



Changing Character of Conflict Platform

Understanding, Tracing, and Forecasting Change across Time, Space, and Cultures

Michael von der Schulenburg: The Era of Armed Non-State Actors - Void in International Law

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This blog article explains why the current international law is unable to effectively deal with the prominent role of non-state conflict actors in armed conflicts. This is a follow-up article to [Risks of Global Chaos](https://conflictplatform.ox.ac.uk/article/the-era-of-armed-non-state-actors) (<https://conflictplatform.ox.ac.uk/article/the-era-of-armed-non-state-actors>) on the increased importance of non-state and external actors and its consequences for civilians trapped in armed conflicts.

International law about war and peace fails to respond to the shift from “traditional” wars among states to violent conflicts with and among armed non-state actors. At its core are the UN Charter and the Geneva Conventions that were developed in the aftermath of WWII with the hope of preventing similar devastating wars among states. Violent conflicts with and among armed non-state actors, although they existed then as now, were considered internal affairs of states and not a matter for international law.

Since the end of the Cold War, however, the UN’s collective security system almost exclusively had to deal with armed conflicts that involve non-state actors, a kind of conflict for which it was not created. Multiple Security Council and General Assembly decisions, anti-terrorism and transnational crime conventions, Responsibility to Protect principle or the International Criminal Court are examples for efforts to overcome this problem. But these efforts remain constrained by an international law exclusively designed for wars among states. This limited, if not blocked, collective security decisions in solving conflicts with armed non-state actors and opened the door to unilateral interventions circumventing the UN Charter and international humanitarian law. The Syrian conflict in which hundreds of state and non-state actors and several foreign armies battle it out, causing unspeakable human sufferings without a fair peace solution in sight, is a stark reminder for collective security failures and the negative impact of unilateral interventions.

Today’s international law fails in large part because armed conflicts with and among armed non-state actors differ substantially from wars among states. They now take place within cities and villages where combatants intermingle with local populations and are rarely distinguishable from them. National borders no longer matter, there are no front lines and areas of control remain opaque and shifting. Mostly, they include multiple armed state and non-state actors with fragmented command structures and diverse aims.

Armed non-state actors rely on terror and intimidation rather than open battle. They are not motivated by national identities but sustained by sympathies from within local communities. Militarily operations to dislodge them are often counterproductive as they tend to cause huge civilian casualties. Even foreign interventions, despite their huge military superiority, prove powerless in ever achieving their strategic aims. Ceasefires, the withdrawal of hostile forces, the separation of populations, fragmenting state structures (Dayton agreement) or elections rarely bring sustainable peace.

All this would call for collective political solutions. But these would need new intentional laws and norms, and indeed of the UN Charter, designed to deal with inner-state armed conflicts. This raises highly complex issues. But as in traditional wars, core aspects remain the use of force, humanitarian principles and status of conflict parties.

The ban of the use of military force in the [UN Charter](https://www.un.org/en/sections/un-charter/un-charter-full-text/) (<https://www.un.org/en/sections/un-charter/un-charter-full-text/>) applies only in cases of attacks “...against the territorial integrity or political independence of any state...” and the Charter continues excluding any UN involvement “... in matters which are essentially within the domestic jurisdiction of any state ...”. Also, the right to national and collective self-defence, often misused to justify foreign interventions, is meant to apply only “...if an armed attack occurs against a Member of the United Nations...” and not a conflict with an internal opposition. On armed conflicts within member states the Charter is largely silent. Foreign interventions without a Security Council mandate, if not outright illegal, operate hence in a legally undefined space.

These limitations in international law have contributed to the rise in unilateral military interventions ranging from humanitarian interventions to pre-emptive wars and wars on terror. The argument is that even if they are 'illegal', these interventions are 'legitimate' by some higher moral standards not covered in the Charter; a dangerous argument that undermines international law and collective security.

Not only that, foreign interventions have made inner-state armed conflicts bloodier, last longer and more difficult to solve. Although they occur only in a fraction of inner-state armed conflicts, foreign military interventions have driven battle-related deaths up dramatically. According to [UCDP](https://ucdp.uu.se/downloads/charts/graphs/png/armedconf_by_type.png) (https://ucdp.uu.se/downloads/charts/graphs/png/armedconf_by_type.png) internationalized armed conflicts accounted in 2015 for 93%, in 2016 for 91%, in 2017 for 86% and in 2018 for 89% of all battle-related fatalities. These numbers don't even include battle fatalities caused in the armed conflicts in which foreign powers 'only' provide arms, logistic support and funding.

Also, the [Geneva Conventions](https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf) (https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf) were only meant to regulate the conduct during wars among states and not in armed conflicts with or among non-state actors. Although the four conventions include a common provision for "armed conflicts not of an international character", states generally don't accept these provisions to apply in their struggle with armed non-state actors and armed non-state actors are no parties to these conventions.

In fact, defying humanitarian principles appears to have become a deliberate "tactic" in such armed conflicts. This has led to such extreme atrocities by some non-state actors from publicly burning alive or cutting the throats of prisoners, to the killing of family members or suicide bombing of civilian targets. States react with targeted killings, enhanced interrogation practices, denying rights to prisoners, indiscriminate bombing of cities and villages or deployment of pro-government militia with awful human rights records. The anti-terrorism conventions may have contributed to this by allowing governments to justify exceptional use of force by declaring any armed opposition as terrorists.

In a world of traditional wars among states, the legal status of conflict parties is largely defined by the principle of "[sovereign equality](https://www.un.org/en/sections/un-charter/un-charter-full-text/)" (<https://www.un.org/en/sections/un-charter/un-charter-full-text/>). But what is the legal status of conflict parties in a world of armed conflicts among state and non-state forces in which the issue is not so much one of war or peace but of chaos or order? Can we treat armed non-state actors simply as outlaws or terrorists when they even stand up to the world most powerful military armies? Ultimately, we may have to negotiate peace with them, invite them to our capitals, give them immunities and integrate them into societies, eventually even in governments.

Also, the legal status of states can no longer be defined only in relation to other states but must be redefined in relations to armed non-state actors within their countries. Although the foremost aim of the international community must be stable and functioning states, this doesn't necessarily mean supporting respective governments. The question is when governments legitimately represent states and what international rights would governments have if they do?

These are delicate questions, but if we want to respond more effectively to the threats armed conflicts with and among belligerent non-state actors and prevent global chaos, we must strengthen the UN's collective security system by developing appropriate norms and laws. With the West increasingly exhausted by its failed foreign military interventions, this might offer a way out.

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