

Non-State Actors and Their Liabilities in International Armed Conflicts

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Abstract : The Israeli Supreme Court in Public Committee against Torture in Israel v. Government of Israel observed the presence of non-state actors in cross-border terrorist activities thereby making the role of non-state actors in terrorism the center of discussion under the scope of International Humanitarian Law. Non-state actors and their role in a conflict have also been traversed upon by the Tadic case decided by the International Criminal Tribunal for the former Yugoslavia. However, there still are lacunae in International Humanitarian Law when it comes to determining the nature of a conflict, especially when non-state groups act within the ambit of various states, for example, Taliban in Afghanistan or the groups operating in Ukraine and Georgia. Thus, the objective of writing this paper would be to observe the ways by which non-state actors particularly terrorist organizations could be brought under the ambit of Additional Protocol I. Additional Protocol I is a 1977 amendment protocol to the Geneva Conventions relating to the protection of victims of international conflicts which basically outlaws indiscriminate attacks on civilian populations, forbids conscription of children and preserves various other human rights during the war. In general, the Additional Protocol I reaffirms the provisions of the original four Geneva Conventions. Since provisions of Additional Protocol I apply only to cases pertaining to International Armed Conflicts, the answer to the problem should lie in including the scope for 'transnational armed conflict' in the already existing definition of 'International Armed Conflict' within Common Article 2 of the Geneva Conventions. This would broaden the applicability of the provisions in cases of non-state groups and render an international character to the conflict. Also, the non-state groups operating or appearing to operate should be determined by the test laid down in the Nicaragua case by the International Court of Justice and not under the Tadic case decided by the International Criminal Tribunal for Former Yugoslavia in order to provide a comprehensive system to deal with such groups. The result of the above proposal, therefore, would enhance the scope of the application of International Humanitarian Law to non-state groups and individuals.

Keywords : Geneva Conventions, International Armed Conflict, International Humanitarian Law, non-state actors

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