Non-State Actors in Non-International Armed Conflicts and IHL: To engage or not to engage?

Prof. Dr. Horst Fischer
Ruhr-University Bochum
Abstract

This study is conducted to find out in what ways compliance with international humanitarian law (IHL) by non-state actors can best be improved. Therefore the study first looks into the traditional framework of IHL that currently exists. The gaps in the applicable law, implementation mechanisms and enforcement mechanisms will be identified. Consequently a variety of new creative mechanisms that aim to improve compliance with IHL by non-state actors will be described. These mechanisms are different in initiator, the aspect it aims to change and actors involved. For the mechanisms that are not implemented yet the study looks into the advantages and disadvantages these mechanisms could have. For the mechanisms that have already been implemented the study looks into their results. Based on all the gathered information about the (possible) effectiveness of the new mechanisms a conclusion will drawn as to which type of mechanism is most promising to make non-state actors comply with IHL.
Acknowledgements

I am grateful to Prof. Dr. Horst Fischer for guiding me through this exiting experience. He gave me advice when I was in need of it and encouraged me when I was out of ideas. I am sure this study would not have been the same if it weren’t for him. I would like to express my gratitude to all masterini, especially Helen, for sharing ideas, numerous pep talks and endless solidarity. Finally I would like to thank my family and friends for their infinite patience in giving me moral support.
# Table of contents

## Introduction

1. Situating the problem: Non-State Actors violate IHL
2. Research Questions
3. Methodology

## I. Traditional Framework

1. Applicable Law in Non-International Armed Conflicts
   a. Treaty Law
      - Before 1949
      - The distinction of the 1949 Geneva Conventions
      - Article 3 common to all four Geneva Conventions
      - Additional Protocol II
      - Post 1977
      - Problems with the applicable treaty law
   b. Customary Law
      - Relevance for Non-International Armed Conflicts
      - Content of the ICRC Study on customary IHL
      - Critique on the ICRC Study
   c. Accountability of Non-State Actors
   d. Impact of jurisprudence of International Criminal Tribunals

2. Implementation of IHL by Non-State Actors
   a. Legal Tools
      - Domestic Laws
      - Special Agreements
      - Unilateral Declarations
      - Codes of Conduct for Armed Groups
      - Ceasefire or Peace Agreements
      - Grants of Amnesty for mere participation in hostilities
      - Dissemination
b. Other Tools

- Persuasion
- Pressure

3. Enforcing IHL: Non-State Actors in National and International Courts

a. Domestic Enforcement – National Courts

- Principle of Universal Jurisdiction
- Advantages and Disadvantages

b. Interstate Enforcement – International Criminal Law

- More than just deterrence by trials
- The way to the International Criminal Court (ICC)
- The International Criminal Court

4. Conclusion

II. New Mechanisms

1. Changes to the Applicable Treaty Law

a. Opportunities in Human Rights Law
b. Engaging Non-State Actors in the Creation of IHL

2. Implementation Mechanisms

a. Geneva Call

- Description of the organisation
- Results obtained in the landmine issue
- Children and Women in Armed Conflict
- Criteria developed by Geneva Call

b. Berghof

- Description of BCR and its activities
- Results obtained in the area of Resistance and Liberation Movements in Transition
- Results obtained in the area of State and Non-State Relations in Transforming Violent Conflicts
- Berghof Peace Support
- Berghof Handbook for Conflict Transformation
c. Human Rights Council 65
  ▪ The Mandate 65
  ▪ Expanding to IHL and Non-State Actors 66
3. Enforcement Mechanisms 72
  a. Individual Complaints Procedure for Violations of IHL 72
  b. Courts by Non-State Armed Groups 74
    ▪ Legitimacy 75
    ▪ Due Process Guarantees 76
    ▪ Engagement of the International Community 78
4. State-Legitimacy Concerns with Engaging Non-State Actors 80

III. Conclusion 84

Bibliography 87
Non-state actors in non-international armed conflicts and IHL: to engage or not to engage?

Hoofstat, Marie : Van

https://doi.org/20.500.11825/1054

Downloaded from Open Knowledge Repository, Global Campus’ institutional repository