

HUMANITY IN CRISES

THE LEGAL FRAMEWORK FOR
WAR AND DISPLACEMENT



Editors

Dr. Huma Khan
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Humanity in Crises: The Legal Framework of War and Displacement

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CHAPTER 11

The Crisis of Norms: Legal Accountability of Non-State Armed Groups under International Humanitarian Law

Faiz Osmani¹

Introduction

Today's understanding of war is very different than it was in the past. Wars of the past involved uniformed armies clashing on battlefields with clear boundaries. Many wars today are fought in the shadowy recesses of the world, and many have witnessed an increase in non-state armed groups' power, authority, and influence. Non-State Armed Groups (NSAG) are organized armed forces that do not have legal authority from a recognized state government.² A NSAG can be an insurgent group, a militia, a rebel group, or an armed paramilitary force. NSAG have control and governance over populations and territory, and they may engage in the use of sustained violence, which often blurs the concept of 'combatant' versus 'civilian'.³ Scholars and international legal instruments recognize that NSAG are important actors of contemporary armed conflict, especially within the context of non-international armed conflict (NIAC).⁴

International Humanitarian Law (hereinafter referred as IHL) was developed to regulate behaviour in war and protect individuals in war. The fundamental principles of IHL are facing one of their biggest challenges. How can IHL law hold a NSAG accountable when the NSAG operator rejects state power and exercises state-

¹ Assistant Professor, Faculty of Law, Integral University, Lucknow, U.P., India.

² Françoise Bouchet-Saulnier, *Non-State Armed Groups*, in *The Practical Guide to Humanitarian Law*, Médecins Sans Frontières (2013), available at <https://guide-humanitarian-law.org/content/article/3/non-state-armed-groups/> (last accessed May 17, 2025).

³ Sandesh Sivakumaran, *The Law of Non-International Armed Conflict* 221–226 (2012).

⁴ Marco Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare* (Edward Elgar Publishing, Cheltenham, 2019), pp. 221–226.

like power? How can IHL seek to ensure justice when the user of violence is neither a formalized government nor a civilian, without losing sight of the obligation to follow the fundamental principles of law?

This chapter examines the crisis of norms that has developed as a result of NSAG's rise and the complex issue of how to hold these actors legally accountable. It considers whether these actors can and should be bound by humanitarian rules that were originally designed for state actors, outlines the legal mechanisms that are available, and describes where those mechanisms fall short.

While this is a global challenge manifesting in conflicts across Latin America, the Middle East, and South Asia, this chapter primarily engages with international legal frameworks and comparative experiences, while offering selective reflections on the Indian context—particularly in relation to groups like the Naxalites and insurgent actors in Kashmir and the North-East. By situating these cases within a wider international context, the chapter highlights the necessity for a reconsideration of IHL in those circumstances where the distinction between war, politics, and law become increasingly muddled.

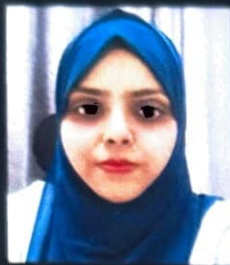
This discussion is ultimately about something deeper than just legal rules: it acknowledges the realities of contemporary violence, but also calls for the transformation of the international norms that protect human dignity, and to do so in the most dysfunctional and contested spaces. This chapter contends that dealing with non-state armed group's legal accountability is essential for not just the pursuit of justice, but also the legitimacy of the future efficacy of international humanitarian law itself.

The Legal Personality of Non-State Armed Groups

NSAG can function outside formal state structures while controlling territory and a population. They, therefore, subvert traditional international law and call for a recalibration of how we

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Dr. Huma Khan is a dedicated academician and legal scholar with over six years of teaching experience in the field of law. She is currently serving as an Assistant Professor at the Faculty of Law, Integral University. Her research and academic interests span across contemporary legal issues, with a focus on criminology, International Law, constitutional law, and emerging dimensions of crime in the modern world. Huma Khan holds an LL.B. degree from Lucknow University and completed her LL.M. from Sri Ram Swaroop Memorial University, demonstrating a strong foundation in both the theoretical and practical aspects of law throughout her academic career; Dr. Khan has shown a deep commitment to legal research and scholarship. She has presented papers at numerous national and international conferences, contributing valuable insights into various areas of legal concern. Her scholarly contributions include several research articles and book chapters published in reputed journals and edited volumes, reflecting her engagement with contemporary legal discourse. Demonstrating her leadership and organizational capabilities, she has successfully organized and coordinated various academic events, aimed at enhancing legal awareness and student engagement. She is also the editor of the book titled "Changing Dimensions of Crimes in the 21st Century", which explores the evolving nature of criminal activity and the legal system's response to these changes. Before joining Integral University, she held teaching positions at Ambedkar Law College and Geeta Law College, where she was recognized for her engaging teaching style and her dedication to mentoring students. With her rich academic background, research orientation, and passion for teaching, Huma Khan continues to contribute meaningfully to legal education and scholarship in India.



Dr. Kavya Chandel is a dynamic academite in the field of Legal Academia. She has previously held the position of Assistant Professor (Law) at Sharda University in Greater Noida (UP). Additionally, she has served as an Assistant Professor at Integral University in Lucknow. Furthermore, she was part of Amity and City Academy Law College. With an extensive academic experience spanning five years, she completed her Master's degree in Environmental Law from Hidayatullah National Law University in Raipur, along with a PGDIPR from Rammanohar Lohiya National Law University in Lucknow. Dr. Kavya is a silver medalist in Intellectual Property Rights and possesses a profound passion for environmental issues, which motivated her to pursue a PhD in Environmental Law. She has judged various competitions, including the Second Round Table Conference, moot court competitions, and debate competitions. Dr. Chandel has been interviewed by Lawctopus and TV India, and she has presented research papers at numerous national conferences. She has also moderated international conferences and hosted various events. In addition to her academic pursuits, she has a keen interest in poetry and marathons, having contributed her poetry to Sahitya Ajtak and the Lucknow Literature Festival. She has participated in several marathons throughout the city and is an enthusiastic speaker who doesn't shy away to express her views. Dr. Chandel has delivered guest lectures on Intellectual Property Law, Environmental Law, Sports Laws in India, and the NDPS Act across the country. She hosts and runs a podcast 'Legal Fatum' and has published her research papers in Scopus and international journals.

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