

# **On the Applicability and Obligation of International Humanitarian Law and Human Rights (IHL/HR) to Non-State Armed Groups (NSAGs)**

Saturday 6 July 2013, by [de LOS REYES Ike](#) (Date first published: June 2013).

**A contribution for the Operational Law Seminar sponsored by Friedrich Ebert Foundation Manila.**

## **An Overview**

The majority of armed conflicts today occurs within the states and involves one or more non-state armed groups (NSAGs).

In 2005 Human Security Reports, only 2 inter-state conflicts had been quantified, 26 civil wars involving at least one (1) non-state actor and thirty (30) internal conflicts between non-state actors. In the said reports, it stated that there are 176 armed groups in 64 countries worldwide but two years later (2007), the number increased to 261 active NSAGs and the number is increasing worldwide.

The significant number of NSAGs and their active involvements in the contemporary conflicts signifies their importance on human security, nationally and across borders. The repercussions on internal conflicts involving NSAGs include extensive violations of International Humanitarian Law (IHL) and Human Rights (HR).

Engaging NSAGs and entering legal obligations with them therefore becomes an important as peace treaties in traditional wars/armed conflicts and Geneva Conventions with regards to humanitarian concerns.

NSAGs can be a cause and symptoms of fragile or failed state, in which they have often acquired control over large parts of population of a country or are even considered to be the de facto government. The impact of non-state armed groups on violent conflicts is a consequence of the persistent of intra-state conflicts.

In this context then, NSAGs present themselves as important actors not only while fighting is going on, but also during the peace process, disarmament, and demobilization programs and weapon collection initiatives.

But the fact is that, we currently face a shortcoming in articulating a legal foundation for engaging the NSAGs, especially for the formal actors (states).

As NSAGs, usually operate outside the national legal framework, national as well as international security provisions are confronted with having to adjust to the challenges NSAGs pose in their

territories.

There are difficulties for states in engaging NSAGs in humanitarian matters yet the latter remain key actors in humanitarian activities as they often function as a de facto government in certain territories and they have a crucial role in the protection of humanitarian operations and eventually may become political parties to a peace agreement.

### **Definition of NSAGs and Political Implications of their Engagements with the States**

The terminology surrounding a definition of a term like non-state armed groups is controversial and extremely politically-oriented.

The sheer number of active NSAGs in the contemporary conflicts makes a clear and useful definition as the groups differ widely in motives, goals, size, structures, behaviors and resources.

The International Council on Human Rights Policy (ICHRP) developed a useful definition in this context, which describes NSAGs as groups that are armed and use force to achieve their objectives and not under state control.

The focus lies with NSAGs, which do not pursue a private agenda but rather political and economic objectives.

The highly political nature surrounding NSAGs makes it very difficult and complicated for the formal actors (states) to engage the former because it might give them formal recognition and legitimization. On the other hand, it has been proven by concrete experiences that the strategies such as carrots and sticks are insufficient and less effective. Again, concretely for both the states and the NSAGs, the engagement can be mutually advantageous and disadvantageous. The paramount consideration of the states in engaging NSAGs is not to have belligerent status. The engagement on the dialogue can even be used for propaganda purposes of the NSAG. For the NSAGs, their decisive consideration in having the dialogue and engagement with the states will make them vulnerable to intelligence gathering and surveillance.

Given such complications and proper or an appropriate balance should be mutually agreed upon by both parties. It should be put in mind by the abovementioned parties that all population in areas of armed conflicts, whether international or internal deserve the same level of protection by the International Humanitarian Law (IHL). The abovementioned concerns by both parties in conflicts should be balanced against the urgent need for humanitarian actions in conflict areas. But precisely on this aspect, one can notice a big gap. The legal framework regulating internal armed conflicts and NSAGs remain inadequate and much weaker than the rules that govern the states involved in the internal armed conflicts.

International Law such as IHL is mainly made by the states, primarily addressed to state actors and the implementation mechanisms are particularly state-centered. The international responsibility of NSAGs remains largely in uncharted waters. The state centered framework of the International Law which governs the armed conflicts definitely provides limited opportunities for the NSAGs to comply with its provisions or engage in its development.

### **The Applicability and Obligation of International Humanitarian Law (IHL/HR) to the Non-State Armed Groups (NSAGs)**

As mentioned earlier, there are big gaps that can be cited in terms of legal bases for the NSAGs in relations with their observance and obligations with the existing international law and respect for Human Rights. Their (NSAGs) nature of existence and structure being not part or outside the states

they are operating can be cited as reason for the gaps. And the state-centered nature and orientation of the International Law and Laws governing Respect for Human Rights can also be another reason. Questions can be raised like, why should non-state actors be bound by the rules as the state actors. Or why should the NSAGs follow/obey Laws which they have not been part of in terms of their formulation, development and implementation?

However, there are some parts in the existing International Law which can be cited as legal bases for the NSAGs to respect and implement IHL and one of these is, Article 3 which is common to the 4 Geneva Conventions of 1949 and it states “each party to the conflict e.g. the NSAGs as equally as the government side” in relation to the protection of the victims of armed conflicts. One can also find in the Charter of the United Nations which adheres to common principles of human dignity and achieving common good and human decency are the basic objectives of the genuine NSAGs. Besides, humanitarian consideration demands protection for all actual and potential victims of the conflicts. Among the top priorities must be achieving greater respect for the civilian population, treating captured combatants similarly to prisoners of war and guaranteeing respect for the protective emblem.

The realization of the application and accepting obligation of the IHL/HR to NSAGs will be sustainably achieved if the latter will become active in the process of reviewing and developing these legal foundations. The principle of ownership is very important in this aspect. The NSAGs can only be held responsible or accountable if they have been part of the process.

A precedent can be cited in this regard. In 1974-77, eleven (11) national liberation movements participated as observers in the deliberation of the Diplomatic Conference on the Reaffirmation and Development of IHL applicable in Armed Conflicts. This was convened by Switzerland which adopted the 1977 protocols (related to the protection of victims of international conflicts).

It is in this regard that it is really possible that the NSAGs can be involved in the development, interpretation and operationalization of the Law (IHL/HR). But on top of this is the highest considerations of rejection by their (NSAGs) own social environment which has a greater stigmatizing effect than even the reprobation by the enemy, third state or a distant international community. The reality of being isolated to the communities and peoples you claim to struggle with and fight for human decency and dignity is the worst that can affect and can even lead to the downfall and eventual defeat of the NSAGs.

The application and obligation of the IHL/HR can be followed by the NSAGs when the people and the communities together with the NSAGs will conduct information dissemination on the said laws. Here, the role of the communities should be given stress on the basis that in any armed conflicts and confrontations, they are the ones being victimized and their own properties destroyed.

The people and their communities should create mechanism to ensure a higher level of awareness regarding their rights and obligations during armed conflicts. Informed peoples and educated communities can help the NSAGs (or even the states) observe proper protocols in times of armed conflicts.

On the part of NSAGs, these activities of the people with regards to IHL/HR can be good barometer for the approval or disapproval of their revolutionary activities. NSAGs are always working for building alternative to the present political set-up and therefore they should always set higher standard to the political entity they want to change. This approach from below can really sustain the process of ensuring the application of IHL and HR of the NSAGs or even the State where people serves as active participant as watchdog to the process.

Another important step that can be done to ensure the application and follow the obligations of NSAGs with regards to IHL/HR is to create opportunity to allow and encourage NSAGs to commit themselves to respect IHL/HR. This can be concretely done through creating mechanism where NSAGs with the other stakeholders (even the state actors) can sit together and conceptualize proposals to improve IHL/HR in the local or community context. The importance of this process is to have the principle of ownership for the NSAGs. They can be held accountable in case of violations because they have been part of the process.

A mechanism can be established possibly with non-formal state actors to encourage and assist NSAGs to implement the IHL and HR in the respective areas that they operate. The less political and less diplomatic nature of the works of the non-formal state actors cannot be threatening to the NSAG. The mutual trust can be built through establishing mechanism of monitoring of observance of IHL/HR which can be done through self reporting by NSAGs themselves and even external bodies like the International Committee of the Red Cross (ICRC).

## **Conclusion**

The growing number of NSAGs and their active involvement in the current conflicts has posed real challenge for the state actors in the regulation and monitoring of the implementation and violations of IHL/HR. The available documents which guide the states in their rules of engagement with the NSAGs are almost nil. In fact, these legal materials are almost state centric and therefore create extreme difficulties to allow the NSAGs to engage with the states in terms of the observance of the IHL/HR.

On the other hand, the active participation of the NSAGs, as the other party in the armed conflicts signifies the important role they will play especially if they freely agree, with the implementation and compliance with their obligations to respect and follow the IHL/HR. There are gaps for the legal foundation of their observance and obligation to the IHL/HR but there are some legal and moral materials and obligations which can be utilized to achieve higher level of respect for human dignity. Their political objective to build a more humane and all-sided development of their part of the world give them not only political but moral obligation as well to respect and uphold the IHL and HR.

Thus, such opportunity can be maximized to have mutual engagement between the state and the NSAGs in the review and reformulation of a higher level of understanding of IHL/HR.

Lastly, but not definitely the least, will be the role of the people and the affected communities in ensuring that the IHL/HR will be respected and implemented. Their being important part of stakeholders entitled them to work in achieving higher respect of human dignity even in times of armed conflicts. And on this basis, they (people) can help both the state and the NSAGs observe the proper protocols before, during and after armed conflicts.

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