

Armed Non-State Actors in International Humanitarian Law: The Need for a Definition for Legal Adaptation

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DOI: 10.26442/glsars.v2i1.194

Abstract

Today, non-international armed conflicts involving the participation of Armed Non-State Actors (ANSAs) are of remarkable significance, especially when compared to inter-state armed conflicts. Yet, despite the significant role ANSAs play in modern-day conflicts, they constitute an “anomaly” in the current State-centric international legal system. ANSAs’ degree of dispersion, influence, and effect on international politics challenges the Westphalian notion of sovereignty and Max Weber’s definition of State as an entity that successfully “claims the monopoly over the legitimate use of force within a given territory”. Thus, it is necessary to establish strategies for interacting with ANSAs considering the possibility of “adapting” international law, especially International Humanitarian Law (IHL), in light of their role. To identify the main shortfalls of the relevant IHL norms, particularly the 1949 Geneva Conventions and their Additional Protocols, firstly it is necessary to establish a clear and consistent definition of ANSAs, which is still lacking both in law and in theory. Secondly, it is also fundamental to consider the limitations of International Human Rights Law since it does not apply in situations of internal strife or disturbance, where ANSAs also pose serious threats. Starting with the Syrian armed conflict, this paper aims to put forward innovative solutions, such as “backchannel diplomacy”, to foster States’ and ANSAs’ collaboration. Within the scope of the study, some recommendations are proposed, including the establishment of a working table with the participation of States, international and regional organizations, and civil society, with the task to adapt IHL while mindful of ANSAs’ role. Lastly, there is an attempt to find effective tools to ensure that ANSAs comply with IHL.

Keywords: *Statecentricism, Armed Non-State Actor, international humanitarian law, backchannel diplomacy, human rights.*

Résumé

Aujourd’hui, les conflits armés non internationaux impliquant la participation d’Acteurs Armés Non-étatiques (AANE) revêtent une importance remarquable, en particulier en comparaison avec les conflits armés interétatiques. En dépit de leur rôle toujours plus important dans les conflits modernes, les AANE constituent une “anomalie” dans le système juridique international actuel centré sur l’État. Le degré de dispersion, d’influence et les effets des AANE sur la politique

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International Humanitarian Law and Non-State Actors Ezequiel Heffes, Marcos D. Kotlik, Manuel J. Ventura, 2019-11-28

This book challenges the traditional approach to international law by concentrating on international humanitarian law and placing the focus beyond States it reflects on current legal policy and practical issues that concern non State actors in and around situations of armed conflict With the emergence of the nation State international law was almost entirely focused on inter State relations thus excluding for the most part non State entities In the modern era such a focus needs to be adjusted in order to encompass the various types of functions and interactions that those entities perform throughout numerous international decision making processes The contributions that comprise this volume are oriented towards a broad readership audience in the academic and professional fields related to international humanitarian law international criminal law international human rights law and general public international law Ezequiel Heffes LL.M is a Thematic Legal Adviser in the Policy and Legal Unit at Geneva Call in Geneva Switzerland Marcos D Kotlik LL.M is Academic Coordinator at the Observatory of International Humanitarian Law of the University of Buenos Aires School of Law and was a Judicial Fellow at the International Court of Justice between 2018 2019 and Manuel J Ventura LL.M is an Associate Legal Officer in the Office of the Prosecutor at the International Residual Mechanism for Criminal Tribunals an Adjunct Fellow at the School of Law at Western Sydney University and a Director of The Peace and Justice Initiative

Non-State Actors and International Obligations James Summers, Alex Gough, 2018-10-02 Non State Actors and International Obligations examines the contribution and relevance of non state actors in the creation and implementation of international obligations These actors have traditionally been marginalised within international law and ambiguities remain over their precise role Nonetheless they have become increasingly important in legal regimes as participants in their implementation and enforcement and as potential holders of duties themselves Chapters from academics and practitioners investigate different aspects of this relationship including the sources of obligations their implementation human rights aspects dispute settlement responsibility and legal accountability

Detention by Non-State Armed Groups under International Law Ezequiel Heffes, 2022-02-17 Explores how international law deals with detention conducted by non State armed groups and the motivations behind these practices

Yearbook of International Humanitarian Law, Volume 22 (2019) Terry D. Gill, Robin Geiß, Heike Krieger, Christophe Paulussen, 2020-10-28 The main theme of this volume of the Yearbook of International Humanitarian Law is the 70th anniversary of the Geneva Conventions The evolution of these crucial treaties and international humanitarian law more generally comes back in six chapters addressing topics such as sieges compliance indiscriminate attacks and non state armed groups The second part of the book contains a chapter on the acquittal on appeal of Jean Pierre Bemba Gombo by the International Criminal Court on the basis of command responsibility for war crimes as well as an extensive Year in Review

describing the most important events and legal developments in the area of international humanitarian law that took place in 2019 The Yearbook of International Humanitarian Law is the world's only annual publication devoted to the study of the laws governing armed conflict It provides a truly international forum for high quality peer reviewed academic articles focusing on this crucial branch of international law Distinguished by contemporary relevance the Yearbook of International Humanitarian Law bridges the gap between theory and practice and serves as a useful reference tool for scholars practitioners military personnel civil servants diplomats human rights workers and students *The Global Politics of Human Rights* Miguel Ángel Verde Garrido, Philani Mthembu, Adam S. Wilkins, 2020-07-13 Now available online The Global Politics of Human Rights Bringing the Universal Declaration of Human Rights UDHR into the 21st Century 2020 a publication from the Berlin Forum on Global Politics BFGP in collaboration with the Institute for Global Dialogue and the RECLAIM Universal Human Rights Initiative The Universal Declaration of Human Rights UDHR even more than 70 years after its adoption continues to provide the foundation for national and international laws concerned with human dignity and the universal and inalienable freedoms and claims of every person A living document the core principles enshrined in the UDHR are as relevant as ever to better the human condition and societies worldwide This collected volume is an open knowledge publication freely accessible under a Creative Commons license which includes 24 articles written by numerous well informed stakeholders from across the globe who include human rights scholars and practitioners experts and activists researchers and members of civil society and non governmental organizations It addresses particular aspects of the history of the UDHR the expansion and implementation of its Articles its role in the prevention of violence and its potential to address a changing world As a whole the publication serves two goals on the one hand it clarifies why the UDHR continues to be strongly relevant to the contemporary values dynamics and conditions of human rights in the 21st century and on the other hand it illustrates how the UDHR and its Articles can be further adapted and implemented to uphold and safeguard human rights even in times when global politics often follow the siren songs of populism authoritarianism nativism and extremism *Human Rights, Export Credits and Development Cooperation* Barbara Linder, 2019-12-27 This book analyses to what extent the current human rights system allows affected individuals to claim accountability for human rights violations resulting from bilateral development and export credit agency supported undertakings The author explores three legal pathways host state responsibility home state responsibility and corporate responsibility The book concludes with recommendations on how to strengthen human rights accountability and improve access to justice for adversely affected individuals It will be of great interest to those researching the intersection between human rights development cooperation and investment **The Legal Regime Applicable to Private Military and Security Company Personnel in Armed Conflicts** Mohamad Ghazi Janaby, 2016-08-31 This book investigates the modern privatisation of war It specifically focuses on the legal regime regulating private military and security company PMSC personnel in armed conflicts The law regulating PMSC personnel is analysed from two perspectives

Firstly can one of the three following legal statuses established by international humanitarian law mercenary combatant or civilian be applied to PMSC personnel Secondly the book employs a context dependent methodology to explore the legal regime regulating PMSC personnel It argues that the legal regime regulating PMSC personnel in armed conflicts depends on who hires them individual states the United Nations non governmental organisations or armed groups This approach represents a departure from previous literature where attention has primarily been paid to the use of PMSCs by states

Hybrid Threats and Grey Zone Conflict Mitt Regan,Aurel Sari,2024 Hybrid Threats and Grey Zone Conflict explores the legal dimension of strategic competition below the threshold of war assessing the key legal and ethical questions posed for liberal democracies Bringing together diverse scholarly and practitioner perspectives the volume introduces readers to the conceptual and practical difficulties arising in this area the rich debates the topic has generated and the challenges that countering hybrid threats and grey zone conflict poses for liberal democracies *Self-Defence against Non-State Actors*

Mary Ellen O'Connell,Christian J. Tams,Dire Tladi,2019-08 Provides a multi perspective study of the international law on self defence against non State actors The International Legal Personality of the Individual Astrid

Kjeldgaard-Pedersen,2018-08-09 This is the first monograph to scrutinize the relationship between the concept of international legal personality as a theoretical construct and the position of the ultimate subject the individual as a matter of positive international law By testing the four main theoretical conceptions of international legal personality against historical and existing norms of positive international law that regulate the conduct of individuals the book argues that the common narrative in contemporary scholarship about the development of the role of the individual in the international legal system is flawed Contrary to conventional wisdom international law did not apply to states alone until World War II only to transform during the second half of the 20th century so as to include individuals as its subjects Rather the answer to the question of individual rights and obligations under international law is and always was strictly empirical It follows of course that the entities governed by a particular norm tell us nothing about the legal system to which that norm belongs Instead the distinction between international law and national law turns exclusively on whether the source of the norm in question is international or national in kind Against the background of these insights the book shows how present day international lawyers continue to allow an idea which was never more than a scholarly invention of the 19th century to influence the interpretation and application of international law This state of affairs has significant real world ramifications as international legal rights and obligations of individuals and other non state entities are frequently applied more restrictively than interpretation without presumptions regarding personality would merit **Yearbook of International Humanitarian**

Law, Volume 20, 2017 Terry D. Gill,Tim McCormack,Robin Geiß,Heike Krieger,Christophe Paulussen,2018-12-20 The main theme of this volume of the Yearbook of International Humanitarian Law is the development and interpretation of international humanitarian law IHL It is elaborated upon in several chapters that examine the role of non state armed

groups in the development and interpretation of IHL the impact of international criminal law on the development of IHL the notion of external non international armed conflicts and the regulation of prolonged occupation under international law The second theme of this volume is dedicated to targeting in armed conflicts Specific topics include precautions in attack in urban and siege warfare the targeting of the Islamic State's religious personnel in Iraq and Syria and the targeting of illicit crop through aerial spraying in Colombia Besides the chapters that address both themes this volume also contains a Year in Review describing the most important events and legal developments that took place in 2017 The Yearbook of International Humanitarian Law is the world's only annual publication devoted to the study of the laws governing armed conflict It provides a truly international forum for high quality peer reviewed academic articles focusing on this crucial branch of international law Distinguished by contemporary relevance the Yearbook of International Humanitarian Law bridges the gap between theory and practice and serves as a useful reference tool for scholars practitioners military personnel civil servants diplomats human rights workers and students

The Right Relationship John Borrows, Michael Coyle, 2017-01-01 In The Right Relationship John Borrows and Michael Coyle bring together a group of renowned scholars both indigenous and non indigenous to cast light on the magnitude of the challenges Canadians face in seeking a consensus on the nature of treaty partnership in the twenty first century Israel Yearbook on Human Rights, Volume 52 (2022) Yoram Dinstein, 2022-09-19 The Israel Yearbook on Human Rights an annual published under the auspices of the Faculty of Law of Tel Aviv University since 1971 is devoted to publishing studies by distinguished scholars in Israel and other countries on human rights in peace and war with particular emphasis on problems relevant to the State of Israel and the Jewish people The Yearbook also incorporates documentary materials relating to Israel and the Administered Areas which are not otherwise available in English including summaries of judicial decisions compilations of legislative enactments and military proclamations

Children's Rights Law in the Global Human Rights Landscape Eva Brems, Ellen Desmet, Wouter Vandenhoele, 2017-04-21 Children's rights law is often studied and perceived in isolation from the broader field of human rights law This volume explores the inter relationship between children's rights law and more general human rights law in order to see whether elements from each could successfully inform the other Children's rights law has a number of distinctive characteristics such as the emphasis on the best interests of the child the use of general principles and the inclusion of third parties e.g. parents and other care takers in treaty provisions The first part of this book questions whether these features could be a source of inspiration for general human rights law In part two the reverse question is asked could children's rights law draw inspiration from developments in other branches of human rights law that focus on other specific categories of rights holders such as women persons with disabilities indigenous peoples or older persons Finally the interaction between children's rights law and human rights law and the potential for their isolation inspiration or integration may be coloured or determined by the thematic issue under consideration Therefore the third part of the book studies the interplay between children's rights

law and human rights law in the context of specific topics intra family relations LGBTQI marginalization migration media the environment and transnational human rights obligations

Detention of Non-State Actors Engaged in Hostilities

Gregory Rose, Bruce Oswald, 2016-08-01 Detention of Non State Actors engaged in Hostilities The Future Law explores legal dilemmas facing detention management during military missions overseas Armed forces increasingly find themselves facing non international armed conflict with non state actors such as insurgents terrorists or other civilians whom they might be permitted to kill or capture in some circumstances The book considers the legal powers of military forces to apprehend non State actors and to hold them in ongoing detention or to transfer them to judicial authorities for prosecution It deals with both theoretical approaches and practical case studies concerning management and treatment of detainees It concludes by synthesizing the options and delivering a detailed set of guidelines that are proposed as emerging norms for the detention of non state actors in an armed conflict

US Counterterrorism and the Human Rights of Foreigners Abroad

Monika Heupel, Caiden Heaphy, Janina Heaphy, 2022-02-22 This book examines why the United States has introduced safeguards that are designed to prevent their counterterrorism policies from causing harm to non US citizens beyond US territory It investigates what made US policymakers take steps to put the gloves back on through five case studies on the emergence of such safeguards related to the right not to be tortured the right not to be arbitrarily detained the right to life in connection with targeted killing operations the right to seek asylum in connection with refugee resettlement and the right to privacy in connection with foreign mass surveillance The book exposes two mechanisms coercion and strategic learning which explain why the United States has introduced what the authors refer to as extraterritorial human rights safeguards thus demonstrating that the emerging norm that states have human rights obligations towards foreigners beyond their borders constrains policy choices This book will be of key interest to scholars and students of human rights counterterrorism US foreign policy human rights law and more broadly to political science and international relations The Open Access version of this book available at <http://www.taylorfrancis.com> has been made available under a Creative Commons Attribution Non Commercial No Derivatives 4.0 license

OECD Journal on Development, Volume 9 Issue 2 Measuring Human Rights and Democratic Governance: Experiences and Lessons from Metagora

OECD, 2008-09-08 On the occasion of the 60 anniversary of the Universal Declaration of Human Rights this special issue of the OECD Journal on Development focuses on robust methods and tools for assessing human rights democracy and governance

Ethical Water

Stewardship Ingrid Leman Stefanovic, Zafar Adeel, 2020-10-20 This interdisciplinary book brings philosophers and non philosophers to the table to address questions of water ethics specifically in terms of how moral questions inform decision making around water security at local national and international scales Water security which pertains to the experience of assured access to clean water is a broad concept that intersects human rights politics economics law legislation public health trade agriculture and energy Decisions made at each of these intersection points have ramifications for human well being

especially for the populations that are marginalized in a societal and political sense In this book the ethical dimensions of decision making at those intersection points are explored and real world examples are used to tease out some key insights It charts how ethical consideration can help shape a future in which everyone will be water secure [Making and Shaping the Law of Armed Conflict](#) Sandesh Sivakumaran,Christian R. Burne,2024 This volume in the Lieber Studies series explores how the law of armed conflict is made and shaped It examines the fundamental materials of the law of armed conflict key actors and influences the spaces where the law is made as well as questions of unmaking **The Asian Yearbook of Human Rights and Humanitarian Law** Ayesha Shahid,Meryl Dickinson,Javaid Rehman,2017-10-17 The Asian Yearbook of Human Rights and Humanitarian Law aims to publish peer reviewed scholarly articles and reviews as well as significant developments in human rights and humanitarian law It examines international human rights and humanitarian law with a global reach though its particular focus is on the Asian region The focused theme of Volume 1 is ISIS and Implications for Human Rights and Humanitarian Law

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