

2009

## The Regulation of Armed Non-State Actors: Promoting the Application of the Laws of War to Conflicts Involving National Liberation Movements

Noelle Higgins

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/hrbrief>



Part of the [Human Rights Law Commons](#), and the [International Law Commons](#)

---

### Recommended Citation

Higgins, Noelle. "The Regulation of Armed Non-State Actors: Promoting the Application of the Laws of War to Conflicts Involving National Liberation Movements." Human Rights Brief 17, no. 1 (2009): 12-18.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Human Rights Brief by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact [kclay@wcl.american.edu](mailto:kclay@wcl.american.edu).

# The Regulation of Armed Non-State Actors: Promoting the Application of the Laws of War to Conflicts Involving National Liberation Movements

by Noelle Higgins\*

## INTRODUCTION

The regulation of armed non-state actors is a challenge to the state-centric international law paradigm. The vast majority of international legal instruments which impact the regulation of armed actors are open to ratification by states only. This leads to the unfortunate situation in which armed non-state actors often fall outside the remit of international law and their use of force and, indeed, the use of force against them, is left unregulated, which can only be to the detriment of combatants and civilians alike. However, there is an emerging trend, led by the International Committee of the Red Cross (ICRC) and non-governmental organizations (NGOs) such as Geneva Call, to accommodate non-state actors under the international humanitarian law (IHL) framework.

This article seeks to investigate how non-state actors, specifically national liberation movements, are and could be regulated by IHL. It seeks to give an overview of the relevant legal provisions and illustrates the difficulties faced by national liberation movements if they do wish to accede to IHL instruments and apply IHL in their conflicts. As it is the aim of IHL to protect both combatants and civilians in armed conflicts, it is important that this body of law is practically applied and implemented in all conflict situations to the greatest extent possible. However, in the past, national liberation movements have encountered difficulties when seeking to apply IHL to their conflicts due to the nature of the legal framework and, indeed, the nature of international law itself.

International law, the body of law that governs states in their relationships with one another, generally struggles to accommodate non-state actors. The international legal instruments dealing with the laws of war, namely the Geneva Conventions of 1949,<sup>1</sup> the Hague Regulations of 1907,<sup>2</sup> and more modern international conventions seeking to regulate weapons such as the Ottawa Treaty of 1997 banning landmines,<sup>3</sup> were all drafted by states with the regulation of states in mind. These instruments almost exclusively limit ratification to states and do not allow for the accession of non-states. This means that non-state actors, including national liberation movements, face many difficulties when seeking to be bound by and apply IHL provisions in their conflicts, thus limiting the protection available to those fighting and caught up in these conflicts. However, non-state actors are active in various theatres of war and it is therefore vital that a realistic IHL framework that accommodates non-state actors be formulated.



By Christopher Soghoian.

POW registry at the Red Cross Museum in Geneva, Switzerland.

## WARS OF NATIONAL LIBERATION

A war of national liberation can be defined as “the armed struggle waged by a people through its liberation movement against the established government to reach self-determination.”<sup>4</sup> The right to self-determination has been enshrined in conventional law in various legal provisions, such as Article 1 and Article 55 of the UN Charter,<sup>5</sup> and Common Article 1 of the International Covenant on Civil and Political Rights<sup>6</sup> and the International Covenant on Social, Economic and Cultural Rights.<sup>7</sup> This right is also a *jus cogens* norm, binding on all states, as recognized by the International Court of Justice.<sup>8</sup> Nevertheless, because it is very difficult to implement, the right of a people to self-determination often goes ignored or is denied. In many cases this denial encourages the creation of national liberation movements and the outbreak of wars aimed at challenging governmental authority and achieving self-determination through force.

The main spate of wars of national liberation occurred in the mid-twentieth century; however, wars of national liberation did not vanish completely after the decolonization period. In fact, according to the report *Peace and Conflict 2008*, 26 armed self-determination conflicts were ongoing as of late 2006, including conflicts waged by groups representing the Palestinian people, the Corsicans in France, and the Chechens in Russia.<sup>9</sup> Additionally, in 2008 the South Ossetians, with support from Russia, declared independence from Georgia after an armed struggle.<sup>10</sup>

The application of IHL principles in these conflicts is vital for the protection of both governmental and liberation movement combatants, and for civilians caught in the middle of a

\* Dr. Noelle Higgins is a lecturer in International Law in the School of Law and Government, Dublin City University, Ireland.

National liberation movements often seek to apply IHL principles in their conflicts to legitimize their organization and cause on the international stage. If they are seen to act in accordance with international legal principles, states may view these movements as genuine and valid actors, rather than as “rebels” or “terrorists.”

conflict zone. On a political level, national liberation movements often seek to apply IHL principles in their conflicts to legitimize their organization and cause on the international stage. If they are seen to act in accordance with international legal principles, states may view these movements as genuine and valid actors, rather than as “rebels” or “terrorists.” Such a perceived status change could ameliorate the plight of national liberation movements and the people they represent, for example by helping them to receive international aid.

In recent times, actors in some self-determination conflicts have attempted to apply IHL principles in their conflicts, outside of the formal IHL framework. For example, since its foundation in 2000, an NGO called Geneva Call has promoted the engagement of non-state armed groups with IHL. Through Geneva Call, a number of national liberation movements from all parts of the world, including the *Polisario* in the Western Sahara, the Sudan People's Liberation Movement/Army (SPLM/A), the Moro Islamic Liberation Front in the Philippines, the Kurdistan People's Congress in Turkey, and the Kurdistan Regional Government in Iraq, have agreed to implement IHL principles in relation to the use of landmines.<sup>11</sup> This break from the traditional IHL framework is necessary because, as illustrated below, this paradigm is state-centric, sidelining non-state actors.

### IHL AND NON-STATE ACTORS

#### GENEVA CONVENTIONS

The Geneva Conventions of 1949, the main IHL instruments, are in principle open to ratification by states only. These instruments have been almost universally ratified and have been deemed to be part of customary law, thus binding on all states.<sup>12</sup> They contain two provisions regarding accession or acceptance that could be of use to national liberation movements and allow for the application of the Conventions to wars of national liberation. The first provision is Common Article 60/59/139/155 regarding accession, which states that accession is open to any “Power” rather than to any “State.”<sup>13</sup> The second is Article 2(3), which also refers to “Powers” rather than “States” as entities that can be bound by the Geneva Conventions.<sup>14</sup> If the terms “Power” or “Powers” in these two provisions can be taken to encompass national liberation movements, then these movements could

accede to or accept to be bound by the Geneva Conventions, thus applying the whole corpus of IHL to wars of national liberation. This liberal interpretation is not without its critics, who argue that the drafters originally intended the term “Power” to be restricted to mean states only.<sup>15</sup>

Attempts have been made by non-universally recognized states, for example the *Gouvernement Provisoire de la République Algérienne* (Provisional Government of the Republic of Algeria) and the State of Palestine,<sup>16</sup> to accede to the Conventions and the Additional Protocols.<sup>17</sup> However, these attempts were unsuccessful as the Depositary housed in the Swiss government did not accept the Parties' notification of accession as they were not recognized states.<sup>18</sup> This illustrates that, even though the legal framework could potentially accommodate national liberation movements, political will is also needed in order to implement IHL in wars of national liberation.

#### ADDITIONAL PROTOCOL I

IHL was reviewed and revitalized by the adoption of two Additional Protocols at the Diplomatic Conference for the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts 1974–1977. Additional Protocol I<sup>19</sup> deals with international armed conflicts and Additional Protocol II<sup>20</sup> deals with non-international armed conflicts. These instruments have not been ratified by every state, but some provisions have been deemed to be part of customary law.<sup>21</sup> As a result of international pressure during the decolonization period, wars of national liberation were determined to be international armed conflicts and thus fall under Additional Protocol I.<sup>22</sup>

Article 1(4) of Additional Protocol I identifies as international armed conflicts situations that “include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination . . . .”<sup>23</sup> The terms “colonial domination,” “alien occupation,” and “racist regimes” are not clarified in the instrument or elsewhere, but it is clear that they reflect the politics of the decolonization period. It may therefore be questioned whether Article 1(4) is applicable to modern wars of national liberation.<sup>24</sup> Some more recent national liberation movements, however, claim that their conflicts clearly fall within the remit of Article 1(4). One example is the Free Aceh



Saharawi troops in the Polisario Front.

Movement (*Gerakan Aceh Merdeka* or GAM)<sup>25</sup> in the Acehese region of Indonesia, which claimed that Indonesia is a neo-colonist.<sup>26</sup> The GAM fought a war for self-determination and independence from Indonesia for 25 years until it finally signed a peace agreement, the Memorandum of Understanding,<sup>27</sup> with the Indonesian government in 2005, thereby giving up its claim to independence. Alien occupation “covers the situation of a territory which was not yet fully developed into a State before it came occupied by another State”<sup>28</sup> and could apply to places such as the Western Sahara and events such as the *Polisario*’s current war of national liberation. A claim of alien occupation could perhaps also be made by groups representing the Kurdistan People’s Congress and the Kurdistan Regional Government in Turkey and Iraq. The category of “racist regime” is more difficult to satisfy in a current context. This term was originally directed towards the apartheid regimes of South Africa and the former Southern Rhodesia,<sup>29</sup> which are no longer in existence. The General Assembly also commented that Zionism was a form of racism in Resolution 3379 (XXX) of 1957, but this was voided by Resolution 46/86 of 1991.<sup>30</sup>

It is important to note that Article 1(4) states that international armed conflicts “include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination . . . .”<sup>31</sup> However, the Commentary on the Additional Protocol ignores the word “include” and the drafters stated that Article 1(4) “should be interpreted as introducing an exhaustive list of cases which are considered to form part of the situations covered by the preceding paragraph.”<sup>32</sup>

In short, it is clear that Article 1(4) has a restrictive scope,<sup>33</sup> as it only applies to situations of armed struggle by a people against colonial domination, alien occupation, or a racist regime. A second criterion of Article 1(4) is that the struggle of that people must be undertaken in order to exercise its right to self-determination against a Contracting Party to the Protocol. This requirement further limits the scope of the provision, as the vast majority of states faced with such a struggle, such as Indonesia and India,<sup>34</sup> have not ratified Additional Protocol I, thereby rendering the protection offered by the instrument useless for many liberation movements.

Article 96(3) of Additional Protocol I,<sup>35</sup> discussed further below, accommodates national liberation movements and allows

for their accession to the instrument, but only when they follow specific procedural requirements which limits the application of the instrument. First, the prerequisites of Article 1(4) of Protocol I must be satisfied. Then the authority representing the people fighting for self-determination must make a Declaration to the Depositary, which then must notify the other Parties to the Geneva Conventions.<sup>36</sup> The Declaration subsequently triggers the application of the Conventions and Protocol.<sup>37</sup>

#### ARTICLE 96(3) DECLARATIONS

When Additional Protocol I was adopted, national liberation movements welcomed Article 96(3) in principle as an attempt to allow for their accession to an IHL instrument and for the regulation of their wars as international armed conflicts. Since then, a number of Article 96(3) Declarations have been made by national liberation movements, such as the African National Congress (ANC).<sup>38</sup> However, no such Declarations are listed by the Depositary<sup>39</sup> or have been transmitted to the High Contracting Parties.<sup>40</sup> The Depositary will not accept Declarations made by national liberation movements in states that have not ratified Additional Protocol I, since such Declarations do not fulfill the procedural requirements of Article 96(3). Some Declarations of this kind, specifically mentioning Article 96(3), are nevertheless deposited with the ICRC,<sup>41</sup> indicating that national liberation movements have recognized the difficulties inherent in Article 96(3) and tried to work outside the formal framework. There is uncertainty regarding the legal status of such unilateral Declarations. Verhoeven has commented that “it is accepted that a declaration without deposition suffices”<sup>42</sup> to trigger the application of the Conventions and the Protocol, although this assertion could be questioned in light of inconsistent practice.<sup>43</sup>

The Article 96(3) Declaration system is referred to in Article 7(4) of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects<sup>44</sup> of 1980 (Certain Conventional Weapons or CCW). Under this provision, in situations covered by Article 1(4) of Additional Protocol I, an authority can make a Declaration to that Convention’s Depositary, the Secretary General of the United Nations. This would trigger the application of the Weapons Convention and its Protocols as well as the Geneva Conventions, even in cases where the state against which the authority is fighting has not



Women soldiers of the Free Aceh Movement.

States almost always refuse to recognize the existence of national liberation movements and prefer to refer to groups who use force to challenge their authority as “rebels” or “terrorists” who fall outside the remit of IHL. Members of the Irish Republican Army who fought for the independence of Ireland from the United Kingdom called for many years for their members who had been imprisoned to be granted prisoner of war status; however, they were viewed only as “terrorists” and dealt with under domestic legislation.

ratified Additional Protocol I.<sup>45</sup> However, no Declarations of this kind have been made.<sup>46</sup> The fact that national liberation movements have not utilized this mechanism may mean that these movements have become disillusioned with the formal IHL framework and the problems associated with accession to other IHL instruments. It may also mean that information on the CCW mechanism has not been widely disseminated among national liberation movements. Dissemination of IHL rules is the first step towards application and is an issue which deserves attention. Engagement with non-state actors is needed for adequate explanation of IHL principles to take place.

#### GENEVA CALL AND THE DEED OF COMMITMENT

Very important and innovative work to engage with and to accommodate non-state actors and to encourage their willingness to apply IHL has been undertaken by Geneva Call since 2000. Geneva Call is a “neutral and impartial humanitarian organisation dedicated to engaging armed non-State actors towards compliance with the norms of international humanitarian law and human rights law.”<sup>47</sup> It has accommodated the desire of non-state actors to bind themselves by IHL rules regarding land mines, through the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction of 1997<sup>48</sup> (Ottawa Treaty). This is done by means of signing a Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action,<sup>49</sup> formulated and overseen by Geneva Call.

Although landmines are a popular weapon of non-state actors, the Ottawa Treaty limits ratification to states only and the use of these weapons by non-state actors cannot be formally regulated under the current IHL framework. By signing a Deed of Commitment, however, armed non-state actors agree to a number of commitments in relation to the non-use of mines and

also agree to the monitoring and verification of these commitments by Geneva Call. Under the Deed, signatories also agree “to treat their commitment as one step or part of a broader commitment in principle to the ideal of humanitarian norms,”<sup>50</sup> thus binding themselves in the most formal way possible within the current IHL framework. So far, 39 armed groups<sup>51</sup> have signed Deeds of Commitment, a move that a number of states view as a positive development.<sup>52</sup>

#### NATIONAL LIBERATION MOVEMENTS, STATES, AND IHL

It is obvious that national liberation movements will be met with obstacles to their accession to the Geneva Conventions as they are not states.<sup>53</sup> However, that does not stop them from declaring their intention to apply and be bound by these Conventions outside of the formal legal framework.<sup>54</sup> For example, the ANC made a statement to the ICRC in 1980 regarding its willingness to apply the Conventions, as did South West Africa People’s Organisation, and the Sahrawi Arab Democratic Republic.<sup>55</sup>

In addition, since the outbreak of many wars of national liberation in the 1970s, numerous liberation movements have actively implemented IHL principles, especially in relation to prisoners of war. Some national liberation movements have invited the ICRC to visit their prisoner camps and to oversee their implementation of IHL rules. The ICRC has visited prisoners of war held by the various national liberation movements such as the *Polisario* Front,<sup>56</sup> the National Front for the Liberation of Chad,<sup>57</sup> and the SPLM/A<sup>58</sup> to monitor their treatment of prisoners and application of IHL. The ICRC has also encouraged dialogue between state leaders and national liberation movements. For example, the president of the ICRC has met with President Al Bashir of Sudan and also with the chairman of the SPLM/A, John Garang de Mabior. During these meetings,



the ICRC president made known the ICRC's readiness to facilitate the release of detainees held by the SPLM/A.<sup>59</sup>

While national liberation movements have been willing to apply and to declare their intentions to apply IHL in an effort to "internationalize" and legitimize their struggles, states generally refrain from applying any IHL provisions for fear that they may be in some way legitimizing the national liberation movement and thus the challenge to their sovereignty and territorial integrity.<sup>60</sup> States almost always refuse to recognize the existence of national liberation movements and prefer to refer to groups who use force to challenge their authority as "rebels" or "terrorists" who fall outside the remit of IHL. Members of the Irish Republican Army who fought for the independence of Ireland from the United Kingdom called for many years for their members who had been imprisoned to be granted prisoner of war status; however, they were viewed only as "terrorists" and dealt with under domestic legislation.<sup>61</sup> Similarly, the Indonesian government insisted for many years on officially calling the GAM a "peace disturbing gang" (*gerombolan pengacau keamananan*),<sup>62</sup> thereby denying its national liberation movement status, and applied domestic criminal law when dealing with GAM members.

Only very rarely, when violence and fighting have reached high levels, have states accepted that IHL applied to a war of national liberation and affirmatively applied Common Article 3, the most basic of all IHL provisions. For example, beginning in 1974, Portugal applied Common Article 3 to the conflicts in its colonies in Guinea-Bissau, Angola, and Mozambique and invited the ICRC to visit its prisoners of war.<sup>63</sup> France also applied the provision to the Algerian War in 1956, "partially because the FLN [National Liberation Front of Algeria] threatened reprisals if executions of captured FLN members contin-

ued."<sup>64</sup> These are rare examples of state acknowledgement of application of IHL norms to internal conflicts, as states tend to favor territorial integrity over humanitarian concerns.<sup>65</sup>

The fact that national liberation movements have invited the ICRC to overview their implementation of IHL principles in prisoner of war camps, have signed Deeds of Commitment to the Ottawa Treaty and restricted their use of landmines, and have been open to dialogue on IHL principles and processes with NGOs and states, illustrates their wish to be accommodated in the formal IHL framework. Currently, due to the state-centric nature of IHL, the adhesion of national liberation movements to this body of law is *ad hoc* and unpredictable. An IHL framework which formally engages these movements is needed.

### CONCLUSIONS AND RECOMMENDATIONS

Given the major difficulties that national liberation movements have faced when attempting to bind themselves by IHL, the work of organizations such as Geneva Call should be welcomed. This work should also be expanded to include other IHL conventions. In addition, dialogue between states and non-state actors, as well as with international organizations, on issues of IHL should be encouraged to reflect the reality of current conflicts, which are rarely waged between two or more states. Attempts should be made to convince states that the application of IHL to a conflict does not necessarily translate into a threat to their territorial integrity. It is important that the benefits of the application of IHL and, indeed, the consequences of non-compliance under international criminal law be highlighted. Such steps may encourage the political will necessary for the implementation of the IHL regime in wars of national liberation, which can only be to the benefit of all involved in the conflict.

HRB

### ENDNOTES: The Regulation of Armed Non-State Actors: Promoting the Application of the Laws of War to Conflicts Involving National Liberation Movements

<sup>1</sup> Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114 [hereinafter Convention I]; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217 [hereinafter Convention II]; Geneva Convention relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316 [hereinafter Convention III]; Geneva Convention relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516 [hereinafter Convention IV].

<sup>2</sup> Hague Convention Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277 and annex Regulations Concerning the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2295.

<sup>3</sup> Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Sept. 18, 1997, 2056 U.N.T.S. 211 [hereinafter Ottawa Treaty].

<sup>4</sup> Natalino Ronzitti, *Resort to Force in Wars of National Liberation*, in 60 CURRENT PROBLEMS OF INTERNATIONAL LAW, ESSAYS ON U.N. LAW AND ON THE LAW OF ARMED CONFLICT, 319-353 (Antonio Cassese, ed., Dott. A. Guiffre Editore, 1975).

<sup>5</sup> U.N. Charter arts. 1, 55.

<sup>6</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966).

<sup>7</sup> International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966).

<sup>8</sup> East Timor (Port. v. Austl.), 1995 I.C.J. 90, at 90 (June 30).

<sup>9</sup> J. JOSEPH HEWITT, JONATHAN WILKENFELD & TED ROBERT GURR, PEACE AND CONFLICT 2008 14 (Paradigm Publishers 2007); see at J. JOSEPH HEWITT, JONATHAN WILKENFELD & TED ROBERT GURR, PEACE AND CONFLICT 2010 (Paradigm Publishers 2007), available at [http://www.cidcm.umd.edu/pc/executive\\_summary/exec\\_sum\\_2010.pdf](http://www.cidcm.umd.edu/pc/executive_summary/exec_sum_2010.pdf) (stating that there were nine self-determination conflicts ongoing in 2008).

<sup>10</sup> Noelle Higgins & Kieran O'Rielly, *The Use of Force, Wars of National Liberation and the Right to Self-Determination in the South Ossetian Conflict*, 9 INT'L CRIM. L. REV. 567, 567-574 (2009).

<sup>11</sup> Geneva Call, Signatories to the *Deed of Commitment* Banning Anti-Personnel Mines, <http://www.genevacall.org/resources/list-of-signatories/list-of-signatories.htm> (last visited Nov. 14, 2009).

<sup>12</sup> Theodor Meron, *The Geneva Conventions as Customary Law*, 81 AM. J. INT'L L. 349, 348-370 (1987).

<sup>13</sup> Convention I, *supra* note 1, art. 60; Convention II, *supra* note 1, art. 59; Convention III, *supra* note 1, art. 139; Convention IV, *supra* note 1, art. 155.

<sup>14</sup> Convention I, *supra* note 1, art. 2(3); Convention II, *supra* note 1, art. 2(3); Convention III, *supra* note 1, art. 2(3); Convention IV, *supra* note 1, art. 2(3).

<sup>15</sup> In the opinion of the drafters of the Conventions of 1949, wars which today are characterized as wars of liberation were considered as non-international conflicts. The territory of the colonies was looked upon as part of the territory of the mother country. Commentary to the Geneva Convention Relative to the Treatment of Prisoners of War, Volume III 36-37 (Jean S. Pictet, ed. 1960).

<sup>16</sup> In June 1989, the Permanent Observer of Palestine sent a letter to the United Nations Office in Geneva, stating "that the Executive Committee of the Palestine Liberation Organization, entrusted with the functions of the Government of the State of Palestine by decision of the Palestine National Council, decided, on 4 May 1989, to adhere to the Four Geneva Conventions of 12 August 1949 and the two Protocols additional thereto." However, the Depositary stated that it was not in a position to decide if this constituted accession because of the uncertainty surrounding the status of the State of Palestine. International Committee of the Red Cross, Geneva Conventions of 12 August 1949 and Additional Protocols of 8 June 1977: Ratifications, accessions and successions as at 31 December 1994, <http://www.icrc.org/web/eng/siteeng0.nsf/html/57JMC7> (last visited Nov. 14, 2009).

<sup>17</sup> See HEATHER A. WILSON, INTERNATIONAL LAW AND THE USE OF FORCE BY NATIONAL LIBERATION MOVEMENTS 51 (Oxford Univ. Press 1988) (2003); see also Arnold Fraleigh, *The Algerian Revolution as a Case Study in International Law*, in THE INTERNATIONAL LAW OF CIVIL WAR 195, 179-243 (Richard Falk, ed., 1971); see also TIM HILLIER, SOURCEBOOK ON PUBLIC INTERNATIONAL LAW 127 (Cavendish Publishing Ltd. 1998).

<sup>18</sup> WILSON, *supra* note 17, at 195; see also HILLIER, *supra* note 17.

<sup>19</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, Dec. 7, 1978, 1125 U.N.T.S. 3 [hereinafter Additional Protocol I].

<sup>20</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, Dec. 7, 1978, 1125 U.N.T.S. 609.

<sup>21</sup> Sten Verhoeven, *International and Non-international Armed Conflicts* 6 (Inst. for Int'l Law, Working Paper No. 107, 2007) available at <https://www.law.kuleuven.be/iir/nl/onderzoek/wp/WP107e.pdf> (last visited Nov. 14, 2009).

<sup>22</sup> Christopher Greenwood, *A Critique of the Additional Protocols to the Geneva Conventions of 1949*, in THE CHANGING FACE OF CONFLICT AND THE EFFICACY OF INTERNATIONAL HUMANITARIAN LAW 7, 3-20 (Helen Durham & Timothy L.H. McCormack ed., 1999).

<sup>23</sup> Additional Protocol I, *supra* note 19, art. 1(4).

<sup>24</sup> Christopher Greenwood, *Terrorism and Humanitarian Law – The Debate Over Additional Protocol I*, 19 ISR. Y.B. HUM. RTS. 187, 194 (1989).

<sup>25</sup> The GAM waged a war against the Indonesian government from 1976 until a Memorandum of Understanding was signed in 2005. INTERNATIONAL CRISIS GROUP, ACEH: A NEW CHANCE FOR PEACE (2005), available at <http://www.crisisgroup.org/home/index.cfm?l=1&id=3615> (last visited Nov. 12, 2009).

<sup>26</sup> Aceh/Sumatra National Liberation Front, The Aims of the ASNLF, <http://www.asnlf.com/topint.htm> (last visited Nov. 14, 2009).

<sup>27</sup> Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement, available at: <http://www.asnlf.com/topint.htm> (last visited Nov. 14, 2009).

<sup>28</sup> Verhoeven, *supra* note 21, at 13.

<sup>29</sup> WILSON, *supra* note 17, at 168.

<sup>30</sup> Verhoeven, *supra* note 21, at 13.

<sup>31</sup> Additional Protocol I, *supra* note 17, art. 1(4).

<sup>32</sup> COMMENTARY ON THE ADDITIONAL PROTOCOLS OF 8 JUNE TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949 54 (Sandoz et al. eds., Martinus Nijhoff 1987).

<sup>33</sup> Greenwood, *supra* note 22, at 194-95.

<sup>34</sup> Currently there are 168 High Contracting Parties to Additional Protocol I. International Committee of the Red Cross, <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=470&ps=P> (last visited Nov. 14, 2009).

<sup>35</sup> George H. Aldrich, *Prospects for United States Ratification of Additional Protocol I to the 1949 Geneva Conventions*, 85 AM. J. INT'L L. 1, 6-8 (1991).

<sup>36</sup> Additional Protocol I, *supra* note 19, art. 100(d).

<sup>37</sup> WILSON, *supra* note 17, at 169.

<sup>38</sup> Examples include the Declaration of 16 June 1977 by the African National Congress and the Zimbabwean African People's Union undertaking to apply the Geneva Conventions and Protocols. See Christina Murray, *The 1977 Geneva Protocols and Conflict in Southern Africa*, 33 INT'L & COMP. L.Q. 462, 464 (1984); see also National Democratic Front of the Philippines, NDFP Declaration of Undertaking to Apply the Geneva Conventions of 1949 and Protocol I of 1977, [http://ndfp.net/joomla/index.php?option=com\\_content&task=view&id=72&Itemid=83](http://ndfp.net/joomla/index.php?option=com_content&task=view&id=72&Itemid=83) (last visited Nov. 12, 2009).

<sup>39</sup> WILSON, *supra* note 17, at 171-72; Andrew Clapham, *Human Rights Obligations of Non-state Actors in Conflict Situations*, 88 INT'L REV. RED CROSS 491, 494 (2006).

<sup>40</sup> Claude Schenker stated that "[i]n its capacity as depositary, the Swiss Federal Council did not...register any valid declaration according to Article 96 para. 3 of Protocol I."

<sup>41</sup> E-mail from Claude Schenker, Deputy Head of the Treaty Section of the Federal Department of Foreign Affairs of Switzerland, to Noelle Higgins, Lecturer, Dublin City University (July 23, 2007) (on file with author).

<sup>42</sup> Verhoeven, *supra* note 21, at 14.

<sup>43</sup> Clapham, *supra* note 39, at 494.

<sup>44</sup> Geneva Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, Oct. 10, 1980, 26 U.S.T. 583 [hereinafter Certain Conventional Weapons].

<sup>45</sup> *Id.* at 7(4).

<sup>46</sup> Clapham, *supra* note 39, at 494.

<sup>47</sup> Geneva Call, Home Page, <http://www.genevacall.org/home.htm> (last visited Nov. 12, 2009).

<sup>48</sup> Ottawa Treaty, *supra* note 3.

<sup>49</sup> Geneva Call, *Deed of Commitment Under Geneva Call for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action*, available at <http://www.genevacall.org/resources/deed-of-commitment/f-deed-of-commitment/doc.pdf> (last visited Nov. 12, 2009).

<sup>50</sup> *Id.*

<sup>51</sup> Geneva Call, Home Page, *supra* note 47.

<sup>52</sup> NOEL STOTT, NEGOTIATING IN PRACTICE WHAT IS NON-NEGOTIABLE IN PRINCIPLE: DEVELOPMENT POLICY AND ARMED NON-STATE ACTORS 15-16 (German Dev. Inst. 2007) available at [http://www.iss.co.za/dynamic/administration/file\\_manager/file\\_links/NEGOTIATINGPRACTICENSTOTT.PDF?link\\_id=32&slink\\_id=4442&link\\_type=12&slink\\_type=13&tmpl\\_id=3](http://www.iss.co.za/dynamic/administration/file_manager/file_links/NEGOTIATINGPRACTICENSTOTT.PDF?link_id=32&slink_id=4442&link_type=12&slink_type=13&tmpl_id=3) (last visited Nov. 14, 2009).

<sup>53</sup> Clapham, *supra* note 39, at 494.

<sup>54</sup> *Id.*

<sup>55</sup> Churchill Ewumbue-Monono, *Respect for International Humanitarian Law by Armed Non-State Actors in Africa*, 88 INT'L REV. RED CROSS 905 (2006).

<sup>56</sup> WILSON, *supra* note 17, at 157.

<sup>57</sup> Ewumbue-Monono, *supra* note 56, at 913.

<sup>58</sup> *Id.*

<sup>59</sup> International Committee of the Red Cross, News Release, *Sudan: ICRC President Ends Visit*, available at <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/5wtyny?opendocument> (last visited Nov. 14, 2009).

<sup>60</sup> Ewumbue-Monono, *supra* note 56, at 921.

<sup>61</sup> TIM PATRICK COOGAN, *THE IRA* (Fontant 1970) (1980).

<sup>62</sup> RIZAL SUKMA, SECURITY OPERATIONS IN ACEH: GOALS, CONSEQUENCES, AND LESSONS 9 (East-West Center 2004) available at: <http://www.eastwestcenter.org/fileadmin/stored/pdfs/PS003.pdf> (last visited Nov. 12, 2009); *see also* KIRSTEN E. SCHULZE, *THE FREE ACEH MOVEMENT (GAM): ANATOMY OF A SEPARATIST ORGANIZATION* (East-West Center 2004) available at <http://www.tamilnation.org/selfdetermination/countrystudies/aceh.pdf> (last visited Nov. 12, 2009).

<sup>63</sup> WILSON, *supra* note 17, at 156.

<sup>64</sup> *Id.* at 153.

<sup>65</sup> Lindsay Moir, *The Historical Development of the Application of Humanitarian Law in Non-International Armed Conflicts to 1949*, 47 INT'L & COMP. L.Q. 337, 343 (1998).