Nonstate Actors in Armed Conflicts: A Legal Perspective

יום שני, 15.06.09, בשעה 11:45

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Abstract

The laws of war were designed to regulate the conduct of war – with war traditionally conceived as a conflict between sovereign, independent states. Legal instruments, customary international law and judicial pronouncements that contemplate the involvement of non-states in warfare are scarce. And yet, non-states play a role in almost all modern conflicts to varying degrees: a state may be in physical conflict with an independent non-state entity (e.g., Hamas); a state may engage in war with a non-state entity receiving financial and military support from a state (e.g., Hizbullah); or a non-state entity may be providing essential logistical or military support to one or more of the belligerents (think al-Qaeda support for the Taliban or Blackwater support for the US Army in Iraq).

What is the legal framework applicable to conflicts involving non-state actors? Does the nature of the non-state actor matter, i.e. terrorist, military contractor or other? Does the non-state actor’s willingness to act in accordance with international law make a difference? I will examine whether the presence of quasi-civilians or quasi-combatants on or near the "battlefield" affects the applicability of international law to these actors and, more broadly, to these conflicts.

Monday, June 15, 2009, 11:45 a.m.
Faculty Club
IDC Herzliya