
Sridhar Patnaik Dabiru
International Humanitarian Law and Non-State Actors

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The objective of this succinct outline is to provide a rejoinder to the Indian Society of International Law (ISIL) Secretary-General’s draft paper on ‘Fundamental Guarantees of Humane Treatment’ in the Laws of War. The present theme is subject to further research at the behest of the Secretary-General, ISIL.

The draft paper on ‘Fundamental Guarantees of Humane Treatment in the Laws of War’ written by Prof Rahmatullah Khan is a comprehensive work outlining the major issues pertaining to treatment of detainees and the violation of their fundamental human rights by the US, in the light of incidents which have taken place at Abu Ghraib, Guantanamo Bay etc. The title of the paper represents upholding the spirit of basic human rights of individuals. The broad objective of international humanitarian law is to protect the rights of victims in armed conflicts that could be categorized as ‘minimizing the sufferings of the victims’. However there is a sense of discernment that the victim oriented approach did not provide satisfactory response as to who should respect or ensure respect of victim’s rights. This attitude is more relevant in issues relating to non-international armed conflicts and there upon raising questions relating to the applicable international law per se for internal armed conflicts. Some scholars like Liesbeth Zegveld2 opine that international humanitarian and human rights law as a corpus juris developed with a state centric approach. Hence application of international humanitarian law protecting the rights of victims in conflict situations involving non-state actors is an area of debate. Further, germane to this area is the question of whether fundamental guarantees to be accorded to non-state actors such as terrorists and guerilla forces.3 Providing either combatant status or PoW status to the non-state actors and thereby according immunity

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1 See Geneva Convention (III) Relative to the Treatment of Prisoners of War of 12 August 1949. Also see Art 75 of the Additional Protocol I of 8 June 1977 Relating to Protection of Victims of International Armed Conflicts and Art of the Additional Protocol II of 8 June 1977 Relating to Protection of Victims of Non-International Armed Conflicts

2 Liesbeth Zegveld, The Accountability of Armed Opposition Groups in International Law (CUP: 2002)

from prosecution are unlikely to be accepted. But if perceived as subjects of law and also taking into account the concept of Demarten’s clause, those subjects termed as terrorists or who are terrorists deserve a right to fair trial and due process of law. Contrarian views to this observation are plausible as terrorist activities pose threat to peace and harmony in the society. However the sanguine objective of humanizing mission of international humanitarian law cannot be disregarded in according certain guarantees to these non-state actors under international humanitarian law. 

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