

A Research on the Periphery of International Humanitarian Law

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Abstract

Do hypothetical subjects in the periphery, where their legal status is unclear and they lack the ability to make laws, have any relevance to international law? What criteria must be met for international law to be regarded as law, stay relevant, and finally be followed among the players on the periphery? This article evaluates the degree to which nonstate armed actors (nsaas) recognise and uphold international humanitarian law (ihl) by taking a multidisciplinary approach from both international law and international relations. According to the author, if two requirements are satisfied, international law is relevant in tangential situations. The first situation occurs when nsaas incentives are in line with the restraint-related ihl aim. The second situation is one in which local applications of international law are in line with universal applications of that law. In order to support its ideas, this article offers several instances of nsaas' words and behaviours.

Keywords: Armed non-state actors, Commitment, Adherence, International humanitarian law

Introduction

Do prospective subjects on the periphery, where their legal status is unclear and they lack the ability to make laws, have any relevance to international law? What circumstances would it take for non-state actors to recognise international law as law, continue to see it as significant, and finally obey it? Examining how international law is practised on the margins will be crucial to determining the weight and future direction of international law in an age when its legitimacy, relevance, and acceptability are all under scrutiny.

The case of non-state armed actors (nsaas) is the focus of my main investigation.

nsaas are described in this article as people or organisations that use violence to further their political, social, or economic objectives. In everyday speech, the term "nsaas" is often used to refer to organisations or persons that are insurgents, rebels, terrorists, or even members of criminal gangs. The scope of international humanitarian law (ihl) does not, of course, apply to all nsaas. Legal researchers banter the rules for belligerency, the norms of "taking threats in battle," as well as whether the outfitted association had a sufficient order and control structure or compelling regional control, beginning with whether or not the contention comprises a non-global equipped clash. In this article, the arguments and associated disagreements on the rules that must be followed by people or groups are not treated lightly. Instead of concentrating on the question of whether each nsaa is a legal

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issue or not, this article takes the stance that all nsas are, in varied degrees, covered by the International Humanitarian Law, some inside the bounds of treaties, and others at the level of custom.

This strategy is used since the primary objective of the article is to examine the link between nsas and ihl generally, while taking into account the variability within the collection of nsas. Because of this, the analytical exercise in this article will vary from a strictly legal consideration of whether a specific instance of nsaa meets the requirements for legal personality or whether the ihl is really directly relevant to the group or person in question.

I will now return to the main topic of this paper after defining the nsas. Nsas do not have the same rights and obligations under international law as states since they are considered to be on the "periphery," rather than at the core, of international law. Nsas are often ignored in the development of international law. What circumstances might cause nsas to be influenced by international law? In a broader sense, when might international law matter in the background?

By introducing a hypothetical clarification in view of two necessities: 1) motivational similarity and 2) consistency in translation, I show the examples for the worthiness and significance of ihl with regards to nsas. We are probably going to see ihl acknowledgment on the fringe when nsas are persuaded to adjust to and follow ihl, as well as when nearby translations of nsas are predictable with worldwide guidelines. We are probably going to track down unimportance, renunciation, or dismissal of IHL among NSAs without these two necessities when the motivating force similarity measure falls flat or potentially when neighborhood standards are adequately disparate from general understandings of rules.

Congruent interpretation and incentive compatibility may at times reinforce one another: nsas' motivations to uphold the law can be made stronger when local interpretation is in line with international regulations. In turn, incentive-friendly conditions may encourage nsas to have local interpretations of international law that are consistent with general understandings.

Throughout the span of the twentieth and 21st centuries, the reach of global regulation as to nsas has developed. The way countries behave within the worldwide framework has generally been represented by global regulation. Global regulation currently incorporates many players, including nsas, because of the development of individual entertainers. The Extra Conventions and Normal Article 3 of the Geneva Conventions expanded the use of worldwide regulation to nsas obligations. The Common Liberties Show addresses this issue also, remembering the Discretionary Convention to the Show for the Privileges of the Youngster on the Contribution of Kids in Furnished Struggle (opac). Worldwide regulation has reached the nsas to a remarkable degree, as seen by the marking of the Rome Rule, the formation of the Global Crook Court, and its continuous work with the aggregation of case regulation.

For two key historical reasons, it is critical to evaluate the extent to which nsas has incorporated ihl. One is to ensure the safety of people.

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Because of their utilization of savagery, numerous NSAAs commit IHL. We can create proper worldwide legal and strategic reactions that directly influence the predetermination of many individuals across the globe, assuming we know about how NSAAs answer IHL. Second, as the quantity of members in the worldwide framework increases, understanding how global regulation is seen by end clients will assist us with evaluating its relevance and adequacy all the more extensively. Numerous scholastics concur that the development of populism and protection from the liberal request in the cutting edge period represent a danger to the legitimacy of global law. In light of this, the examination of the nsaa's association with IHL will assist us in understanding the worldwide regulation capabilities in regions where its impact is limited and sometimes dim.

The theoretical circumstances in which ihl may be accepted and retained relevance are examined in this essay. Additionally, it uses nsaas' words and behaviours as instances to exemplify the two criteria. Nsaas may refer to international law and act in accordance with international humanitarian legal standards. Other times, nsaas shamelessly flaunt ihl in their actions or outright reject it in their words. The diversity and variety of non-state armed organisations will be responsible for the ihl's mosaic patterns of importance and acceptability.

What happens next in this essay is as follows: My justification for the two requirements for the adoption of international law on the periphery is explained in Sections 2 and 3. By scrutinising nsaas' words and acts, the subsections therein give instances to demonstrate the points. Implications for ihl and policy are discussed in Section 4's conclusion.

Adaptability to Incentives

At the point when subjects' inspirations and the guidelines' armed forces are in line, global regulation becomes important. We are probably going to see the pertinence and worthiness of IHL when the two associations' goals align. I refer to this area of understanding as the "motivating force similarity" basis. Nsaas are bound to perceive, recognize, and carry out global regulation when motivators are compatible, or when the entertainer's advantages and intentions harmonize. For ihl to be completely acknowledged by nsaas, motivational similarity is a required but insufficient need. Since there might be extra conditions that emerge preceding the consistence stage, impetus similarity on nsaas doesn't as expected guarantee consistence. For example, regardless of whether the NSAA authority laid out an interior set of principles that stuck to the IHL, average soldiers might break the standards during the most intense part of the conflict.

IHL objectives and NSAAS targets appear to be hard to match from the get-go. IHL tries to reduce human suffering by means of constraints on brutality. The fundamental goal of the IHL, which is to control wartime conduct, is much of the time in conflict with the political and military objectives of the NSAAS. The point of nsaas is frequently to make everyone experience something together to get concessions from the other government or to understand their social, political, or financial goals. The points of ihl and nsaas might be contrary, as seen by the substituting drives of nsaas among animosity and restriction.

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Notwithstanding the conceivable hopelessness, I list three conditions under which motivating force similarity could emerge. The first happens when nsaaas proclaim their aim to maintain the IHL as a sign to follow the IHL, for the most part through connections with worldwide philanthropic entertainers. The subsequent event is the point at which certain NSAAS subtypes, such as dissident associations, exhibit a craving to accomplish global authenticity by keeping the IHL. The third circumstance is the point at which the NSAAAS life cycle empowers their impetuses to be in accordance with IHL goals. The three conditions will act as the specific occurrences when nsaaas impetuses and ihl points of limitation consolidate.

Humanitarian Collaborations and Soft Law Documentation

The nsaaas' incentives to adopt international law may be boosted through interactions with international humanitarian actors. Through peace accords, unilateral statements, or agreements with international organisations, several nsaaas have been progressively pledging their allegiance to international law. These delicate commitments are often delivered in relation to global philanthropic entertainers. For example, the Geneva Call has worked with other global alliances to advance the Deed of Responsibility for Adherence to a Complete Restriction on People Killing Mines and for Participation in Mine Activity ("Deeds" hereinafter) in the people killing mines issue. Around 50 agitator bunches have joined the Deeds as of this composition, which is about a portion of those that answered the Geneva Call. According to the graph, just a small percentage of nsaaas are active, and of those that are, only a small minority are ready to address international law. Recent studies also provide empirical support for the idea that certain rebel organisations genuinely changed their behaviour towards greater restraint as a result of their dedication to the Deeds.¹³ The United Nations Department of Peacekeeping Operations, the United Nations Development Programme, and the Special Office of Children and Armed Conflict have often worked together to create action plans with nsaaas in the case of the prohibition on child soldiers. 20 groups of nsaaas are covered by the action plans thus far.

The analysis of the soft law papers created by nsaaas gives us a clearer idea of how the development of soft law is going. These declarations of global humanitarian commitment are curated by nsaaas in the Geneva Call's Theirwords repository. Between 1974 and 2011, the database contains more than 600 papers signed unilaterally or bilaterally with regard to international law by around 60 non-state armed organisations.

The database study reveals a rising tendency in the nsaaas's adherence to international law. The total number of commitment papers varied between 10 to 90. By the year 2000, there were about 30 commitment papers every year. If we take into account the expressions on other platforms, such social media, we're going to hear more nsaaas statements on international law.

At the height of national liberation movements and Marxist rebels in 1981, Swapo and FMLN used phrases like "revolutionaries," "people," and so on. 2014's National Coalition of Syrian Revolutionary and Opposition Forces uses language like "humanitarian," "protect," "refrain," and other similar

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phrases. These word clouds demonstrate, at least in part, how rebel groups have changed norms. This change may well be the result of how revolts are evolving, but it is still significant to recognise that insurgent organisations participate in international "law talk" in and of itself.

The aforementioned instances of humanitarian involvement, together with the short examination of a few soft law papers created by nsaas, highlight the significance of the incentive compatibility requirement in enforcing nsaas' commitments to ihl.

Nsaas has a variety of interests

Contrasted with different gatherings of nsaas, some are bound to have interests that concur with the target of IHL. It appears that the goals, subsidies, and reasoning matter. Some nsaas are more disposed to acknowledge IHL than others, depending on their goals. For example, dissident developments are bound to participate in global legitimate thinking and keep inside the limits of worldwide regulation while endeavoring to obtain statehood. A genuine model is the Polisario in the Western Sahara, a locale that appreciates self-government and is perceived as such by the rest of the world. Concerning EU-Morocco Fisheries Understanding, Polisario documented a protest with the Court of the European Association (CJEU). The Independent Diplomat's attorneys argued the matter, and the Cjeu decision affirmed the Polisario's position on the right to self-determination. In their quest for sovereignty on a global scale, separatist nsaas are also more likely to worry about international law, according to recent study. This has a spillover impact on how they treat local citizens while using violence.

The NSAA and IHL's association are likewise impacted by belief systems. Outfitted jihadists frequently scrutinize worldwide regulation as "occupiers' regulation" or the "West's creation." Equipped communists frequently portray global regulation as "colonialist rule." When found along these lines, philosophy might deliver conviction frameworks that are totally at odds with global regulation. We are probably going to see NSAAS reject the structure and authority of worldwide regulation when philosophical contrasts make it inconceivable for the motivator similarity standards to be met.

Comparable to the issue of "persistent objectors" who would contest the law and order established by the "Other" is this total rejection.

Timing

Some nsaas reach a stage in their life cycle when embracing IHL makes them incentive compatible. Therefore, timing may affect the incentive compatibility condition. Incentives for international appeal rise, for instance, when nsaas are bargaining for peace negotiations. As ihl clauses are often included in peace accords, nsaas have the chance to participate in international law, which in turn may help ihl gain more support.

The remarks made by Fuerzas Armadas Revolucionarias de Colombia (farc) provide as an illustration of how the discourse around ihl changes over time over the lifetime of one nsaas. A farc commander named Gabriel Angel criticised the International Human Rights Law (IHL) in 2001 for being a means

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of extending US hegemony and highlighting the absence of 'Peoples' from the drafting of laws.

Condition for Incentive Compatibility

The above-mentioned facts and defence disturbed the straightforward presumption that all nsas disrespect and undermine ihl. Some practical advice for humanitarian action may be gleaned from the concept of incentive compatibility conditions. It explicitly makes a number of recommendations that could encourage humanitarian action in order to encourage moderation during hostilities. Indicating that certain nsas are more inclined to participate in international law than others, certain features of those specific nsas (such as armed actors with separatist ambitions) imply a more open humanitarian window with those particular players. Timing is important since there are times when using nsas might be more successful than at other times. One high point that provides a window of opportunity with relation to humanitarian objectives is the time of the peace negotiations. In an endeavour to introduce nsas into the ihl domain, humanitarian involvement is another component that may promote incentive compatibility.

Uniformity of Interpretation

As was referenced in the previous area, impetus similarity will be vital for global regulation to issue at the fringe. Nonetheless, it's conceivable that motivational similarity is deficient for worldwide regulation to set up a good foundation for itself in neighborhood settings.

In this part, I set forth the subsequent need and argue that where consistency in translation exists, global regulation worries just behind the scenes. In the event that worldwide regulation were to keep being relevant at nearby levels, there should be a compatible match between understanding at the worldwide and neighborhood levels. Worldwide regulation might become superfluous among nsas assuming nearby comprehension of it varies essentially from worldwide translation, and in some cases in a way beyond reconciliation. The uniqueness among worldwide and neighborhood levels may be frightening with different decentralized interpretive practices, which ultimately cause IHL adequacy among NSAAS to disintegrate. Consequently, notwithstanding the motivational similarity models referenced in the previous segment, consistency of translation across nearby and worldwide entertainers is a requirement for keeping up with ihl worthiness and pertinence among nsas.

Because social, historical, and theological settings change amongst civilizations, different interpretations may be made. Local interpretations of the IHL may contrast with universal interpretations, such as in the case of relation to the concept of "child" in the context of child soldiering, or the definition of "civilian" in the context of civilian protection.

It is also possible for actors to purposefully interpret international law differently in order to further their political agendas. Consider a tweet sent out by the National Transitional Council (ntc) during the NATO and United States of America involvement in Libya. The most significant crimes against the Libyan people might have been perpetrated by Colonel Gaddafi's regime, according to #Libya. It is becoming more common for the nsaa to share its own interpretations on social media. The issue here

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is that some nsaas pretend to be in a position to judge legality while in reality they may not be. On the one hand, this trend is positive since nsaas seek to apply international law rather than outright deny it.

However, there is a chance that international law may be construed quite arbitrarily without adequate authority when it is exploited as a tool for politics.

Legal ambiguity present in ihl itself may also contribute to differences in interpretation. Recent studies have shown that even humanitarian actors do not fully comprehend ihl. We cannot also anticipate that nsaas will be well versed on the law. Particularly if the nsaa leadership has a state-army history, nsaas often acquire IHL via state army experience.

Through engagement with humanitarian actors, nsaas may potentially learn IHL. Only some, not all, nsaas are aware of and embrace international law as the law controlling their actions, according to an analysis of rebel papers, social media, and recorded narratives. IHL uncertainty might lead to miscommunication, erroneous interpretation, the politicisation of IHL, or even silence.

In their conceptions of fundamental legal concepts or when they prioritise local norms above international standards, non-state armed organisations provide examples of how ihl and local nsaa interpretations deviate and converge. The possible interpretive discrepancies between ihl and nsaas are shown by the examples below.

Various Definitions

Warring parties must abide by the International Humanitarian Law, but frequently military might and winning the battle win out. This also applies to nsaas, which often use rule interpretation to their benefit. Consider Layeha, the Taliban's internal code of behaviour. 'Infidels' serve as the dividing point between legitimate and illegitimate targets throughout the narrative. The addition of religious devotion is undoubtedly distinct from how Westerners see civilians.

People who do not actively participate in hostilities are regarded as civilians under the International Humanitarian Law's concept of difference between combatants and civilians. The Layeha's 2010 edition has the passage mentioned above that is opposed to this idea.

It is unclear whether operating an enemy vehicle and provide logistical assistance constitute "direct participation in hostilities." It is conceivable to argue that providing logistical assistance constitutes indirect rather than direct engagement in hostilities. However, the 2010 Taliban code does not provide the aforementioned driver any leeway in terms of how to be treated.

Instead of being executed right away, the accused driver now gets an opportunity to be attempted by the commonplace power. This modification from the 2009 to the 2010 language may have been a response to the United States' reaffirmed military commitments and the 2009 "Afghan surge." Internal behaviour policies are often used to discipline troops, and the shift may be seen as a more forceful response to US military actions. The contrast of the Layeha between 2009 and 2010 shows

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how nsas may interpret the IHL anyway they see fit, based on the political and military climate where they operate. This further demonstrates the brittleness of IHL interpretations in regional contexts.

In a discursive manner, the Taliban continues to contest the fundamental ideas of citizens. The Taliban contested how the United Nations Assistance Mission in Afghanistan (unama) and the governments of the United States and Afghanistan were using various changing definitions of identifying civilians in their recent reaction to the UN report on civilian protection. This unreconciled interpretive discrepancy foretells future conflicting interactions between nsas and ihl.

Unama has on multiple times classed the Afghan government's and America's armed forces as civilians even though they do not wear uniforms, and they do not discriminate between civilian and non-civilian Mujahideen. All Taliban who work in law enforcement, administration, healthcare, the judiciary, reconstruction, or any other area of the civilian economy are counted as Taliban, and their deaths are not included in the total number of civilian fatalities. The American government and the government in Kabul often believe that any civilians who have continued to live under Islamic Emirate Mujahideen authority are valid targets. Similar to how Mujahideen carefully confines its activities to military goals, unama criticises them for deploying ieds since ieds are unable to discern between targets. On the other hand, they turned a blind eye to American and Kabul government airstrikes that do not differentiate between civilian and non-civilian targets and inevitably result in civilian fatalities.

Regional Translations

Another illustration of the discrepancy between local and international conceptions of ihl is the notion of 'child' in the context of child soldiering. The opac, which has been ratified by 167 of the 197 UN member states as of 2018, defines a child as someone under the age of 18 under international law. However, a child is defined as a person under the age of 15 under the Rome Statute (1998) and the Additional Protocols to the Geneva Conventions (1977).

These regional interpretations sometimes diverge from those at the international level. Implementing ihl is undoubtedly hampered by inconsistent or contradictory interpretations. The legislation itself is still seen as being relevant by nsas like the milf, but there are many interpretations of what it really means in practise. Different interpretations may make it difficult for IHL to be accepted since it does not have simple answers, in part because the cultural ideas and customs are deeply ingrained in history and society.

Consistency in interpretation

It takes time to establish interpretive uniformity in international law. As part of the "work of international law," which promotes discussion and contestation, the nsas' participation in ihl interpretation the primary goal of international law. Nsas do not play a part in creating or interpreting international laws, according to the conventional understanding of international law and

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law-making. But how nsas apply or interpret the legislation will be crucial in deciding the applicability and adoption of ihl.

In the face of varying interpretations of ihl, little improvements might make a large difference. Humanitarian professionals attempt to comprehend where certain extremists or ideological nsas come from since islamist thought is not entirely antithetical to ihl. Finding similarities while highlighting consistency with the law, rather than forcing internalisation, may be a more effective persuasive strategy than "talking the law." Humanitarians may have a higher chance of communicating successfully for enhanced debates for civilian protection when shared values, such as the worth of civilian life, are stressed rather than using the Additional Protocol ii or the shared Article 3. Breaking the deadlock of apparently contradictory conceptions of international law may be possible with this form of starting-small persuasion or framing.

Conclusion

This article examined if ihl matters to nsas in the outskirts. With related and illustrative examples, it provided two theoretical criteria for when ihl might be relevant to and accepted by nsas. I have argued that ihl will continue to be accepted among nsas as long as nsas are eager to achieve the aim of restrained aggression and as long as ihl is seen as such by nsas. How nsas embrace international law on the periphery will depend on the incentive compatibility and uniformity in interpretations.

Non-compliant behaviours may happen if the two requirements are not met. When nsas motives and interpretations are misaligned, blatant and severe breaches of international law happen. Such instances abound. In order to further their goal of establishing the Islamic Caliphate, the Islamic State in Syria was encouraged to pillage, which led to the destruction of cultural property.

Another occasion where the armed players didn't have a motivation to embrace IHL is the prisoner taking and sexual maltreatment committed by Boko Haram in Nigeria when the association forced Sharia law on regular citizens. The greater part of the non-state equipped gatherings that stay on the rundown of disgrace for enlisting and conveying minors in outfitted struggle are the people who neglected to fulfill the motivational similarity measures or disliked neighborhood understandings. There are by and large around 50 non-state-equipped gatherings on the rundown.

Our understanding of the nsaa's acceptance of ihl is more akin to a mosaic than a masterfully executed masterpiece. The debate foreshadows the significance of comprehending the variety of nsas and the method, manner, and conditions under which they gain awareness or knowledge of ihl and execute internal rules compatible with ihl. This is because nsas have varying motives and interpretations. IHL will undoubtedly continue to play a part in tightening restrictions during wartime and contribute to the humanity of war as a legal framework and a point of action. But as the nsas case demonstrates, there are restrictions on how and to what degree international law may be applied in local contexts. Understanding the constraints and opportunities will help us make decisions about how to promote ihl in the instance of nsas.

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Now I'm looking forward. The general decline in respect for international law on a global scale may have an effect on how the nsaaas see international law. The principles of international law and order will deteriorate at the national level as repression increases along with the development of strongmen. As a consequence, the credibility and influence of the IHL among armed non-state organisations may also decline. If national leaders demonstrate flagrant contempt for international law in general, the motivation for nsaaas to uphold ihl may be diminished.

Deciding how IHL can hang out on the fringe will be a critical undertaking for researchers and specialists zeroing in on humankind in war and struggle in light of the expansion of coordinated wrongdoing gatherings and other vicious entertainers without focal association, some of whom are outside the immediate reach of worldwide regulation aside from the standard regulation.

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