

Armed groups and international law
Capita Selecta (RMGUIER241)

Description of course:

Today, most armed conflicts involve armed groups meaning that from an international humanitarian law perspective they are classified as ‘non-international in character’. Indeed, it is estimated that between 60-80 million individuals currently live in a territory controlled by armed groups. As a result of the absence of the de jure government in these areas, armed groups often find themselves providing basic services, such as security, health, education, law enforcement and birth registration. This course examines some of the contemporary policy and legal dilemmas relating to armed groups and international law. It examines ongoing debates relating to how armed groups are bound by international law, the tensions between their position under national law and international law and questions relating to how their governance activities should be regulated. It will limit its gaze to the actions of armed groups operating in armed conflicts, and it will not deal with *ad bellum* questions that have already been dealt with in the international security law course. This module is open to students who are interested in the current challenges to the legal framework applying to non-international armed conflicts and legal blogging. Existing knowledge of international humanitarian law has been stated to be required and expected. If you are feeling like you might like to brush up your knowledge of the international humanitarian law that applies to armed conflicts involving armed groups, see [here](#) (especially p66-73).

Aims of the course and skills students will learn:

- Students will have gained a practical understanding of some of the key contemporary debates relating to armed groups and international law, relating to legal personality, detention and trial, rebel governance, compliance, counter-terrorism;
- Students will learn to identify and, where appropriate, distinguish between legal, political, theoretical considerations and arguments and use that knowledge to suggest and appraise creative solutions to current impasses;
- Students will develop their research, analytical and writing skills, with a specific focus on mastering the skill of legal blogging.

Structure of the course:

Session	Topic
1 st session	Armed groups and their place in the legal framework + introduction to legal blogging
2 nd Session	Rebel governance and international law: new dilemmas of law and policy
3 rd Session	Finding space for humanitarian action and IHL lawfulness in armed conflicts involving ‘terrorists’?
4th Session:	Further emerging challenges for the legal framework of IHL by armed groups shape shifting and coalition building?

Session content:

Each session will be started with a brief lecture on the topic of the week. The lecture will draw together some of the themes dealt with in the required reading, and also provide further context to the debates. After this lecture, the session will be opened up for a guided discussion of the issues. Active participation from students is expected, so please make sure that you have done your reading before each session! Please inform the teacher if you cannot attend a session due to illness or any other circumstance.

Assessment:

This course will be assessed by means of a written piece of work between 1,800-2,000 words in the form of a legal blog post, delivered in a form that is ready to be posted. The submission deadline is Friday 1st April, at 5pm. One point will be deducted for any 24 hours delay, and smaller points will be deducted for any smaller delays.

The blog post should address one of the broad topics that are addressed in the course. The submitted blog post must follow the detailed [submission guidelines](#) of the Armed Groups and International Law blog, which should be consulted in full. But in summary, it means:-

- All references should be in hyperlinks, with page numbers provided (i.e. no footnotes)
- No bibliography is required
- Sub-headings should be in bold
- It should be accompanied by a suitable image in the public domain

Blog posts should be in the form of 'reaction/ review posts', in that they should seek to address an existing argument(s) that has been published in **a single article or blog post**. Students are permitted to use any article or blog post they want for this exercise. A good structure when writing a blog post of this nature is as follows:-

- start with an introduction (it should be no more than 10% of the length of the piece)
- make the next section contain some remarks on what you found interesting about the piece of literature you are responding to (e.g. where it sits in the literature, why it is interesting/ controversial/ unique)
- make the next section(s) evaluative/ analytical, zooming in on one smaller aspect that you found the most interesting. This part of the blog post is the most important as it is where explain whether and why you agree/ disagree with a particular legal approach/ argument and why. You may also add your own thoughts on the issue, perhaps suggesting an alternative approach
- make the last section deal with some issues you would have liked more detail on or find thought provoking
- end with a conclusion (no more than 10% of the length of the piece)
- think of a catchy title

In preparation for writing a blog (and before the first seminar) please watch the following video series: [So UU think you can blog?](#). Please also read the 2-page guide on legal blogging by Mira Scholten that is placed on blackboard.

Please do not make the mistake of thinking that this exercise is not a research assignment. It will require legal research because:-

- To describe where the blog post sits in the literature and provide your own opinion on it, you will have to do some additional research;
- If you choose to 'respond' to a blog post, you will very likely have to read at least some of the underlying literature to that blog post in order to respond

If you wish to write your legal blog post on a slightly different topic that still connects to the subjects covered in this course, please take a look at the legal roundups provided by the [Armed Groups and International Law](#) blog for inspiration.

Your blog post should be handed in on blackboard via the link that will be provided in due course. Please make sure that your cover sheet contains the following: student number (please, no name), words count, title of course, and the following grading matrix (which is provided in a separate word document on blackboard).

	u	p	s	ms	g	vg
Blog style, tone and format						
Clear introduction						
Clear and coherent writing and well-structured argumentation						
Use of primary and/or secondary sources						
Persuasive identification and analysis of the issues involved						
Clear conclusions						
Final assessment						

u = unsatisfactory (<4), p = poor (±5); s = satisfactory (±6); ms = more than satisfactory (±7), g = good (±8), vg = very good (±9-10)

To provide you with more details of how this assignment will be marked, see Annex I of this document. The usual rules re. plagiarism apply.

Short bio of professor:

Katharine Fortin is an Associate Professor at Utrecht University where she works at the Netherlands Institute of Human Rights. She has published widely on the topic of non-international armed conflict, with a particular specialism on armed groups and international law. In 2018, her monograph *The Accountability of Armed Groups under Human Rights Law* won the Lieber Prize, awarded by the American Society of International Law to an outstanding book on armed conflict and international law. She is the founder and co-editor of the [Armed Groups and International Law blog](#) which has published analytical pieces, legal roundups and news roundups on non-international armed conflicts and international law since 2012.

1st Session: Wednesday 16th March, 9-10.45, Daltonlaan 500, Room 6.06

Armed groups & their place in the legal framework + introduction to legal blogging

In this session, we will consider the position of armed groups in the legal framework giving attention to the fact that they exist in a strange shadowland of legality and illegality. They are almost always proscribed criminal organisations in national law, meaning that their very existence is unlawful and membership in them is a criminal offence. Yet, under international law armed groups are somewhat tolerated at least in so far as their existence is accepted. They are, for example, bound by international humanitarian law and possibly also international human rights law. This raises questions re. the manner in which armed groups are seen in the legal framework and the manner in which they are approached, in the context of efforts designed to secure their compliance with the law. In the second half of this session, we will look more closely at the skill of legal blogging considering the following questions:-

1. What topic is good for a blog post?
2. What makes blogging different from other pieces of legal writing?

Primary sources to consult:

[Common Article 3 of the Geneva Conventions](#)

[Customary International Law Study on IHL](#)

Required reading materials:

Sassoli, Marco, [Taking Armed Groups Seriously: Ways to Improve their Compliance with International Humanitarian Law](#), *International Humanitarian Legal Studies* 1(2010) 5-51

Bellal, Annyssa, [‘From cockroaches to rosebuds: changing the international community’s perception of non State armed groups’](#), May 2020

Sjoberg, Anki, [Where are the carrots? Positive discipline for armed groups](#), Humanitarian Law and Policy blog, March 2020

2nd Session: Wednesday 23th March, 9-10.45, Daltonlaan 500, Room 6.06

Rebel governance and international law: stuck in the middle with you

In this session, we will study some of the emerging dilemmas that relate to rebel governance. Indeed, it is estimated that between 60-80 million individuals currently live in territory controlled by armed groups. As a result of the absence of the State in these areas, armed groups often provide basic services, such as security, health, education, law enforcement and birth registration. This raises a number of compelling questions regarding the accountability of armed groups under international law. Are armed groups bound by international human rights law and international humanitarian law or only international humanitarian law? Why does it matter? If they are bound by both bodies of law, where should the conceptual dividing lines between these bodies of law be drawn when it comes to issues, like fair trial and detention that are regulated by both fields of law? Equally, is it even possible for armed groups to adhere to norms of international humanitarian law and/ or human rights law on fair trial and detention rights? These are difficult questions that are increasingly grappled with in legal scholarship.

Primary sources to consult:

[Common Article 3 of the Geneva Conventions](#)

[Customary International Law Study on IHL](#)

[International Covenant on Civil and Political Rights](#)

Required reading materials:

Rodenhauser, Tilman, [The Legal Protection of Persons Living under the Control of Non-State Armed Groups](#), International Review of the Red Cross (2020), 102 (915), 991-1020

Pothelet, Elvina, [Life in Rebel Territory: Is Everything War?](#) Armed Groups and International Law blog, May 2020

Muller, Amrei, [Developing International Law in Territories Controlled by Armed Groups: Upholding Life-Saving Conditions – But What About Promoting Political and Legal Legitimacy of Non-State Authority?](#) Armed Groups and International Law blog, May 2020

3rd Session: Friday 25th March, 13.15-15.00, Janskerkhof 15A, Room 202

Finding space for humanitarian action and IHL lawfulness in armed conflicts involving ‘terrorists’?

This session addresses the complex relationship between international humanitarian law and counter terrorism law. It aims to clarify the conceptual, policy and interpretative questions related to the way in which these legal frameworks co-exist and interact. We will start by analysing the different (criminal) regimes created by the two bodies of law, studying the advantages and disadvantages of their co-application and the tensions between them. We will then move on to considering whether the values at the heart of the two legal frameworks are compatible and how they might be better reconciled.

Required reading materials:

Saul, Ben, [‘From conflict to complementarity: reconciling international counterterrorism law and international humanitarian law’](#), International Review of the Red Cross (2021), 103 (916-7), 157-202 (please only read 157-172)

Modirzadeh, Naz and Lewis, Dustin, [Opinion Note: Humanitarian Values in a Counterterrorism Era](#), International Review of the Red Cross (2021), 103 (916-7), 403-413

Ni Aolain, Fionnuala, [The Necessity of Enforcing Humanitarian Law and Human Rights in the Context of Counterterrorism](#), Just Security, October 2020

4th Session: Wednesday 30th March, 9-10.45, Daltonlaan 500, Room 6.06

Further emerging challenges for the legal framework of IHL by armed groups shape shifting and coalition building?

In the final session, we will consider some further challenges that arise out of a completely different conflict trend. This is the idea that armed groups are increasingly fragmented, with many armed groups sometimes operating in a single space. This phenomenon raises the question of whether a country confronting 100 armed groups is engaged in 100 non-international armed conflicts, or whether the legal framework needs to be adapted so that the IHL requirements of (i) intensity and (ii) organization are interpreted differently. In this class, we study some suggestions that have been made in recent years as to how fragmented actors and linked actors should be treated under international humanitarian law and consider their relative merits.

Required reading materials:

Nohle, Ellen, [Drawing the line between armed groups under IHL](#), Humanitarian Law and Policy Blog, July 2016

Nikolic, Jelena, de Saint Maurice and Ferraro, Tristan, [Aggregated intensity: classifying coalitions of non-State armed groups](#), Humanitarian Law and Policy Blog, October 2020

Deeks, Ashley, [Common Article 3 and Linkages between Non-State Armed Groups](#), Just Security, October 2017

Grading matrix for blog post

	u	p	s	ms	g	vg
Blog style, tone and format	The paper does not adopt the style, tone or format of a legal blog post		Some efforts have been taken to make the piece like a legal blog post, but more is to be desired to adjust the style, tone and format to this medium			The piece reads and is presented like a legal blog post, in terms of its style, tone and format (i.e. a good title, sub-headings, appropriate photo and clear and appealing writing style)
Clear introduction	The introduction is hardly discernible as an introduction and does not identify the issues that the post will discuss		An introduction is present, but lacking in some content, too long or unclearly written.			The introduction is appropriate length and clearly identifies the motivation for the blog post (factual and/or legal) and the issues it will explore
Clear and coherent writing appropriate for a legal blog and well-structured argumentation	Little effort has been made to structure the argumentation or write coherently and it is not possible to follow the arguments presented.		Some effort has been made with the writing but it remains a bit unclear in places, with incomplete sentences or poor flow. The argumentation is a bit hard to follow in places.			The writing is very clear and coherent, written in a style appropriate for a legal blog. The argumentation of the piece is very clearly structured
Use of primary and/or secondary sources	The student does not seem to have done any research for this assignment and does not demonstrate an understanding of the issues.		The student has done a little bit of research beyond the required readings, but not much.			The student has clearly read and understood a number of primary and/ or secondary sources that go beyond the prescribed materials.
Well chosen content	The piece of work does not present content appropriate for a legal blog post		The blog post is a bit too descriptive in character, and struggles to add any evaluative/ analytical content which adds any new thinking to the issue			The blog post clearly contributes to a legal discussion on a particular issue, by linking to contemporary events, providing an understanding of the field and adding some new analysis
Clear conclusions	The conclusion is absent or much too long		The conclusion feels a bit robotic			The conclusion retains the reader's interest and is the appropriate length.
Final assessment						