

*Attributing Responsibility under International Humanitarian
Law to Organized Armed Opposition Groups*

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ATTRIBUTING RESPONSIBILITY UNDER INTERNATIONAL HUMANITARIAN LAW TO ORGANIZED ARMED OPPOSITION GROUPS

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Abstract

As legal scholars, we struggle with the question of international law's ability to provide justice and stability in an increasingly complex international system characterized by astounding technological advances in communications and industrial capabilities, rapidly increasing populations, steadily decreasing and overstressed natural resources, growing gaps between developed and less-developed nations, continuous threats to the human rights of the inhabitants of this system, and a continuous movement toward a multipolar world . Quite naturally, when discussing the continuing evolution of the international legal order in an increasingly multipolar world, our attention is typically directed to the actions of states which are trying to fashion or influence that evolving legal order to better suit their national interests. However, when discussing the evolution of International Humanitarian Law and the Law of Armed Conflict ("IHL-LOAC") in a multipolar world, we must also direct our attention to non-state actors; in particular, we must address how evolving IHL-LOAC principles and instruments must recognize and account for the presence of armed opposition groups such as Al Qaeda and Hezbollah in armed conflicts and extend the protections and obligations inherent in IHL-LOAC to these groups as well.

This paper argues that bringing armed conflicts involving non-state actors under the protective cover of IHL-LOAC would be a much-needed extension of the realization that the very nature of armed conflict is evolving more rapidly than the ability of IHL-LOAC to keep pace with those changes. It points out how the Additional Protocols to the Geneva Conventions served to recognize that armed conflicts other than a traditional state-versus-state model warranted the protections and obligations afforded by IHL-LOAC as well and suggests that applying IHL-LOAC to armed conflicts involving all types of armed opposition groups would be the next logical step in the evolution of this body of law.

The benefits as well as the problems with expanding the coverage of IHL-LOAC are discussed in detail. While recognizing that international law depends upon the consent of states to be bound by an international agreement, the paper argues that the unique concepts of individual or personal responsibility and accountability found in the principles of IHL-LOAC extend the coverage of its instruments to the citizens of the states thus bound. It argues that violations of humanitarian principles occur in all armed conflicts and that the perpetrators of such transgressions in armed conflicts currently covered by the principles and instruments of IHL-LOAC are increasingly held accountable for their actions. Given the large number of armed conflicts involving armed opposition groups and the astounding number of violations of humanitarian principles occurring in these conflicts, there exists a compelling argument to hold these perpetrators accountable under IHL-LOAC as well.

The paper also confronts the drawbacks inherent in imposing an international legal norm upon those having no say in its structure. It recognizes that many armed opposition groups are loosely organized and have little or no regard for humanitarian law principles. It recognizes that applying IHL-LOAC to such groups essentially promotes the members to a stature typically reserved for those following the principles of IHL-LOAC.

The paper concludes that given the increase in atypical or asymmetrical armed conflict and given the increasing participation of an increasingly disparate group of irregular fighters who violate IHL-LOAC principles with alarming regularity, there simply must be some accountability under IHL-LOAC for the actions of the participants. In sum, there should be no safe haven for perpetrators of these violations.

The paper provides a series of recommendations including a new Additional Protocol to the Geneva Conventions dealing with armed conflicts involving non-state actors such as these armed opposition groups. It calls for standardization of pertinent terminology. It calls for increased cooperation among the various judicial bodies and institutions established to adjudicate violations of IHL-LOAC. Finally, it asks us to revisit the fundamental purpose of humanitarian law to ensure that we realize why we have IHL-LOAC

and why it should be universally applied to all armed conflicts, including those involving non-state actors such as armed opposition groups.