mobilizing up to 4,000 military personnel. However, the operations were not continuous and were developed to support the work of the police, in quick actions, with the purpose of providing a “safe” environment so that the security agents could carry out arrest and search and seizure warrants.¹²⁸

The use of the Armed Forces was preceded by the approval of the planning of each operation by the minister of justice and public security, the minister of defence and the head of the Institutional Security Office of the Presidency of the Republic.¹²⁹

Despite the fact that there were exchanges of fire and deaths in these operations,¹³⁰ and that there are precedents of instant NIACs,¹³¹ the police nature of the mission carried out by the Armed Forces on the ground compromises the “number of military deployed” criteria as an indicative factor of a NIAC.

Civilian displacement

Although it is well known that many *favela* residents must adapt their lives around the organized criminal activities that take place there despite them, there are few recent studies that address the issue of migratory flows, and as a result we cannot

126 See above note 35.

127 See above notes 44, 45 and 50.

128 See above note 50.

129 See above note 50.

130 See, for example, Daniele dos Santos and Henrique Coelho, “Operação das forças de segurança na Maré, no Alemão e na Penha tem 1 militar e 5 suspeitos mortos”, *Globo.com*, 20 August 2018, available at: <https://g1.globo.com/rj/rio-de-janeiro/noticia/2018/08/20/operacao-das-forcas-de-seguranca-deixa-mortos-no-rio-ghtml>.

131 See IACHR, *Abella*, above note 120, para. 156.

specify whether there is a significant volume of internal displacement.¹³² While urban violence has a strong impact on the daily lives of residents through interruptions in the delivery of specific public services, the phenomenon cannot possibly be compared to the collapse of institutions in times of armed conflict.¹³³

International concern

A NIAC results in a very serious security crisis that can sometimes threaten international peace and become a matter of international concern. There are no reports of international bodies perceiving the situation in Rio de Janeiro as a NIAC; the ICRC places the situation in Rio de Janeiro in the category of “armed violence in urban areas”.¹³⁴ There is no evidence of involvement on the part of the UN Security Council, nor of any attempts by representatives of international organizations to broker and enforce ceasefire agreements.

Aggregated intensity

Usually, the intensity criteria necessary for qualifying a situation as a NIAC would have to be applied to each armed confrontation between non-State armed groups or between such groups and State forces on a case-by-case basis. It is not possible to generalize between regular forces on one side and criminals on the other, unless there is a sufficient level of coordination in a coalition of non-State armed groups fighting a common enemy and the other criteria of a NIAC are present.¹³⁵

An important part of the harmful effects of urban violence in Rio de Janeiro results from armed disputes over territory between criminal factions and militarized police repression. There are reports that the Bonde do Zinho militia and the Terceiro Comando Puro criminal faction are allied to fight the Comando

132 Throughout 2017, interviews were conducted with residents of disadvantaged communities of Rio de Janeiro who had to leave their homes because of the violence, mainly due to disputes between rival factions and constant police incursions, with armed confrontation in regions close to their homes. See Maiara Folly, “Migrantes invisíveis: A crise de deslocamento forçado no Brasil”, Strategic Article No. 29, Instituto Igarapé, March 2018, available at: <https://igarape.org.br/wp-content/uploads/2018/03/Migrantes-invis%C3%ADveis.pdf>.

133 On the impact of armed conflict situations on essential public services for affected populations, see ICRC, *Urban Services during Protracted Armed Conflict: A Call for a Better Approach to Assisting Affected People*, Geneva, 2015, p.11; Saúl Franco *et al.*, “The Effects of Armed Conflict on Life and Health in Colombia”, *Revista Ciência & Saúde Coletiva*, Vol. 11, No. 2, 2006, available at: <http://dx.doi.org/10.1590/S1413-81232006000200013>; Geneva Water Hub, *The Protection of Water during and after Armed Conflicts*, Summary Report for the Global High-Level Panel on Water and Peace, University of Geneva, 14 June 2016, available at: www.genevawaterhub.org/sites/default/files/atoms/files/gwh_ghlp_roundtable_armedconflicts_rev_march2017nomail_0.pdf.

134 ICRC, “Where We Work: Brazil”, available at: www.icrc.org/en/where-we-work/americas/brazil. The Geneva Academy, in its 2018 *War Report*, also refers to the situation in Rio de Janeiro as a high level of armed gang violence but not a NIAC: Annyssa Bellal (ed.), *The War Report: Armed Conflicts in 2018*, Geneva Academy of International Humanitarian Law and Human Rights, Geneva, April 2019, available at: www.geneva-academy.ch/joomlatools-files/docman-files/The%20War%20Report%202018.pdf. See also Robert Muggah, “Rio de Janeiro: A War by Any Other Name”, *Small Wars Journal*, 25 April 2017, available at: <https://smallwarsjournal.com/jrnl/art/rio-de-janeiro-a-war-by-any-other-name>.

135 See above note 99.

Vermelho criminal faction in some areas of Rio de Janeiro in an expansion plan,¹³⁶ but this criminal pact is not sufficiently coordinated to justify an assertion of aggregated intensity for the purpose of legally classifying a NIAC.

For the reason given above, the analysis of the intensity criteria indicates that, although some factors may characterize a spiral of violence, their combination does not result in the threshold required to classify the situation of Rio de Janeiro as a NIAC.

Organization

With regard to the degree of organization required by armed groups, the criteria are the existence of a command structure, disciplinary rules and mechanisms of control within the group; the existence of “headquarters”; territorial control; the ability to have access to weapons and equipment for exclusive use by military troops; military recruitment and training; the ability to plan, coordinate, and execute continuous military operations, including troop movements and logistics; the ability to define a unified military strategy and use military tactics; the ability to speak with one voice and negotiate and conclude ceasefire or peace agreements; and the ability to implement and respect basic IHL obligations.¹³⁷ In Rio de Janeiro, some of these criteria are met, some are not so evident, and others are not met in terms of the organization of criminal factions.

It is not an easy task to determine the hierarchical composition of an armed group, but it is possible to identify a command structure, disciplinary rules and mechanisms of control within the group, the existence of “headquarters”, territorial control, the ability to have access to weapons and equipment for exclusive use by military troops, and the existence of military recruitment and training.

Command structure, disciplinary rules and mechanisms of control within the group

The largest and best-known drug trafficking organized criminal groups are the Comando Vermelho (CV), the Terceiro Comando Puro (TCP) and Amigos dos Amigos (ADA), as well as cells of the São Paulo-based Primeiro Comando da Capital.

The militias, on the other hand, are mainly composed of former military personnel and police officers, and they exploit the population by levying illegal “taxes” for services, under the pretext of providing security. However, this gap between drug trafficking and militia-controlled *favelas* is quickly narrowing with the emergence of *narcomilicias* (narco-militias) – i.e., militia groups that are

136 See Herculano Barreto Filho, “Milícia do Rio se une ao tráfico em guerra contra o Comando Vermelho”, *UOL Notícias*, 1 November 2019, available at: <https://noticias.uol.com.br/cotidiano/ultimas-noticias/2019/11/01/milicia-do-rio-se-une-ao-traffic-para-enfraquecer-o-comando-vermelho.htm>.

137 See above note 97.

increasingly involved in drug trafficking in the *favelas* they control.¹³⁸ The largest militia in Rio de Janeiro was born in the late 1990s as the Liga da Justiça and is now called Bonde do Zinho.¹³⁹

Some might classify the *narcomilicias* as third-generation gangs due to their high degree of organization, international capacity and political goals.¹⁴⁰

The CV has been described as a network of independent actors rather than a strict hierarchical organization led by a single actor, although there are high ranking-bosses within the structure.¹⁴¹ The TCP and ADA emerged from disagreements within the CV; the TCP, rather than being a vertical mafia-type organization, functions as a horizontal coalition of local crime bosses that forge alliances based on mutually beneficial interests.¹⁴²

The leader of the ADA faction was captured by police in 2011, and although it is reported that the drug trafficker continued to run the group from prison, in his absence, rival groups such as the CV and dissident ex-members have been fighting for control of the group's strongholds.¹⁴³

The militia have a more structured organization¹⁴⁴ and more obvious political goals than other criminal groups;¹⁴⁵ they act more discreetly and try to avoid armed confrontation with security forces.¹⁴⁶ These organized criminal groups have their

138 On 26 October 2021, the secretary of State for the Military Police created a military judiciary police station specialized in the investigation of *narcomilicias* and complex crimes. Resolution No. 1827, *Diário Oficial*, Vol. 47, No. 205, 28 October 2021, available at: www.ioerj.com.br/portal/modules/conteudoonline/mostra_edicao.php?k=5E72A42E-E19PF-445B-8351-80C4D500519C. See also above note 136; Kristina Hinz *et al.*, “The Rise Of Brazil’s Neo-Pentecostal Narco-Militia”, *Open Democracy*, 6 May 2021, available at: www.opendemocracy.net/en/democraciaabierta/rise-narco-militia-pentecostal-brazil-en/.

139 See Marcela Lemos, “Como Liga da Justiça se transformou no Bonde do Zinho, a maior milícia do RJ”, *BOL Notícias*, 26 August 2022, available at: www.bol.uol.com.br/noticias/2022/08/26/como-liga-da-justica-se-transformou-no-bonde-do-zinho-maior-milicia-no-rj.htm.

140 See Carlos Frederico de Oliveira Pereira, “ADPF 635: Entrelaçamento do direito internacional dos direitos humanos e do direito internacional humanitário na repressão às gangues de 3ª geração com domínio territorial no Rio de Janeiro”, *Revista do Ministério Público Militar*, Vol. 46, No. 35, 2021.

141 See “Red Command”, *InSight Crime*, 17 July 2022, available at: www.insightcrime.org/brazil-organized-crime-news/red-command-profile/.

142 See “Pure Third Command”, *InSight Crime*, 26 April 2018, available at: www.insightcrime.org/brazil-organized-crime-news/pure-third-command/.

143 See “Amigos dos Amigos”, *InSight Crime*, 30 March 2018, available at: www.insightcrime.org/brazil-organized-crime-news/amigos-dos-amigos/.

144 See Carolina Callegari, Luiz Ernesto Magalhães and Vera Araújo, “Milícia do Rio tem fornecedor de armas dos EUA; veja quem é quem na maior organização criminoso do estado”, *Extra*, 29 August 2022, available at: <https://extra.globo.com/casos-de-policia/milicia-do-rio-tem-fornecedor-de-armas-dos-eua-veja-quem-na-maior-organizacao-criminosa-do-estado-25562746.html>.

145 See Mariana Simões, “No Rio de Janeiro, a milícia não é um poder paralelo. É o Estado”, *Exame*, 3 January 2019, available at: <https://exame.com/brasil/no-rio-de-janeiro-a-milicia-nao-e-um-poder-paralelo-e-o-estado/> (featuring an interview with Professor José Claudio Souza Alves from the Federal Rural University of Rio de Janeiro). See also Gil Alessi, “Mais vivo do que nunca, tentáculo político da milícia mira as próximas eleições”, *El País*, 17 May 2018, available at: https://brasil.elpais.com/brasil/2018/05/14/politica/1526325604_449819.html.

146 See GENI, “Historical Map of Armed Groups in Rio de Janeiro”, Fluminense Federal University, September 2022, available at: <https://geni.uff.br/2022/09/13/mapa-historico-dos-grupos-armados-no-rio-de-janeiro/>. See also “Mapa de tiroteios e operações policiais mostra que raramente confrontos acontecem em áreas de milícia”, *Profissão Repórter*, 30 May 2022, available at: <https://g1.globo.com/profissao-reporter/noticia/2022/05/30/mapa-de-tiroteios-e-operacoes-policiais-mostra-que-raramente-confrontos-acontecem-em-areas-de-milicia.ghtml>.

own internal codes of conduct,¹⁴⁷ career paths and even “trafficking tribunals”¹⁴⁸ for those who break their “law”.

Territorial control and existence of “headquarters”

Criminal groups also have restricted areas of operation and share control of organized criminal activity in Rio de Janeiro’s *favelas* and other low-income neighbourhoods, and often use self-made barricades to hinder police operations in back streets and alleyways. “In some areas of Rio de Janeiro, gang control is so absolute, and legitimate state presence so absent, that police can only enter under threat of armed confrontation with traffickers.”¹⁴⁹

The CV is the largest and oldest drug trafficking group operating in Rio de Janeiro and controls at least 60% of the *favelas* in the southern, central and northern zones of the city where most of the densely populated hillside *favelas* are found.¹⁵⁰ Rocinha, Complexo do Chapadão and Complexo do Alemão are some examples; the latter is where the headquarters of the CV are located.¹⁵¹

Compared to this drug trafficking group, the militias may come second in the number of *favelas* they control, but they are first in terms of controlling extensive areas, especially in the west of the city in flatter areas.¹⁵²

The TCP’s bases are mainly concentrated in the north and west zones of Rio. The most recent movements point to the extinction of ADA, an exponential growth of the militia, and, as already noted, an alliance between

147 See Rafael Pereira, “Sob as leis do tráfico”, *Época*, 28 May 2004, available at: <https://revistaepoca.globo.com/Revista/Epoca/0,EDG64597-6014-315,00.html>; Anderson Justino, “Polícia Civil apreende ‘Estatuto’ e ‘10 mandamentos’ do Comando Vermelho”, *Meia Hora de Notícias*, 8 October 2019, available at: www.meiahora.com.br/geral/policia/2019/10/5807578-policia-civil-apreende-estatuto-e-dez-mandamentos-do-comando-vermelho.html#foto=1; Darcianne Diogo, “Estatuto do Comando Vermelho é encontrado dentro de cela de presídio”, *Correio Braziliense*, 21 September 2022, available at: www.correiobraziliense.com.br/cidades-df/2022/09/5038456-estatuto-do-comando-vermelho-e-encontrado-dentro-de-cela-de-presidio-leia.html.

148 See Vania Regina do Nascimento, “Dos tribunais do tráfico à mediação de conflitos”, Fluminense Federal University, 2013, available at: <http://ppgantropologia.sites.uff.br/wp-content/uploads/sites/16/2016/07/dos-tribunais-do-tr%C3%A1fico-a-media%C3%A7%C3%A3o-de-conflitos.pdf>. See also “Memória: Como funcionam os tribunais do tráfico nas favelas do Rio”, *Extra*, 23 June 2008, available at: <https://extra.globo.com/noticias/rio/memoria-como-funcionam-os-tribunais-do-trafico-nas-favelas-do-rio-531257.html>; “Supeitos do Tribunal do Tráfico são presos no Rio de Janeiro”, *Jornal da Record*, 22 May 2021, available at: www.youtube.com/watch?v=1f5UYdOoJk.

149 P. Alston, above note 90, para. 7.

150 See Leslie Leitão and Carlos de Lannoy, “RJ tem 1,4 mil favelas dominadas por criminosos, aponta relatório”, *Globo.com*, 6 July 2020, available at: <https://g1.globo.com/rj/rio-de-janeiro/noticia/2020/07/06/rj-tem-14-mil-favelas-dominadas-por-criminosos-aponta-relatorio.ghtml> (discussing a report by the Civil Police). See also Nucleus for the Study of Violence, “Map of Armed Groups in Rio de Janeiro”, University of São Paulo, 2019, available at: <https://geni.uff.br/2022/09/13/mapa-historico-dos-grupos-armados-no-rio-de-janeiro/>.

151 See GENI, above note 146.

152 See Federal Fluminense University, above note 21.

the TCP and Bonde do Zinho with the aim of taking over *favelas* controlled by the CV.¹⁵³

Ability to have access to weapons and equipment for exclusive use by military troops, and military recruitment and training

As mentioned above, organized crime in Rio de Janeiro has access to heavy weapons. A considerable number of rifles and grenades are seized from criminals in the city each year.¹⁵⁴

Drug trafficking groups and militias even have international suppliers and benefit from a lack of strict oversight of the arms trade.¹⁵⁵ In addition, changes in legislation in recent years have allowed gun collectors to purchase large amounts of weapons and ammunition, and there are reports of alleged collectors supplying the arsenals of drug dealers and militiamen.¹⁵⁶

With regard to recruitment and training, the experience of former police officers who join the militia is an asset for these criminal groups.¹⁵⁷ There are also indications that former military personnel train new members of drug trafficking groups in urban guerrilla tactics, survival in hostile environments and handling heavy weapons.¹⁵⁸

Ability to plan, coordinate, and execute continuous military operations, including troop movements and logistics

Unlike the aspects of organization mentioned above, the information available does not allow us to assert that drug trafficking groups and militias have the ability to plan, coordinate and execute ongoing military operations, including troop movement and logistics. While there are some reports of members of criminal

153 See above note 152.

154 See above note 124.

155 See Cecília Olliveira and Leandro Demori, “Arsenal global: A origem das munições dos tiroteios do Rio de Janeiro”, *The Intercept Brasil*, 16 December 2019, available at: <https://theintercept.com/2019/12/16/rio-municoes-balas-eua-bosnia-russia-guerra-fria/>; Carolina Callegari, Luiz Ernesto Magalhães and Vera Araújo, “Milícia do Rio tem fornecedor de armas dos EUA”, *Extra*, 29 August 2022, available at: <https://extra.globo.com/casos-de-policia/milicia-do-rio-tem-fornecedor-de-armas-dos-eua-veja-quem-quem-na-maior-organizacao-criminosa-do-estado-25562746.html>.

156 See Igor Mello, “Exército enviara ao Ministério Público dados sobre colecionador que vendeu arsenal ao Comando Vermelho”, *UOL Notícias*, 27 January 2022, available at: <https://noticias.uol.com.br/cotidiano/ultimas-noticias/2022/01/27/exercito-enviara-ao-mp-dados-sobre-colecionador-que-vendeu-arsenal-ao-cv.htm>.

157 See Alba Zaluar and Isabel Siqueira Conceição, “Favelas sob o controle das milícias no Rio de Janeiro”, *São Paulo em Perspectiva*, Vol. 21, No. 2, 2007, available at: http://produtos.seade.gov.br/produtos/spp/v21n02/v21n02_08.pdf.

158 See “No Rio, ex-milares ensinam táticas do Exército a facções”, *Veja*, 15 March 2018, available at: <https://veja.abril.com.br/brasil/no-rio-ex-militares-ensinam-taticas-do-exercito-a-faccoes/>; “Ex-milares treinam tráfico no Rio”, *Folha Online*, 4 February 2022, available at: www1.folha.uol.com.br/folha/dimenstein/imprescindivel/semana/gd040202a100202.htm; Flávio Costa and Sérgio Ramalho, “Sniper, caçador e silencioso: O ex-Bope que comandava o Escritório do Crime”, *UOL Notícias*, 29 April 2019, available at: <https://noticias.uol.com.br/cotidiano/ultimas-noticias/2019/04/29/capitao-adriano-milicia-ex-bope-escritorio-do-crime-rio-de-janeiro-rj.htm>.

groups circulating with weapons in *favelas* or travelling together in vehicles to frighten the population and carry out criminal activities,¹⁵⁹ these do not constitute continuous military operations to qualify as a non-State armed group in a NIAC.

Ability to speak with one voice and negotiate and conclude ceasefire or peace agreements, and to implement and respect basic IHL obligations

The ability to define a unified military strategy, to speak with one voice, to negotiate and to conclude ceasefire or peace agreements and, above all, to implement and respect basic obligations under IHL is not at all evident in the criminal groups operating in Rio de Janeiro.

As already mentioned, confrontations between criminal factions are very frequent and eventual pacts between armed groups do not standardize their way of acting or reflect a general unity. Furthermore, the State has never considered initiating negotiations to conclude ceasefire or peace agreements with drugs trafficking groups or militias.

The social and territorial control exercised by such violent and criminal groups is based on criminal activities and atrocities, and it is not credible to suggest that these groups can implement even the most basic principles of IHL.¹⁶⁰

Some might argue that aspects of the intensity of the clashes and the organization of non-State actors meet the criteria necessary to qualify a NIAC, but as demonstrated, although the situation in Rio de Janeiro is very serious and challenging for the State response, a convincing combination of the required criteria is not reached and the very nature of the extreme urban violence remains a crime-fighting issue.

Additionally, the arguments in favour of applying IHL to the situation of Rio de Janeiro (more “legal certainty” to police and military personnel who fight violent crime, possibility of prosecuting criminals for war crimes, and greater and specific legal protection for the *favela* populations¹⁶¹) misrepresent the essence of IHL. The applicability of IHL cannot be based on apparent practical advantages that this legal system could offer in the fight against organized crime.

Targeting “the enemy” – in this case, criminals in densely populated communities – through incursions in a warlike manner is not the solution to fighting crime. Upholding the pattern of use of force reserved for the conduct of hostilities in wartime¹⁶² in order to exempt police or military personnel involved in law enforcement actions from criminal prosecution for extrajudicial killings is

159 See Diego Haidar *et al.*, “Polícia investiga imagens de bonde de criminosos após morte de Ecko e monitora disputa por sucessão da maior milícia do RJ”, *Globo.com*, 14 June 2021, available at: <https://g1.globo.com/rj/rio-de-janeiro/noticia/2021/06/14/policia-investiga-imagens-de-bonde-de-criminosos-apos-morte-de-ecko-e-monitora-disputa-por-sucessao-da-maior-milicia-do-rio.ghtml>.

160 See above note 98.

161 See above notes 93 and 95.

162 In wartime, targeting and killing the enemy is not a crime because it is a military objective, but in law enforcement actions, the use of lethal force should be the last resort in the face of a serious, proven threat.

an alleged legal form of violation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.¹⁶³

The possibility of prosecuting criminals for war crimes, not yet integrated into the Brazilian legal system,¹⁶⁴ seems to be an impact argument used to draw attention to the seriousness of the situation and not a technical argument based on the reality of the terrain. National criminal law has its own instruments for bringing criminal groups to justice, including special legislation to fight against organized crime that came into force as a result of Brazil's ratification of the UN Convention against Transnational Organized Crime.¹⁶⁵ In addition, in 2002 the National Council of Attorneys General established the National Group to Combat Criminal Organizations.¹⁶⁶

The argument that IHL would provide more protection to the *favela* populations as a special legal framework designed to apply in times of extreme violence is dubious to say the least.¹⁶⁷ In general, the principles of human rights law afford broader and more extensive levels of protection.

Civilians not involved in crime, including children and the elderly, are killed as a result of fighting between criminal factions and, mainly, as a result of militarized police operations to repress violent organized crime.¹⁶⁸ From an IHL perspective, if not disproportionate to the expected military advantage, these killings of *favela* residents would be considered collateral damage¹⁶⁹ and not a serious crime to be investigated and prosecuted.

Adopting a war narrative that justifies the conduct of hostilities in a *favela* will result in greater exposure of the population to the dangers of armed

163 See above note 92.

164 Bill 4038/2008 (available at: <https://tinyurl.com/y2mvmebd>) provides for the crime of genocide; defines crimes against humanity, war crimes and crimes against the administration of justice of the International Criminal Court; establishes specific procedural rules; and provides for cooperation with the International Criminal Court.

165 See Law No. 12.850/2013 (available at: www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/l12850.htm), which defines criminal organizations and provides for criminal investigation, means of obtaining evidence, related criminal offences and criminal proceedings.

166 See the official website of the National Group to Combat Criminal Organizations, available at: www.cnpq.org.br/site/index.php/gnccoc-menu.

167 According to the ICRC, “[t]he non-applicability of IHL does not necessarily mean lesser protection for the persons concerned. In such cases, human rights rules and peacetime domestic law would apply; they are more restrictive, for instance, regarding the use of force and detention of enemies, while IHL gives States greater latitude on these two aspects.” ICRC, “Fundamentals of IHL”, *How Does Law Protect in War?*, available at: <https://casebook.icrc.org/law/fundamentals-ihl>.

168 See the number of victims of violence in Rio de Janeiro by age group in Fogo Cruzado, above note 118.

169 Rule 14 of the ICRC Customary Law Study refers to proportionality in attack, stating: “Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.” According to the commentaries on this rule, “[w]hile Additional Protocol II does not contain an explicit reference to the principle of proportionality in attack, it has been argued that it is inherent in the principle of humanity which was explicitly made applicable to the Protocol in its preamble and that, as a result, the principle of proportionality cannot be ignored in the application of the Protocol”. Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), Rule 14, available at: <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1>.

confrontation in a densely populated urban area and even in a social acceptance of extrajudicial killings.

Although the contours of the fight against violent organized crime in Rio de Janeiro do not characterize a NIAC, one may still argue that this is a “grey zone conflict”¹⁷⁰ situated in a space between war and peace where human rights rules are not sufficient to monitor the situation.

Situations of internal disturbance and tensions¹⁷¹ are governed by domestic law and rules of international human rights law.¹⁷² As already seen, the non-applicability of IHL does not necessarily mean lesser protection for the persons concerned. Human rights rules and domestic law “are more restrictive, for instance, regarding the use of force and detention of enemies, while IHL gives States greater latitude on these two aspects”.¹⁷³

Attempts to lower international human rights standards during law enforcement operations in Rio de Janeiro

Given that the state of Rio de Janeiro has not been able to tackle urban violence efficiently, some members of the Executive Branch and even some prosecutors and judges advocate lowering applicable human rights standards, particularly concerning the use of force.¹⁷⁴ The argument is based on, again, the need to

170 See Sven Peterke, *Regulating “Drug Wars” and Other Gray Zone Conflicts: Formal and Functional Approaches*, HASOW Discussion Paper No. 2, IRI-PUC, October 2012, available at: <https://igarape.org.br/wp-content/uploads/2016/04/Regulating-Drug-Wars.pdf>. See also C. F. de Oliveira Pereira, “Grey Zones and Crime Suppression”, above note 93.

171 According to the ICRC, internal disturbances involve “situations in which there is no non-international armed conflict as such, but there exists a confrontation within the country, which is characterized by a certain seriousness or duration and which involves acts of violence. These latter can assume various forms, all the way from the spontaneous generation of acts of revolt to the struggle between more or less organized groups and the authorities in power. In these situations, which do not necessarily degenerate into open struggle, the authorities in power call upon extensive police forces, or even armed forces, to restore internal order. The high number of victims has made necessary the application of a minimum of humanitarian rules. ... As regards ‘internal tensions’, these could be said to include in particular situations of serious tension (political, religious, racial, social, economic, etc.), but also the sequels of armed conflict or of internal disturbances. Such situations have one or more of the following characteristics, if not all at the same time:

- large scale arrests;
- a large number of “political” prisoners;
- the probable existence of ill-treatment or inhumane conditions of detention;
- the suspension of fundamental judicial guarantees, either as part of the promulgation of a state of emergency or simply as a matter of fact;
- allegations of disappearances.”

Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds), *Commentary on the Additional Protocols*, ICRC, Geneva, 1987, paras 4475–4476.

172 Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609, 8 June 1977 (entered into force 7 December 1978).

173 See ICRC, above note 167.

174 See above note 93 and below notes 175 and 177.

provide “legal guarantees” to security forces or military troops engaged in law enforcement operations, including reducing the accountability of officials who use excessive force and/or carry out extrajudicial killings.

Although this is not the core discussion point of this paper, in order to exemplify some attempts to lower international human rights standards during law enforcement operations in Rio de Janeiro that make the populations of the *favelas* even more vulnerable, some initiatives that reflect a debate on the right to the inviolability of the home and the pattern of the use of force can be mentioned: (1) claims for collective search and seizure warrants;¹⁷⁵ (2) the use of snipers by the police, shooting from helicopters in densely populated areas;¹⁷⁶ and (3) bills intended to give law enforcement officers the presumption of self-defence in the event of an armed confrontation or imminent risk of armed confrontation.¹⁷⁷ In some extreme cases, international human rights treaties allow restrictions or even suspensions of some rights, but the rights to life and physical integrity, for example, are fundamental rights that cannot be derogated.¹⁷⁸

In Brazil, as provided for in the Federal Constitution, only in exceptional cases of “state of defence” and “state of siege” can certain rights be restricted or suspended.

The “state of defence”¹⁷⁹ can be declared by the president in restricted and determined areas in order to promptly preserve or restore public order or social peace threatened by serious and imminent institutional instability or affected by

175 See “STJ considera ilegal busca e apreensão coletiva em comunidades pobres do Rio”, *Consultor Jurídico*, 5 November 2019, available at: www.conjur.com.br/2019-nov-05/stj-considera-ilegal-busca-apreensao-coletiva-rio. See also Habeas Corpus 435.934 in the Superior Court of Justice, available at: www.conjur.com.br/dl/hc-stj-comunidades-pobres-rio.pdf; and Habeas Corpus 154118 in the Supreme Court, available at: <https://portal.stf.jus.br/processos/detalhe.asp?incidente=5370727>.

176 In the scope of ADPF 635, the adoption of measures to reduce police lethality was once again considered by the courts. The Supreme Court ordered a plan and restricted the use of helicopters to cases of strict necessity, to be proven through a full and detailed report submitted at the end of the operation. Supreme Federal Court, “Emb.decl. na medida cautelar na arguição de descumprimento de Preceito Fundamental 635 Rio de Janeiro”, 3 February 2022, available at: <https://portal.stf.jus.br/processos/downloadPeca.asp?id=15351553094&ext=.pdf>.

177 In early 2019, the Executive Branch forwarded to Congress a proposal to extend self-defence to security agents who are in armed confrontation or at imminent risk of armed confrontation (in the context of the bill that became known as the “anti-crime package”). The project also provided for the possibility of the judge reducing the penalty or not applying it in case of excessive use of force in police action due to “fear, surprise or violent emotion”. See Bill 882/2019, available at: www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=1712088&filename=PL+882/2019. At the end of 2019, and with the same argument of providing “legal protection to military and security agents”, the Executive Branch forwarded to Congress a new bill that expands the case scenarios of self-defence: see Bill 6125/2019, available at: www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=1836676&filename=PL+6125/2019. In another attempt, in March 2022, the Executive Branch sent a new proposal to Congress based on the need to provide greater legal protection to security agents: see Bill 733/2022, available at: www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=2153078&filename=PL+733/2022.

178 See, for example, International Covenant on Civil and Political Rights, 171 UNTS 999, 16 December 1966, Art. 4; American Convention on Human Rights, 22 November 1969, Art. 27.

179 Brazilian Constitution, above note 1, Art. 136.

major calamities. In this state of exception, there may be coercive measures such as restrictions on the right to assemble, secrecy of correspondence and secrecy of communications.

If a measure taken during the state of defence is ineffective or in cases of serious commotion with national repercussions, or even in case of a declaration of war or a response to foreign armed aggression, a “state of siege”¹⁸⁰ may be declared by the president. In this state of exception, there may be (1) an obligation to stay in a certain location; (2) detention in a building not intended for those accused or convicted of common crimes; (3) restrictions relating to the inviolability of correspondence, secrecy of communications, the provision of information and/or freedom of the press, radio and television; (4) suspension of freedom of assembly; (5) house searches and seizures; (6) intervention in public service companies; and (7) requisition of goods.¹⁸¹

The “state of defence” and the “state of siege” have never been considered in the debate regarding urban violence in Rio de Janeiro. The Inter-American Court of Human Rights (IACtHR) has already decided that the suspension of human rights can hardly be justified in situations where the armed forces are used to control social protest, domestic disturbances, internal violence, public emergencies or criminality.¹⁸²

Particularly with regard to the situation of Rio de Janeiro, international human rights organs have expressed concern about the “war approach”¹⁸³ and the consequent growing militarization of the fight against crime. A report of the situation of human rights in Brazil issued by the Inter-American Commission on Human Rights (IACHR) in 2021, calling for a citizen approach to public security, recommended the adoption of measures to revert the militarization of the police and the revision of protocols and guidelines of security forces that carry out law enforcement actions in order to ensure that the use of force respects the principles of legality, proportionality and absolute necessity.¹⁸⁴

Besides, in the “ADPF of the *Favelas*”,¹⁸⁵ the Supreme Court also ruled that security agents must examine the proportionality and exceptionality of the use of force in concrete situations and in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

180 *Ibid.*, Art. 137.

181 *Ibid.*, Art. 139.

182 IACtHR, *Zambrano Vélez et al. v. Ecuador*, Judgment (Merits, Reparations and Costs), 4 July 2007, para. 51, available at: www.corteidh.or.cr/docs/casos/articulos/seriec_166_ing.pdf.

183 See above note 90.

184 IACHR, *Situation of Human Rights in Brazil*, 2021, available at: www.oas.org/en/iachr/reports/pdfs/brasil2021-en.pdf.

185 See above notes 82–84.

Concluding remarks

Although urban violence in Rio de Janeiro may be seen by some as “war”, the city is not living a NIAC and the solution to criminality will not be found by resorting to the military and applying IHL.

The political use of the term “war”, including by high-ranking government officials,¹⁸⁶ to try to justify a militarized response while shielding law enforcement agents from criminal liability for any excessive and disproportionate use of lethal force is dangerous for society. The warmongering discourse feeds into a collective fear that can result in an uninformed social acceptance of human rights violations, such as extrajudicial killings.

The notion of solving historical failures in the fight against organized crime through alleged tactical/operational military advantage while applying the “laws of war” means disregard for the rule of law and the effective transfer of responsibility and accountability from the state of Rio de Janeiro in providing internal security to the federal Armed Forces. The military are trained to fight wars and should only act in exceptional situations for a determined period and under tight civilian oversight.

Government initiatives over the last fifteen years have already demonstrated that the “hypermilitarization”¹⁸⁷ of the police and the “policialization” of the Armed Forces,¹⁸⁸ both based on a confrontation-centred policy,¹⁸⁹ do not provide effective and lasting solutions to public security issues. In addition, this militarized response to violent crime has resulted in human rights violations.

The essential scope of IHL is to limit the use of violence and to protect victims of war. In the context of Rio de Janeiro, international human rights law is the prevailing legal framework and IHL can only contribute as a normative inspiration that protects people from the effects of extreme violence: a reference of humanity, put simply. If, in times of war, there are rules that protect the civilian population and restrict means and methods of combat, then *a fortiori*, in other situations of violence, these principles must also be respected.

The failure by the State to tackle violent crime, impunity and police brutality needs to be faced in a determined, ethical, professional, competent and integrated fashion, detached from partisan or ideological interests. The

186 See the above section on “The ‘Militarization’ of Security: The Escalation of Warmongering Rhetoric and the Role of the Armed Forces”.

187 Giovane Matheus Camargo, Marcelo Bordin and Aknaton Toczec Souza, “As intervenções federais no Rio de Janeiro: A hipermilitarização do cotidiano”, *Revista do Núcleo de Estudos Paranaenses*, Vol. 4, No. 2, 2018, available at: <https://revistas.ufpr.br/nep/article/view/63837/37144>.

188 Natalia Viana cites the “PMização” of the Armed Forces, alluding the Military Police of the State of Rio de Janeiro, popularly called the PM (Polícia Militar). N. Viana, above note 110. See also “‘Dano Colateral’ aborda efeitos da atuação dos militares na segurança pública”, *Rede Brasil Atual*, 2 October 2021, available at: www.redebrasilatual.com.br/politica/dano-colateral-militares-seguranca-publica/.

189 See above note 17.

affirmation of human rights and the construction of a citizen-based security policy – away from a model essentially based on confrontation operations – calls for the real engagement of all institutions and needs to be protected from electioneering interests.