July 2025,
President,

Reviewing the status of non-state actors in humanitarian law

Leiden Model United Nations 2025

Human Rights Council

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Introduction

The issue of the status of **non-state actors** in **humanitarian law** is one with many faces. There are two reasons why this debate is so complicated: for one, there are many, completely different groups and organisations that fall under the umbrella term ‘non-state actor’, and moreover, this change of ‘status’ under humanitarian law could mean more *protection* but also more *accountability*.

Non-state actors such as **human rights organisations** can be at risk in conflicted regions, they can be subject to violence, abduction and murder by other NSA’s or state actors. Although human rights defenders are already protected as civilians in humanitarian law, there are states that have problems with their presence or do not agree with their protection.

Additionally, there are **militant groups** - such as international terrorist movements - active in conflicts around the globe. When the only actors in a conflict are organisations unaffiliated to a state or governmental figure, prosecution is even more difficult than when they are states. They do not have a position in the international community and can not be easily held accountable. Even in cases where there is a single leader at the top of this organisation. They often do not take part in (international) negotiations, at which they have no seat. NSA’s are not affected by sanctions - economic or diplomatic - in the way that states are, because they do not rely on recognition, trade or cooperation. When there is insufficient legislation, it is hard to properly, lawfully prosecute leaders - that is if they are even captured and extradited. These are obstacles which could be tackled with new international attention.l it protect non-state actors in need of protection, while still realizing comprehensive legislation that can be used to prosecute or punish those who form a danger to the global society?

And is it possible and/or desirable to make the following of humanitarian law obligatory for NSA’s too?

While violent non-state actors must be confronted with the consequences of their crimes, they are still human. And they too enjoy their rights, and are to be treated in a way that is right according to the committee and the IHL. NSA’s could be protected from each other. For instance, what is the right course of action when a member of a non-governmental militant group is abducted, should they be treated according to the rights of prisoners of war?

The committee thus stands before this important question: how wil

This report will mainly focus on the current status of violent NSA’s - in conflict situations - in humanitarian law. And issues around that status as well as possible solutions. But it is also written to encourage member states to make themselves aware of all sides of the debate.

Definition of key terms

Non-state actors (NSA)

The United Nations define NSA as: persons or groups of persons with sufficient power to influence and cause a change even though they do not belong to any established institution of a state. Generally, when speaking about NSA, we mean militant groups that take part in - or cause - conflicts. But the same term can apply to NGO's, NPO's, corporations, banks, cultural groups, and other unions.[12]

IHL/the Geneva conventions

International Humanitarian Law is an instrument for the United Nations to define and protect humanitarian rights across the globe. It consists of numerous conventions and protocols adopted by the UN since 1949. According to the UN it regulates 'the means and methods of warfare … the humanitarian protection of civilian populations, sick and wounded combatants and prisoners of war'.[3] So-called 'grave breaches' of the conventions - which are implemented in national legislation and followed by the ICC - can be punished according to their principles, in court cases.

Prisoners Of War

Prisoners Of War (POW's) are 'captivated combatants'. Their rights (on how they are to be treated) are written down in the Geneva Conventions. POW's can only be by-the-state-recognized soldiers.

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[1] UNESCW, (sd.)
[2] UNCED, (2023)
[3] UN, (sd.)

General Overview

History

From the moment humanity started to form states, there have been descriptions of groups that we would nowadays define as being an NSA. Political movements, rebels, and forms of religious and cultural 'organisations'. Violent behaviour by non-state actors is also not a modern issue, although these groups were often hired by or affiliated to a state or state official. In this overview we will zoom in on the increasing relevance that NSA's have gotten in interstate and international conflicts.

The oldest known revolts and conflicts organized by non-state actors, were for instance slave rebellions or independence battles. Still, wars were essentially fought by armies, between states. And as of now, the number of different NSA's active in some modern conflicts, is estimated to be at hundreds or even thousands.[4] These NSA's all have different motives and strategies.

In the past century, there have been cases where non-state actors took control over large parts of countries. During the 1930's civil war in Spain, nationalist rebels gained power over half of the nation. At that time the League of Nations encouraged other states to stay out of the conflict.[5] In international - and specifically colonial - wars, NSA's have often been active as well, like in the Afghan wars and the Vietnam war. In these cases colonial, or 'western' powers were fighting with indigenous nationalist movements or rebels (e.g. the Taliban, Viet Cong). Humanitarian issues that arose in the examples above included uncertainty about how to treat prisoners and injured combatants, how to distinguish NSA's from civilians, and how to prosecute or end the organisations as a whole. In the 1960's, in Colombia, the growth of FARC, a marxist-leninist movement calling for a revolution, marked the start of a conflict with the Colombian state that would last until both parties signed an official peace statement in 2016.[6] This example shows how sometimes an NSA does participate in official affairs, and can reach an agreement with a state.

In modern times, one of the most present NSA's (in conflicts) is ISIS - Islamic State. ISIS is an armed group active in large parts of the Middle East and some parts of Africa. They abuse their power in many Islamic countries, but also claim attacks in other regions of the world. Human Rights Watch actively monitors ISIS' behaviour but also states' strategies on countering the organization, to prevent armies from harming the civilian population or families of ISIS members.[7]

Another interesting case to highlight is the overtaking of the government in Syria, in December 2024. The current leader, Al-Sharaa, was originally part of a Syrian rebel group - the HTS, and led the quick military offence which would

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[4] IRCR, (2019)
[5] Zayas, (2013)
[6] Yuhas, (2016)
[7] HRW, (sd.)

bring an end to the Assad regime. The Assad regime had been the Syrian state for over 50 years, and was one of the most oppressive regimes of its time.[8] After the 'coup', the new (rebel) leaders have been actively campaigning for a more modern, freer state and cooperating with the United Nations.[9] This shows how an NSA can become the state, and how blurry the line can be. Since the new government has gained power, civil rights in the country have doubled, though the state still counts as 'not free'.

Current and previous measures

The first attempt at an international humanitarian law framework was made in the 1860s on initiative by the Swiss Federal Council. In 1863, Henry Dunant (among others) established the International Committee of the Red Cross. One year later, he invited all European states and the US, Brazil and Mexico to sign the convention on the Treatment of the Wounded in War. In the decades that followed, many revisions were made and the convention was eventually fully replaced by the Geneva Conventions of '49. Even now, the Red Cross is still the institutor and guardian of the agreements made in these conventions.[10]

The IHL covers both the civil rights of wounded or captivated people in conflicts, and the obligations for states to protect civilians, or to treat them in a certain way. Whether the different parts of the conventions apply to NSA's or its members is complicated. Conventions and clauses on humanitarian rights of civilians count for members of NSA's if they are active in conflicts. So, they too must be given fair trial, humane treatment and care. Additional Protocol II is especially relevant to NSA's, since this protocol is about non-international conflicts, and non-state actors are generally active in civil wars. The obligations in these conventions also apply to non-state actors, meaning they can not treat civilians inhumane, etc. However, since the conventions are signed by states, all their civilians must keep to them, but militant organisations have not signed them and can therefore not be prosecuted according to them as a whole. This is why, when organisations are prosecuted, the only members being punished are their leaders. In order to punish NSA's, the leaders and/or other separate criminals must be well-known and clearly guilty.
A convention that typically does not apply to NSA's or its members, is convention III (and its amendments and additions). This convention is about POW's. Prisoners Of War must be recognized combatants, and since they are *non-state*, NSA's are usually *not* recognized as a part of the *state's* military. That is why there have been disagreements in the past about whether or not it is obligatory to treat them according to these clauses, in the same way as official soldiers. [11]

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[8] Freedom House, (2024)
[9] UN News, (2025)
[10] ICRC, (sd.)
[11] ICRC, (1949-2005)

Although the United Nations generally follows the Geneva Conventions. However the intergovernmental organisation also has some committees and adopted resolutions which are relevant to the status of NSA's in humanitarian law. The Security Council has adopted resolutions on counter-terrorism, on the monitoring of and against the supporting of NSA's in member states, and on the Geneva Conventions (e.g. res. 1373[12] and res. 2178[13]). Additionally the General Assembly and specialized committees have made attempts at clarifying the status of NSA's in specific cases. Like the Committee on Enforced Disappearances in its statement on NSA's (and disappearances).[14] But has not been able to make legislative changes to their status in humanitarian law.

[12] Security Council, (2001)
[13] Security Council, (2014)
[14] UNCED, (2023)

Major parties involved

International Committee of the Red Cross (ICRC)

The ICRC is the institutor and 'watchdog' of the Geneva Conventions. They guard the agreements made in the conventions. To protect civilians in conflict areas, they are active all across the globe, and check states on their policies. So, the Red Cross is in some ways the main player in the legislation around war crimes.

International Criminal Court (ICC)

The ICC is an international court recognized by the majority of all states that uses the Geneva Conventions (among other tools) to prosecute war criminals. A state can be called before the ICC, but also leaders or members of for instance terrorist organisations.

Non-state actors

As mentioned before, 'non-state actor' can refer to all kinds of groups and organisations. It is crucial to take the ideas and wishes of NSA's into account when deciding on their future, but it is even more important to know who they are and how they influence the world. Representatives of NSA's will often take part in discussions about their rights (and wrongs).

United Nations bodies

There are many UN bodies that play a part in the discussion about non-state actors. Non-state actors whose rights are being threatened by conflicts can be a reason for human rights committees to take part in the debate. Or these committees could be relevant for the protection of victims of *violent* non-state actors. The UN Office on Drugs and Crime works with its member states on for instance counter terrorism. Since it is an issue that concerns the entire international community, the United Nations already has a basis for legislation on this topic and has a 'motive' to solve any issues surrounding NSA's.

Timeline of events

1863 February 17	Henry Dunant starts the implementation of the International Committee of the Red Cross.
1864 August 22	The first Geneva Convention on the condition of the wounded in war is adopted by the Geneva Conference, a committee of all European and some American countries; an initiative by the Swiss Federal Council.[15]
1906 July 6	The initial Geneva Conventions are replaced in a new convention on the wounded and sick.
1929 July 27	A new convention on the Treatment of Prisoners of War is added to finish the previous agreements (of Geneva).
1936 December	In response to the growing power of nationalist rebels in Spain, the League of Nations adopts a resolution which prohibits states from intervening in non-international conflicts that do not 'concern' them. (Instead of supporting the official government against the NSA's.)
1945 October 24	The United Nations enters into force, replacing the League of Nations.
1949 August 12	All previous conventions are replaced by the new Geneva Conventions of 1949. To these conventions amendments will be made until the last amendment (as of now) of 2005.
1955-1975	The Vietnam War. The US army fought against non-state actors in Vietnam. After the twenty-year war, the NSA wins and gains power over Vietnam.
2016 June 23	The Revolutionary Armed-Forces of Colombia (NSA) and the Colombian government sign an official peace agreement.
2024 December 8	The oppressive Syrian Assad-regime falls when a rebel group takes over the capital in a surprise offensive.

[15] IHL, (sd.)

Possible solutions

Descriptive frameworks

Before the international community can properly prosecute and/or protect certain NSA's, it is useful to once again clearly define 'non-state actors' and distinguish the different types of NSA's from each other. Which types of NSA's should be held accountable, when and how? In which situations is it desirable to put an NSA under a certain humanitarian right? By agreeing upon these first definitions, the committee can create a strong foundation to use for installing (for instance) better legislation.

Legislation

By suggesting new binding laws defining the status of NSA's, or their rights, the committee can make a change in future cases. Things that could be clarified for states and jurists by such legislation are for instance: how to prosecute criminal NSA's as a whole, what to do with violent NSA's unwilling to cooperate, the position of an NSA in society, the rights of NSA's in war. With improved legal framework, there could be more chances for courts to prosecute criminals who as of now have an unclear status in the international juridical system. Moreover, clarifying the position of NSA's in humanitarian law could resolve the questions there are now, surrounding their rights in wars (rights of prisoner of war etc.).

Specialized advisory bodies

The committee could suggest for the establishment of an advisory committee specialized on non-state actors (in conflict zones). This committee could work on the monitoring of NSA's and combine legislation and new definitions to start the clarification of their status in humanitarian law. It could suggest revisions on the Geneva Conventions and help states working with or against NSA's.

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