

# **Legal regulation of activities of non-state actors in armed conflict**

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**Dissertation thesis – ABSTRACT**

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The increased number of armed conflicts with various forms of participation of non-state actors has recently revealed a range of possible “gaps” in legal regulation. An array of questions has thus surfaced, concerning in particular their legal status, means of conducting armed conflicts, and, in relation to these, matters of obligatoriness of the given rules and matters of their responsibility for potential breaches of international law. All of this is related in a complex way to the matters of sufficiency of the legal framework itself, within which the non-state actors operate – that is, with the affairs related to both the international humanitarian law and the international human rights law, but subsequently also with the international criminal law.

The present thesis therefore focuses on the legal analysis of the activity of non-state actors in the situation of an armed conflict. Since the prevailing type of contemporary armed conflicts are internal armed conflicts, i.e. conflicts in which there is interaction of government armed forces with non-state actors, or even mutual interaction between several groups of non-state actors, the thesis focuses on the analysis of their legal activity in this type of conflict.

The thesis is divided into seven parts, while the first two parts, as well as the last part, function as a theoretical introduction to the problematics of the phenomenon of non-state actors and the legal environment in which they act, and an outline of their regulation. A detailed legal analysis of their activity in armed conflicts, i.e. the analytical part of the thesis, is covered in the remaining four parts.

The first part is devoted to the analysis of the term “non-state actors” itself, and to their categorization by the criterion of non-state actors participating in armed conflicts. The reason for this is that they form a rather broad variety of entities, both from the point of view of content and terminology, their only common characteristics basically being that they do not represent an entity associated with the exercise of state authority. Since the international

humanitarian law only operates with the terminology contained within itself, the determination of a single status of such a diverse group as the non-state actors will represent a true challenge.

As the activity of non-state actors is analyzed in the light of the legal regulation of international humanitarian law governing the conduct of internal armed conflicts, the second part of the thesis focuses on the analysis of branches of law, which it is necessary to apply to this type of armed conflict. That is, in particular, the legal regulation of the Common Article 3 of the Geneva Conventions, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), and also the collection of norms of customary international law. Due to the fact that the International Court of Justice has ruled the necessity of complementary application of international human rights law with respect to international humanitarian law in the situations of armed conflict, and that this trend was subsequently supported and developed by the decisions of the European Court of Human Rights, the legal analysis also includes the influence of non-state actors in an armed conflict to this otherwise separate branch of public international law.

Due to frequent infringements of the rules valid in the situation of an internal armed conflict, when in particular the non-state party declares not being bound by the given norms, the aim of this thesis is to show that although the current regulatory framework is universally challenged, its content in fact objectively binds both (all) parties of an armed conflict (see the third part of the thesis). Therefore the final question, to which this thesis is devoted, is how to motivate the non-state party in the conflict to fully respect and obey the established rules.

As the third part of the thesis has tried to clearly show that the non-state party of a conflict is bound by the valid norms for conducting an armed conflict, whether it likes them or not, the fourth part of the thesis is aimed at a detailed analysis of the legal instruments regulating the conduct of an internal armed conflict. This means, firstly, the Common Article 3 of the Geneva Conventions, being really the most fundamental humanitarian minimum with respect to the conduct of these armed conflicts, but also the legal regulation contained in the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (APII). The complication in practice is that although the APII contains a more complex and extensive legal regulation for the conduct of internal armed conflicts, due to the substantial requirements for triggering its application, most internal armed conflicts are not regulated by this body of law.

The fifth part of the thesis is focused on the status of the members of the non-state party in a conflict. Unfortunately, the apparent non-existence of the status of combatant, or any comparable status, such as in the form of a fighter, and of the related corresponding legal regulation of the consequences in case of their detention (capture), causes a manifest inequality in their status, especially for the non-state party of the conflict. The result is, in fact, that whether the members of the non-state party of the armed conflict act fully in accordance with the rules for conducting armed conflicts or not, the state party of the conflict can, in case of their capture, consider them perpetrators of a criminal activity.

The sixth part of the thesis is aimed at the issues of responsibility, meaning on the one hand the direct responsibility of the non-state actors as a whole, and on the other hand the potential forms of their indirect responsibility consisting in the induction of the individual (commander) responsibility, and the responsibility of the state. This part is aimed not only at the potential causes of the establishment of responsibility pursuant to the international humanitarian law, international human rights law, but, with respect to the existence of the first permanent international criminal court, this part also tries to outline the actual consequences of their responsibility from the aspect of international criminal law.

The purpose of the seventh part of this thesis is to clarify the topic of regulation of the activity of non-state actors. Since several different principles collide on this point, the international community has not adopted a single approach to the issue. Taking into account the protection of the victims of the armed conflicts, there is on the one hand the demand to guarantee as broad compliance with international law as possible. On the other hand, the current legal regulation of the conduct of internal armed conflicts has remained somewhere “in between” the system of national law and the system of international law. For it still holds true that the international law is created and exercised by the states, and therefore its rules can (and must be) implemented by the states only.

From the above mentioned, it is clear that the existence of non-state actors in armed conflicts poses a significant challenge to the international community, since their activity creates an array of questions regarding the sufficiency of the current legal framework. More than 150 years ago, states began to create binding legal norms among themselves, which would be used world-wide in the situation of an international armed conflict. Today, these rules represent a very broad collection of rights and obligations. In 1949 and then in 1977, a partial legal regulation of the conduct of internal armed conflicts was achieved at the international level, i.e. of conflicts heretofore fully considered as a part of internal affairs of states. However, since the legal regulation is rather modest, in comparison with the regulation

of the conduct of the international armed conflicts, it is questionable, considering the prevailing tendency of conducting internal armed conflicts (and the activity of non-state actors), including the increasing tendency of civilian casualties, whether the manifest disparity in this form is tenable.