Does Who Matter? Legal Authority and the Use of Military Violence

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Since the late Renaissance, just war theory (JWT) and international law have generally assumed that sovereign states are the only actors that have a right to use military violence and to engage in war.[1] As was stated in the most famous of all twentieth-century treatises on international law, "To be war, the contention must be between States."[2] Even today, although international law provides that nonstate actors can be parties to a war (armed conflict), it is generally assumed that the UN Charter's regulation of the resort to war (use of force) only concerns states, and that the resort to war by nonstate actors is regulated only in domestic law.[3] Hence, under common understandings of international law, sovereign states have the authority to (sometimes) use force while nonstate armed actors are criminalized under domestic law. In fact, as Jens Bartelson has noted, our conceptions of political authority and the right to war are mutually constitutive.[4]

However, that sovereignty-centered view of the authority to use force does not correspond to current realities on the ground. As Mary Kaldor has pointed out, current warfare is "a mixture of war, crime, and human rights violations," and thus distinctions among combatants, criminals, and civilians are difficult to uphold.[5] Partly in response to these changes, contemporary "revisionist" just war theorists generally downplay the concept of authority.[6] According to these philosophers, the same moral rules should apply in war as in peace, and ethical questions regarding wars should be analyzed only in terms of individual behavior. Therefore, the authority of who wages war has little or no independent moral relevance.[7]

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Nevertheless, authority may have normative consequences that merit close study, as Jonathan Parry has observed.[8] An analysis of the current regulation of the use of military violence under international law shows that it is much less centered on the state than appears at first glance, and that other actors may have legal—but not necessarily legitimate—authority to use military means. For example, under *jus in bello* nonstate actors can create a state of armed conflict in which they can often continue to use military means without legal sanction. Hence, by resorting to arms a nonstate actor can arrogate for itself the right to use military means. *Jus ad bellum* may still require legitimacy (in the formal sense of being a state or, perhaps, a national liberation movement), but current *jus in bello* also covers nonstate armed groups, and from a practical point of view the *in bello* regulation undermines any *ad bellum* requirement of proper authority. The same can be said for some other actors. Hence, in present international law on war, proper authority is not always conditioned on legitimacy as usually understood. That is, a "proper" authority—an authority that may produce certain normative consequences—does not necessarily have to be a "legitimate" authority.

In this article I will ask what authority for the use of military violence means under international law. I hope to be able to make two contributions to this debate: (1) an analysis of the several potential legal and other normative consequences of authority; and (2) the empirical finding that international law—partly in response to the complex picture that Kaldor and others describe—actually recognizes different authorities for different causes and different contexts, and there appears to be no consistent, overarching conception of authority, and even less of legitimacy.[9] The rules discussed here are well known to international lawyers, but my contribution is to assess them in a JWT framework. The article will proceed as follows. First, I will very briefly sketch how the idea of authority in JWT and in international law has developed over time. Second, I will discuss what authority might mean in legal terms. Specifically, I argue that it makes a difference in law whether or not a certain decision or action with regard to military means is taken by a unit with the proper authority. Third, I will briefly disaggregate the concept of authority and outline some of the consequences that follow from each type. Fourth, I will highlight a number of different actors and describe the various authorities each has under international law. In doing so, I will argue that there are different authorities in different situations, and that this is at odds with the more homogenous Westphalian and Grotian world that we commonly think of as comprising the domain of international Law of War.

A few terminological notes are necessary. First, in contemporary international law the term "war" has by and large been replaced by other terms. The UN Charter employs the terms "use of force" or "armed attack" (which often entail the initiation of "war") and the Geneva Conventions prefer the term "armed conflict" (which is by and large synonymous to war). Nevertheless, in contemporary international ethics, the term "war" is still used. For the purposes of this study, I may use both "war" and "armed conflict" interchangeably, but I will prefer "armed conflict" whenever I need a more precise legal term.

Second, in international law, "use of force" generally refers to the "strategic level" (*jus ad bellum*) whereas international humanitarian law (IHL) uses a number of terms like "hostilities," "acts of hostility," "attacks," "military operations," and the like to describe various types of events and actions at the "tactical level" (*jus in bello*).[10] Since my argument implicitly transcends the distinction between *jus ad bellum* and *jus in bello* (although I support the legal regime that upholds that distinction), I will often use terms such as "military measures" or "military violence" that do not prejudice whether a certain authority applies to the one level or the other.

Third, I take the term "norm" to cover both legal norms and other types of norms. While my focus is on legal norms, moral norms could also be analyzed in the same fashion; in fact, international lawyers are used to dealing with "soft law"—norms of dubious legal quality that nevertheless play a role in international intercourse. Thus, throughout the article I take "normative consequences" to include legal ones.

Fourth, the noun "authority" can refer both to a particular capacity (like the capacity to decide on the use of military violence) and to a subject with a particular capacity (like "the tax authorities"). This point will be developed more fully below, but whenever needed, I will insert the adjective "proper" to distinguish an authority that has the particular capacity that is the focus of this inquiry, namely, the normative capacity to use or decide on military violence. For the purposes of this article, and in contrast to some just war theorists, "proper" does not mean "legitimate." It only means that the particular normative system in question—international law—has determined that a particular subject or type of subject may resort to military violence. Whether that authority is legitimate is a separate question and should be discussed as such, though not in this article. Suffice it to say that I find it at least problematic that "proper" seems to be delinked from "legitimate" under international law.

Just War Theory, International Law, and Authority

As is well known, classical just war doctrine claimed that there were three requirements for a war to be just: first, there needed to be a just cause; second, there had to be right intention; and third, the war had to be pursued by a proper authority, which had to be a *legitimate* authority. The third requirement in particular had a profound political impact on the development of what we now call the Westphalian system.[11] Medieval Europe was not constructed around the concept of the state, let alone that of the nation-state. Instead, there were a plethora of actors: city-states, kingdoms, princedoms, the pope, the Holy Roman Emperor, and others, and the legal relations among them were not at all clear. Political thinkers of the time proposed various answers to the question of who was allowed to use the sword, but they held one thing in common: they wanted to limit the number of actors that could lawfully use force. Thomas Aquinas (1225–1274), for example, explains that for a war to be just, "the authority of the prince by whose command war is to be waged [is required]. For it does not pertain to a private person to declare war, because he can prosecute his rights at the tribunal of his superior."[12]

As just war doctrine morphed into international law in the sixteenth and seventeenth centuries (through the writings of Vitoria, Suarez, and Grotius),[13] political thinkers and leaders increasingly viewed the answer to the question of who had proper authority as being "the prince," and later "the state." Even though international law generally continued to uphold the just cause requirement of just war in theory, this was more lip service than a real requirement. In 1625, Grotius said that it is very difficult to know who is just; in 1758, Vattel more or less discarded the just cause requirement; and by the nineteenth century neither writers nor nations were much concerned with the justice of the cause. Once the problem of just cause had been settled (by being ignored), the question of proper authority (is this subject a state?) came to be the only really pertinent issue. Hence, the legal interest turned away from justice and toward form, procedure, and (most importantly) competence. The only question was: Who decides (*quis judicabit*)? On the domestic as well as on the international scene, that could only be the sovereigns.[14] They alone had the right to go to war on any pretense; and since there was no just and no unjust party, they were equals in combat—*justus hostis*.[15]

After World War I, and even more so after World War II, the prerogative of the state to go to war became more limited. The UN Charter introduced a prohibition on the use of force with two generally recognized exceptions: self-defense and

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force authorized by the UN Security Council. On paper, the UN Charter marked the emergence of a true competitor to sovereign authority, since the Security Council had the capacity to take "such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security."[16] However, due to cold war inertia, it almost never did so. Further, as decolonization proceeded, almost all territories came to be represented by more or less legitimate governments; in order to know what was a state, it usually sufficed to check the list of United Nations members.[17] As a result, the question of proper authority became less pronounced, and the legal discussion again turned to just cause: Is anticipatory self-defense legal? Is it legal to intervene on the side of the sovereign in a civil war?

After the end of the cold war, proper authority returned as an issue. It was now generally recognized that there are situations (such as Rwanda in 1994) in which force can legitimately be used to protect individuals (as opposed to states).[18] The crucial remaining debate centered on who had the right to decide when there is a just cause: an individual state, a coalition of states, or the United Nations in some form?

In the meantime, the concept of *jus in bello* had become separated from *jus ad bellum* and developed on its own.[19] In the Middle Ages it was generally held that the just party had nearly unlimited means at its disposal. Gradually, limitations on the means and methods of warfare were established and accepted in both legal doctrine and state practice, and then codified in the 1860s with the Lieber Code in the American Civil War, the first Geneva Convention, and the Saint Petersburg Declaration. This development continued through the 1899 and 1907 Hague Conventions and then, after World War II, with the elaboration of the four Geneva Conventions in 1949 and their additional protocols in 1977. Even if the UN Charter outlawed the resort to war, wars continued to exist in real life, and the humanitarian costs had to be dealt with. From the 1990s onward, multinational efforts were increasingly focused on how to improve the protection of civilians in non-international armed conflicts (civil wars), not least through efforts to incentivize nonstate armed groups (like rebels) to comply with IHL.

In spite of these developments over the last century and beyond, there is currently little comprehensive debate in international law on proper (or legitimate) authority as such. In a sense, this is not surprising, since "proper authority" is not a legal term of art.[20] However, the idea that only the state has the right to use force is ingrained in both international and constitutional law. To be sure,

there has been debate on the relationship between the authority of states and the authority of the Security Council or some other intergovernmental body. However, debate surrounding the authority of nonstate actors has been slim. Instead, the argument focuses on the right to use military measures *against* nonstate actors, in particular foreign terrorist groups. Similarly, there have been debates on how members of nonstate groups shall be treated during conflict (*jus in bello*), such as the debate over the Guantánamo Bay detention camp. Few scholars, however, have asked whether nonstate groups could actually, under some circumstances, be covered by the international law regime on the *ad bellum* right to resort to force, or otherwise have a right to resort to military measures (such as a right to rebel).[21] And, even more fundamentally, there is little to no scholarly discussion on the relationship between conceptions of political authority and the various legal powers that different types of actors can exercise in a war. In the following sections I aim to do both.

The Meaning of "Authority" in the Context of War

Even though states generally have an explicit authority to resort to force under certain circumstances, a fine-grained analysis reveals that other actors, too, may have important capacities that can be analyzed and discussed in terms of authority. Before undertaking that analysis, however, an explanation of my use of the term "authority" is necessary.

First, in this essay I speak of authority in a legal sense, not in a philosophical or a sociological sense. There are different meanings of authority in law, but for the present purpose the following dictionary definitions are relevant: "legal permission granted to a person to perform a specified act,"[22] "a right to command or to act,"[23] or "a permission, a right coupled with the power to do an act or order others to act."[24] I will use these definitions as starting points.

Second, authority must be distinguished from both political power and from legitimacy.[25] Power, in a sociological sense, as in the ability to influence, is not directly relevant, since this is an enquiry into legal norms. "Power" could also have a legal meaning, close to "authority," but for reasons of clarity I will avoid using the term in that sense. Regarding the distinction between authority and legitimacy, in current international law the former is not conditioned on a clear conception of the latter. One could argue that *jus ad bellum* may still require legitimacy (for instance in the formal sense of being a generally recognized state),

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whereas *jus in bello* does not. I believe that such a view is too simplified, but it does highlight the distinction between the two concepts. Therefore, my concept of authority will not include "legitimacy." In other words, being "legitimate" is a possible but not a necessary attribute of an actor with authority.

Third, for anyone concerned with the law, it is the possible *consequences* of actions by actors with or without the required authority that count. To say that an authority is "proper" or "not proper" is meaningless without some account of the consequences of being "proper" or "not proper." Does the lack of proper authority mean that an actor may be subjected to a penalty, a tort claim, a loss of privileges, or countermeasures by some other actors? For the issues dealt with in this article, the consequences are often quite complex, and for reasons of space I will review them only to a limited extent. However, in general, the reader can assume that if an act is undertaken under the proper (legal) authority, the balance of legal consequences for that actor will be more favorable than if that authority had not been at hand.

Hence, "authority" means that a particular act by a person or entity with this designation has different normative (including legal) consequences than if a similar act were performed by a person without such authority. Clearly, the sentence "You are under arrest" has a different meaning if uttered by a police officer than by a child on a playground. The decision to invade Iraq in 2003 would have been judged differently if it had been made by the Security Council rather than by a group of individual states. This may seem very formalistic, but the reason for this stems from a concern for order—a concern shared by the classical just war writers.[26] Decisions on war and peace should not be taken by just anyone.

Fourth, authority may entail consequences not only for those who use military violence but also, and arguably more importantly, for those who are the targets of this violence. Do they have a duty to suffer the consequences? Do they have a right to resist? Can third parties intervene to protect them? As Tom Christiano notes, "we must distinguish a duty that is owed to the authority and a duty that is merely the result of the authoritative command."[27] For example, a prisoner of war camp or a justified military occupation "gives the authorities justification for coercion."[28] To go further, "political authorities . . . in . . . some cases do not purport to create . . . duties at all." Hence, authority is not only a capacity to impose duties on those who may have obligations to comply—like citizens to a government or soldiers to a commander—but also the right to issue commands and enforce them upon people who have no such obligations, like enemy citizens under occupation,

prisoners of war, or enemy combatants and civilians, who may have to tolerate the orders and belligerent acts of a party to an armed conflict. As I will explain below, this is exactly what happens when a dispute has turned into an armed conflict. Under IHL, combatants of belligerent Y have no legal basis to complain against belligerent X for being targeted, and the civilians of belligerent Y may have to accept proportional and necessary collateral damage.[29] Consequently, the right to use military violence is an authority to impose obligations on two different constituencies: those who are expected to obey by executing the violence (or by funding it, as taxpayers), as well as those who are expected to suffer it. The former obligations are regulated by the internal or domestic legal code of the actor concerned, while the latter are a matter for international law. Hence, under international law a body exercises some form of authority even over those who must suffer the consequences of its inflicted military violence. The actor executing that violence has a right to expect that the opposing side accepts the consequences without any legal claims (civil or criminal) against it.

Lastly, it is not always clear whether the just war requirement of authority concerns the authorization or the actual waging of war. In my view, authority can very well be divided, so that there are certain requirements for the body that authorizes the war and other requirements for the body that executes it. (Of course, those two sets of requirements can be fulfilled by the same entity.) Hence, there is a distinction between the units that have a recognized right to use force independently under some circumstances, and the units that do not have the capacity to employ force independently but may do so under the authority of another actor. This duality between authorization and execution applies both to force used by states—perhaps under the authority of the Security Council—and to force used by certain nonstate units (militias, private military companies), which may sometimes use force under the authority of a state.

In a sense, this dichotomy corresponds to the distinction between *jus ad bellum* and *jus in bello*. The authority to authorize the use of force (governed by *jus ad bellum*)—including to self-authorize—is distinguished from the authority to carry out the armed force (governed by *jus in bello*). Again, in many cases these two forms of authority will be exercised by the same actor, but not always. From the particular perspective of this article, the important thing is not whether a certain act is judged under *jus ad bellum* or *jus in bello*; rather, what is important is that the requirement of proper authority regulates aspects of how military violence is being used.[30]

To summarize, in the context of military measures, I will take "authority" to mean "the legal permission granted to an actor to perform or authorize military violence." Understood in this way, there is "authority" for different actors to do different things that produce different normative outcomes, as will be developed in the next section. As I will show: (i) there is a range of possible consequences that may follow from having a certain type of authority (that is, the concept of authority can be disaggregated); and (ii) there is a range of different kinds of actors that might be differently able to trigger these various consequences (that is, authority as an attribute of an actor can be also disaggregated).[31] I will consider both in turn.

Different Actors and Different Forms of Authority

Before providing a taxonomy of different actors and different types of authority, I want to outline what those various legal authorities are, and briefly describe the range of possible consequences that may follow from each. Each of those consequences will be further elaborated in the subsequent discussion.

The Disaggregation of Authority

If an actor does not have the legal capacity to use military measures, then doing so will be unjust or illegal no matter the cause. This is the most direct consequence of the just war requirement of proper authority. However, the precise legal consequences of a lack of legal capacity depend on the content of each respective legal system. Under constitutional law, "proper authority" may refer to the domestic power to commit the country to war.[32] Under international law, by contrast, the situation is considerably more difficult, as will be developed in the next section. A state is in general a proper authority, so legality will hinge on whether the other conditions (such as just cause) are fulfilled. For nonstate armed groups, by contrast, international law neither prohibits nor endorses the resort to force (although there are other legal consequences of an armed group's resort to military violence that in my view merit the use of "authority" in that context; see below).

A second type of authority is the legal ability to request and justify intervention in a conflict by external actors, such as a sovereign state's ability to call on other sovereign states for assistance if it has been subjected to an armed attack (collective self-defense).

A third type is the authority to create a state of war or armed conflict. When a conflict reaches the threshold of war or armed conflict, whether the cause is just or unjust, the application of IHL is triggered.[33] A state of armed conflict entails a number of important legal consequences. Foremost, the parties to the conflict may use military violence, but they must also respect the Geneva Conventions and other rules of IHL.

Fourth, there is the authority to negotiate the end of a war. This is not usually taken to be a part of the authority to go to war in JWT, and it certainly does not follow automatically from an authority to use military violence, but it is nevertheless often the result of an armed conflict, and one worth exploring.

A Taxonomy of Actors and Their Authorities

So far I have argued that authority should usefully be understood as "the legal permission granted to an actor to perform or authorize military violence." I have also explained that different types of authority lead to different normative consequences, and I have briefly outlined these consequences under international law. An analysis of "proper" authority shows that it plays a much more complex role than simply determining whether or not an entity is entitled to resort to force. There can be an explicit right to use military measures for certain purposes, but there are also important indirect legal capacities that may follow from the creation of a state of war.

A priori, a number of different positions are possible. An actor might have no authority under international law to use and authorize military violence under any circumstances (which pertains to many actors, like holding companies or philatelic societies[34]); it might have the authority to use force under all circumstances (which does not apply to any actor at present); or it might have the authority to use force under some circumstances (which is what applies today to states and several other kinds of actors). Hence, authority is conditional: it may depend on the cause, and it may bring varying consequences.

So, what authority does present international law give to various actors? Here I present a taxonomy of actors in war and explain which type of authority each of them has under current international law.

States. First, states may use military measures under certain circumstances. Self-defense situations present the most obvious case, but that authority is not unrestricted, because it can be limited by the Security Council. Article 51 of the UN Charter provides for self-defense only "until the Security Council has taken

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measures necessary to maintain international peace and security." Hence, in principle, whenever the Council decides that the necessary measures have been taken, its police powers legally trump the authority of states to act in self-defense.[35] In addition to self-defense, states may implement Security Council resolutions, but only under the terms of the Council's authorization.

Second, under certain circumstances states may have the authority to legitimize intervention by external actors. Article 51 of the UN Charter provides a right of not only individual but also collective self-defense, meaning that states have the authority to ask for assistance against an aggressor. In cases regarding civil wars (non-international armed conflicts), the situation is more complex. While the general view used to be that military intervention on the side of the state government was always allowed (the government had the unlimited authority to ask for and receive such assistance), today some scholars hold that such intervention is prohibited unless the government can show that it is more legitimate than the rebels.[36]

Third, a state may have the authority to create a state of war (or armed conflict), regardless of whether or not the war is started in compliance with *jus ad bellum* (the UN Charter). Until the mid-twentieth century it was commonly held that a war was created through an expression of will, such as a declaration of war. States also had the authority to recognize insurgencies as civil wars; again, even though a civil war might have been started by a rebel group, only by the recognition of a government could a state of war exist.[37] Today, by contrast, the status of armed conflict has—at least in principle—been delinked from the explicit volition of states; the status of an armed conflict is now considered to be the result of a situation on the ground, not as being contingent on state recognition or declaration. According to Common Article 2 of the four universally ratified Geneva Conventions of 1949, the conventions cover "all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them." As developed by the UN International Criminal Tribunal for the former Yugoslavia, there is armed conflict "whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State."[38] This means that a state can initiate both international and internal armed conflicts. The mere initiation of hostilities is sufficient; no formal declaration or recognition is required.

As mentioned above, a state of armed conflict entails not only that all parties to the conflict must respect the Geneva Conventions and other rules of IHL but also that they, under that law, may use violence. For a state, this license to use violence provides an exception from (or at least a limitation on) the state's obligation to respect and protect human rights, including the right to life.[39] Further, under international law, soldiers have no criminal responsibility for merely participating in an international armed conflict. Legitimate combatants cannot be punished for having taken part in combat—including for having killed other soldiers; only for ordinary crimes and for war crimes can they be held accountable.

It is self-evident that a government will participate in peace negotiations following a war. This will follow not only from its position of being a party to the preceding conflict but also from its political authority as a representative of a sovereign state. However, peace negotiations involving rebel groups put the spotlight on international law's ambivalent conception of state legitimacy: Is it the government's ability to control a population or a territory or its representativeness that is the basis for sovereignty?[40]

International Organizations. What about international organizations? The personality and authority of the United Nations is derived from states, since states create organizations and give them their mandates (as well as their legitimacy). Through Article 25 and Chapter VII of the UN Charter, states have agreed to give the Security Council the *ad bellum* competence to use and to authorize force for purposes related to the restoration and maintenance of international peace and security. But this competence is limited by law. Article 24(2) provides that the Council "shall act in accordance with the Purposes and Principles of the United Nations." Hence, force cannot be employed for purposes other than those allowed by the Charter.[41]

Other international organizations may also, under some circumstances, use force. The UN International Law Commission finds, in Article 21 of its Draft Articles on the Responsibility of International Organizations, that an organization may invoke self-defense under certain circumstances, although the Commission foresees that this will be the case only for "a small number of organizations, such as those administering a territory or deploying an armed force."[42] NATO would seem to fit this description. According to some participating states, the International Security Assistance Force, created by NATO but authorized by the Security Council, was itself at war with the Taliban in Afghanistan.[43] Of course, Article 21 does not constitute a legal permission as such, but the Commission

clearly believed that there is nothing inherent in the status of international organizations that prevents them from acquiring such authority. However, it is equally clear that such authority must be delegated from states, since international organizations are created and mandated by states. If an international organization can resort to self-defense, it seems logical to hold that it can also ask for assistance if attacked, but I know of no examples where this has happened. At any rate, it is now a fairly uncontroversial understanding that forces of the United Nations and other international organizations are covered by IHL, and that they may therefore create a status of armed conflict.[44]

Participation by an international organization in peace or armistice negotiations may be a consequence of its involvement in the conflict, which happened with the United Nations at the end of the Korean War.[45] As a matter of practice, however, it is much more likely that an international organization will be involved in other capacities, foremost as a mediator or observer, as opposed to taking direct part in negotiations.

National Liberation Movements. The next category of actors is national liberation movements (NLMs).[46] Since almost all former colonies have been liberated, "classic" NLMs are rare, but the Palestine Liberation Organization and the Polisario Front are two of the closest examples (even though neither Palestine nor Western Sahara is controlled by colonial powers in the usual sense). Some movements in places other than "salt water" colonies[47] have also claimed to be national liberation movements, such as those led by Chechens, Kurds, and Kosovars.[48]

Do NLMs have an explicit right to pursue armed struggle? States are divided on that issue. The Friendly Relations Declaration, adopted in 1970 by consensus in the UN General Assembly, purports to express "principles . . . in accordance with the Charter of the United Nations," and asserts that "every State has the duty to refrain from any forcible action which deprives peoples . . . of their right to self-determination and freedom and independence." Here the Declaration is describing the situation of a people "in their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination." Though this is not an outright permission, it does seem to imply that there is a proper authority for a people to resist. The right to pursue armed struggle finds clearer expression in paragraph 2 of Resolution 3070 of 1973, in which the General Assembly "reaffirms the legitimacy of the peoples' struggle for liberation from colonial and foreign domination and alien subjugation by all available

means, including armed struggle." The resolution was adopted by an overwhelming majority, but Western states generally opposed or abstained.[49]

In the view of many states, peoples struggling for self-determination also have the right to seek and receive support, including military support. This, too, is confirmed in the controversial Resolution 3070, which "calls upon all States . . . to offer moral, material, and any other assistance to all peoples struggling for the full exercise of their inalienable right to self-determination and independence."

In the eyes of most states, NLMs have the authority to create a state of international war, even if it is controversial whether NLMs have an explicit *ad bellum* right to use military violence against a state. Article 1(4) of the First Additional Protocol to the 1949 Geneva Conventions equates "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination" with international armed conflicts (interstate wars). Hence, the 174 states that have ratified this Protocol (notably, the United States, India, and Israel not among them) recognize that an NLM, by initiating military violence, has the authority to create a state of international armed conflict with the same legal consequences as a conflict between states. This means that according to IHL, fighters on the side of the NLM should not be treated as rebels under domestic law but as legitimate combatants, regardless of whether the state party has recognized the NLM or not. Of course, nonratifying states are likely to view such situations as internal armed conflicts (see below on other armed groups).

National liberation movements have often been accepted as the political representatives of their peoples, for instance, as observers in the United Nations or the African Union (formerly the Organisation of African Unity).[50] In addition, it is often the case that an NLM negotiates a devolution agreement for a newly liberated state with the former colonial power. In such situations, it may be unclear whether it is popular legitimacy or military strength that gives the movement a place at the table.

Other Armed Groups. What about other armed groups? An NLM is fighting on behalf of a colonized people, distinct from the polity of the metropolitan, colonial power. Other armed groups may be fighting for causes such as secession or autonomy for a minority, the protection of a civilian population, or the replacement of a corrupt regime. International law does not authorize such groups to take up arms. On the contrary, by recognizing sovereignty, international law empowers the incumbent government to determine that nonstate military violence is unlawful

and to suppress such actions (as long as human rights and other international obligations are respected). Nevertheless, international law does not expressly prohibit rebellion, and any domestic criminal prohibition of rebellion will generally not be enforced under international law or by foreign states.

The established view is that the government may request assistance from foreign states to quell a rebellion, though that rule has been challenged.[51] Further, there are instances in which foreign intervention in support of armed opposition groups might be legal, or at least legitimate.[52] In Libya in 2011, for example, many Western governments recognized the provisional rebel government as the legitimate representative of the Libyan people, and refused to respect the Qaddafi government.[53] For the assessment of the legitimacy of a party, there are no hard legal rules, although the right of self-determination, for instance, could certainly speak in favor of parties that base their claims to authority on democratic elections or popular support, as arguably was seen in the recent events in Gambia.[54]

Under IHL, armed groups that satisfy certain criteria are recognized as having the ability to create a state of armed conflict, namely, a non-international armed conflict, regardless of its cause. The Second Additional Protocol to the Geneva Conventions applies to "armed conflicts . . . which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups" (Article 1). Common Article 3 of the 1949 Geneva Conventions, which contains basic minimum rules, has even broader coverage and applies in any non-international armed conflict, that is, even wars in which no state is involved. Again, to reiterate the position of the UN International Criminal Tribunal for the former Yugoslavia, armed conflict is "whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State."[55]

In order for an armed group to have this authority, according to Article 1(1) of the Second Additional Protocol to the Geneva Conventions, it has to satisfy the criterion of being an "organized armed [group] which, under responsible command, exercise[s] such control over a part of its territory as to enable [it] to carry out sustained and concerted military operations and to implement this Protocol." Hence, nonstate armed groups, through sheer control and military power, can carve out for themselves the authority to create a state of war regardless of their popular legitimacy.

As discussed, a state of armed conflict entails certain important legal consequences, including the right to use violence under IHL. In contrast to states,

nonstate armed groups are generally not held responsible for the obligations to respect, protect, and fulfill human rights in peacetime, but they are obliged to respect IHL in war.[56] Hence, strictly speaking, for a nonstate party, the application of IHL typically entails increased obligations under international law, as opposed to the reverse situation for states.

However, there are also "positive" consequences for a nonstate actor, and they are often more important than the negative ones. Under current international law, the use of violence in peacetime will be classified as terrorism "when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act."[57] The relevance here is immediately evident, as the reason for a nonstate group to undertake an armed conflict would generally be to "compel a government" to do something; and there is a high likelihood that violence by such a group will be viewed through this lens. In order to avoid the label of "terrorism," the nonstate group must strive to conduct the armed struggle in accordance with IHL, and thereby avoid being subjected to various counterterrorism measures that are provided for by a number of treaties and "law-making" resolutions by the UN Security Council.[58]

While the aforementioned consequences relate to the nonstate actor as a group, the state of armed conflict also has important consequences for individuals. Members of nonstate armed groups are in a more insecure position than soldiers in the armed forces of a state, but they may still enjoy combatant immunity under some conditions. While there is no legally protected combatant status in non-international armed conflicts, that status ("functional combatancy"[59]) is still implicit in IHL regulations of such conflicts.[60] The legal baseline position under domestic law is that the members of nonstate armed forces are guilty of rebellion and may be prosecuted for insurrection, treason, or violent crimes. However, Article 6(5) of the Second Additional Protocol to the Geneva Conventions provides that "at the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained."[61] This means that if rebels have conducted themselves in accordance with IHL, then they ought not to face prosecution for treason, rebellion, or some similar crime. This is in line with contemporary efforts to incentivize nonstate armed groups to comply with IHL and respect civilians.[62] According to the authoritative commentary on the third

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Geneva Convention, "the spirit of [common] Article 3 certainly requires that members of the insurgent forces should not be treated as common criminals."[63] If the government follows this recommendation—which happens quite often—then the soldiers in the rebel group are also protected.[64] Further, peace agreements after civil wars often give full or conditional amnesty to rebels; the recent peace agreement between the Colombian government and the Revolutionary Armed Forces of Colombia is one such example.[65]

Regardless, the risk of prosecution for members of nonstate armed groups is only domestic. Even though international law does not explicitly allow rebellion, it is not an international crime, and rebels will not likely be prosecuted in third states for their rebellion. Further, rebels in exile will usually not be extradited back to the country where the rebellion took place. International extradition treaties and domestic extradition law generally make an exception for political crimes, and a rebellion will usually be considered just that. This means that, for instance, if a rebel kills someone in a civil war, and if the killing does not constitute a war crime, then the rebel should actually be treated by a third state as if he or she had combatant immunity.

Nonstate armed groups often negotiate the end of a war, either directly or through their political branches. This is not usually taken to be a part of the authority to go to war in just war doctrine, and it certainly does not follow automatically from an authority to use military means. As an empirical fact, however, it is often the case that parties to a civil war are also parties to any ensuing peace negotiations, and this applies even in the many cases where the government has tried to deny the existence of the rebels as a political or even military power. The status as party to peace negotiations turns a rebel group into a de facto political authority, or in some cases even a part of the constituent power of that state if the peace talks bring about constitutional changes. One could argue that the right to negotiate peace after a civil war is solely a domestic issue. That is not, however, how international institutions and third states tend to see such negotiations. There are often international observers to peace talks, and the result may be endorsed by the United Nations or some other organization.[66] Consequently, even if there is no "right of rebellion," properly organized nonstate armed groups can create a state of armed conflict and carry out military measures with a degree of legal protection—although that protection may be contingent on the attitude of the government of the state where the conflict takes place. It is therefore justified to say that nonstate armed groups have a degree of authority, albeit of a qualified nature.

Private Military Companies. As for private military companies (PMCs), a few JWT writers have suggested that there is nothing in principle that should preclude economic actors from using force, provided that the cause is just.[67] In international law, PMCs have been analyzed as contractors to states.[68] However, there is little discussion of whether such entities, as such, are governed by international law in their own right.[69] A PMC, like any other actor, can initiate an armed conflict, and thus put some of the normative consequences of authority into play. In such a case, the PMC would in principle be treated like an armed group, but it is certainly not clear what that would mean in practice, and I will not develop that further here.

Conclusion

In international law, there is no single overarching concept of authority to use military means. Instead, there exists authority to do different things for different purposes, allocated to different actors who base their authority on different characteristics (state legitimacy, level of representativeness, military power, or control). We are therefore quite far from the neat picture of classical international law in which states and only states have the authority to resort to force. In fact, what just war doctrine would think of as authority to use military measures is actually fragmented in international law; there is no coherent conception of legitimacy as a requirement for such authority, and the regulations are not consistent with a particular conception of the international society and its constituent members. This review suggests that the budding discussion on proper authority in JWT needs to devote attention to the normative consequences of the distribution of authority, and that international lawyers need to connect the laws regulating warfare to discussions on the wider regulation of political authority. Whether there could be a more coherent conception of authority is another matter. It seems quite unlikely that states would agree on any criterion for the awarding of authority, because that would require that they agree on what it is that produces legitimacy. And even if they could agree on that, the implementation of such a criterion would be fraught with difficulties.[70] I support the inclusion of nonstate armed groups under IHL, and I do believe that rebellions may be justified, but one must also recognize that law must have general application, and that even the most well-meaning regulation will have unintended consequences. There will always be trade-offs.

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NOTES

[1] See Carl Schmitt, *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum,* 2nd ed. (Berlin: Duncker & Humblot, 1974, p. 123f.

[2] Lassa Oppenheim and Hersh Lauterpacht, *International Law: A Treatise*, Vol II, 7th ed. (London: Longmans, Green & Co., 1952), p. 203. See also Charles Rousseau, *Droit international public. Tome III* (Paris: Sirey, 1979), p. 123.

[3] See, for example, Olivier Corten, *The Law Against War: The Prohibition on the Use of Force in Contemporary International Law* (Oxford: Hart Publishing, 2010), pp. 126–97.

[4] Jens Bartelson, "Double Binds: Sovereignty and the Just War Tradition," in Hent Kalmo and Quentin Skinner, eds., *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept* (New York: Cambridge University Press, 2014), pp. 81–95, 88.

[5] Mary Kaldor, *New and Old Wars: Organised Violence in a Global Era* (Hoboken, N.J.: John Wiley & Sons, 2013), pp. 11, 29. For an even more futuristic, and scarier, outlook, see Paul Brooker, *Modern Stateless Warfare* (Hampshire: Palgrave Macmillan, 2010).

[6] Cécile Fabre, in her "Cosmopolitanism, Just War Theory and Legitimate Authority," *International Affairs* 84, no. 5 (2008), pp. 963–76, quotes Kaldor three times in an article of fourteen pages. However, revisionist JWT arguments are generally applicable also in a system dominated by states, so the relation should not be exaggerated.

[7] Cécile Fabre rejects the idea that there is a need for legitimate authority. See Fabre "Cosmopolitanism, Just War Theory and Legitimate Authority." See also Anthony F. Lang, Jr., "Authority and the Problem of Non-State Actors," in Eric Heinze. and Brent Steele, eds., *Ethics, Authority, and War: Non-State Actors and the Just War Tradition* (New York: Palgrave Macmillan, 2009), pp. 47–72, 54–55. See further the discussion in Helen Frowe, *The Ethics of War and Peace: An Introduction* (Abingdon: Routledge, 2011), pp. 29–47. At any rate, revisionists agree that the *legal* regulation of warfare may need to "diverge from the moral principles governing the same area of conduct." See Jeff McMahan, "War," in David Estlund, ed., *The Oxford Handbook of Political Philosophy* (New York: Oxford University Press, 2012), pp. 298–315, 305.

[8] Jonathan Parry, "Just War Theory, Legitimate Authority, and Irregular Belligerency," *Philosophia* 43, no. 1 (2015), pp. 175–96.

[9] In this article, however, I will not make a comprehensive argument regarding the inconsistency of conceptions of legitimacy. As I will very briefly indicate below, the authority of national liberation movements to use military means is grounded in the fact that they represent peoples with a right of self-determination. The more limited authority of nonstate armed groups to use military means is only based on their qualifications from a military perspective, while the basis for the legitimacy of the state as an authority is more complex—it could be grounded on control of territory and population, representation of the population, or external recognition.

[10] On the terms "tactical" and "strategic level," see Terry D. Gill and Dieter Fleck, *The Handbook of the International Law of Military Operations* (New York: Oxford University Press, 2010), p. 483.

[11] As Bartelson explains, "Although the question of legitimate authority has been of marginal concern in the recent revival of just war theory, it was an absolutely crucial concern to medieval and early-modern scholarship." Bartelson, "Double Binds," p. 88.

[12] Thomas Aquinas, "War, Sedition and Killing," in Thom Brooks, ed., *The Global Justice Reader* (Oxford: Wiley-Blackwell, 2008), p. 469.

[13] James Turner Johnson, "Contemporary Just War Thinking: Which Is Worse, to Have Friends or Critics?" *Ethics & International Affairs* 27, no.1 (2013), pp. 25–45, 27.

[14] This was not without significant exceptions, though. Writers like Vattel developed nomenclatures for various stages of civil strife. See Stephen Neff, *War and the Law of Nations: A General History* (New York: Cambridge University Press, 2005), p. 254.

[15] Schmitt, *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum* (1950), p. 128. See also Neff, *War and the Law of Nations*, pp. 161–62; and Wilhelm Grewe, *Epochen des Völkerrechts*, 2nd ed. (Baden-Baden: Nomos, 1988), p. 623 et seq.

[16] Article 42 of the UN Charter.

[17] This was with an important caveat for the problematic representations that were hostage to the cold war: the two Koreas, the two Vietnams, and the two Germanys as well as the two contending representatives of China, of which the Beijing delegation replaced the Taipei delegation in 1971.

[18] In fact, there has been a lively discussion on right authority for humanitarian intervention: Should it be by states or the United Nations? The work of the International Commission on Intervention and State Sovereignty (ICISS), formed in the wake the Kosovo campaign in 1999, has served as an international reference point. In its report of December 2001, the Commission dealt with three dimensions of what it

called the responsibility to protect—to prevent, to react, and to rebuild. The responsibility to react was explicitly framed in just war language. On right authority, the ICISS was explicitly undecided—in fact divided—on whether the decision to intervene and stop ongoing atrocities could be taken only by the Security Council or whether other bodies (such as the General Assembly, a regional organization, or one or more sovereign states) could take that decision. It is to be noted that all of these candidates for legitimate authority are states or have been created by states. See *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Centre, 2001), pp. 32–37. The last section is titled "The Question of Authority."

[19] See, generally, Robert Kolb, "Origin of the Twin Terms *Jus ad Bellum*/*Jus in Bello*," *International Review of the Red Cross* 37, no. 320 (1997), pp. 553–562.

[20] For example, perhaps the most standard book on the subject, Christine D. Gray, *International Law and the Use of Force* (New York: Oxford University Press, 2008), discusses only use of force *against* nonstate actors, such as terrorist groups. One important exception is Corten, *The Law Against War*, pp. 126–97. For a good discussion on armed groups, see Zakaria Daboné, "International Law: Armed Groups in a State-Centric System," *International Review of the Red Cross* 93, no. 882 (2011), pp. 395–424.

[21] Corten, *The Law Against War*, pp. 126–97. Corten emphatically rejects that possibility after a thorough review.

[22] "Authority," *Collins Dictionary of Law* (2006), retrieved February 10, 2017, legal-dictionary.thefreedictionary.com/authority.

[23] "What is AUTHORITY?" *The Law Dictionary Featuring Black's Law Dictionary Free Online Legal Dictionary*, 2nd ed., retrieved February 10, 2017, thelawdictionary.org/authority/.

[24] "Authority," in Gerald and Kathleen Hill, *The People's Law Dictionary*, retrieved February 10, 2017, dictionary.law.com/Default.aspx?typed=authority&type=1.

[25] Tom Christiano, "Authority," in Edward Zalta, ed., *Stanford Encyclopedia of Philosophy*, Spring 2013 ed. p. 1, retrieved February 10, 2017, plato.stanford.edu/entries/authority/.

[26] James Turner Johnson, "The Right to Use Armed Force: Sovereignty, Responsibility, and the Common Good," in Anthony F. Lang Jr., Cian O'Driscoll, and John Williams, eds., *Just War: Authority, Tradition, and Practice* (Washington, D.C.: Georgetown University Press, 2013), pp. 19–34.

[27] Christiano, "Authority," p. 5.

[28] Ibid.

[29] Ibid., p. 6.

[30] In fact, the distinction between the two branches of norms has to some extent imploded. See Robert D. Sloane, "The Cost of Conflation: Preserving the Dualism of *Jus ad Bellum* and *Jus in Bello* in the Contemporary Law of War," *Yale Journal of International Law* 34 (2009), pp. 47–112.

[31] I thank Jonathan Parry for suggesting the distinction between the two ways of disaggregating authority.

[32] The right to immunize soldiers from personal responsibility is clear when they fight for a government that is held to represent a recognized state, so the question of constitutional authority has some relevance to international law. However, from an international law point of view, this is a matter of representation (who represents the state?), not of identity (which entity?).

[33] The same could be said about the law of neutrality, to the extent that it is still being applied.

[34] Just to be clear, if such actors are transformed into nonstate armed groups that correspond to certain prerequisites of chain of command, they may use military violence under this analysis. However, that would require a change of identity of sorts.

[35] This has yet to happen, however.

[36] Corten, *The Law Against War*, pp. 279–80.

[37] See Neff, *War and the Law of Nations*, pp. 251–75.

[38] Jordan Paust believes that this definition is too relaxed. See his "Armed Opposition Groups," in Math Noortmann, August Reinisch, and Cedric Ryngaert, eds., *Non-State Actors in International Law* (Oxford: Bloomsbury Publishing, 2015), pp. 273–92, 281. However, this definition is generally referred to in international law, and for the limited purposes of this paper I have assumed that it is a statement of the law.

[39] Many lawyers would, legally speaking, think of this as a limitation of the human right to life rather than as an exception, since human rights apply in principle also during armed conflict.

[40] The sources of international law are contradictory. For the recognition of a state, the criterion of territorial control is usually the most important issue. The Friendly Relations Declaration, by contrast, conditions the right to territorial integrity on the state being "possessed of a government representing the whole people belonging to the territory without distinction as to race, creed, or colour." UN General Assembly Resolution 2625 (XXV), A/RES/25/2625, October 24, 1970.

[41] Sir Michael Wood, "United Nations, Security Council," *Max Planck Encyclopedia of Public International Law* (2007), para. 18. It is controversial whether the powers of the Security Council are

self-judging or not. See, for instance, Thomas M. Franck, "The 'Powers of Appreciation': Who Is the Ultimate Guardian of UN Legality?" *American Journal of International Law* 86, no. 3 (1992), pp. 519–23.

[42] UN Report of the International Law Commission, 63rd session (2011), Draft articles on the responsibility of international organizations, with commentaries, UN document A/66/10, p. 113.

[43] It is the Swedish government's view that if there is an armed conflict in which an international force is involved, it is that state or organization which leads the force that becomes a party to the conflict. See Ola Engdahl, "Folkrättsligt ansvar och svenska väpnade styrkors utövande av våld och tvång: vad innebär den svenska Irakinsatsen?" *Svensk Juristtidning* (2016), pp. 38–61, 55–56.

[44] Daphna Shraga, "UN Peacekeeping Operations: Applicability of International Humanitarian Law and Responsibility for Operations-Related Damage," *American Journal of International Law* 94, no. 2 (2000), pp. 406–12.

[45] The Korean Armistice Agreement of 1953 was concluded between the Commander in Chief of the United Nations Command, on the one hand, and the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's volunteers, on the other. See news.findlaw.com/cnn/docs/korea/kwarmagro72753.html (retrieved February 10, 2017). It could be argued that UN Security Council Resolution 678 on Iraq in fact contained an agreement between the United Nations and Iraq. See Pål Wrange, "The American and British Bombings of Iraq and International Law," *Scandinavian Studies in Law* 39 (2000), pp. 491–514, 503.

[46] The discussion on NLMs builds partly on Heather Wilson, *International Law and the Use of Force by National Liberation Movements* (Oxford: Clarendon Press, 1988), pp. 91–136.

[47] A salt water (or blue water) colony is a term to distinguish colonies separated by sea from the metropolitan state, such as colonies of the British Empire in Asia and Africa.

[48] It is likely that they would not be considered NLMs by legal authorities. See David W. Glazier, "Wars of National Liberation," *Max Planck Encyclopedia of Public International Law* (2009). For the purposes of this article it is not necessary to settle the question of whether they fulfill the criteria under international law. Nonetheless, the regulation is relevant from a practical perspective, since the arguments are available and provide a potential political asset.

[49] Voting figures: 97 (yes); 5 (no); 28 (abstain); 4 (did not participate).

[50] See Wilson, *International Law and the Use of Force by National Liberation Movements*, pp. 137–46.

[51] Georg Nolte, "Intervention by Invitation," *Max Planck Encyclopedia of Public International Law* (2010).

[52] Charles Beitz would "allow exceptions to the nonintervention principle when intervention would support a secessionist movement that has demonstrated its representative character, when it would contest a prior (and unjustified) intervention by another state, and when it would put an end to acts that 'shock the moral conscience of mankind.'" Charles R. Beitz, "The Moral Standing of States Revisited," *Ethics & International Affairs* 23, no.4 (2009), pp. 325–47, 326.

[53] In that case the rebels were held to substitute for Qaddafi as legitimate representatives of the Libyan political community, not as an additional legitimate body.

[54] See, for instance, UN Security Council Resolution 2337, January 19, 2017, operative paragraphs 5 and 6. The Economic Community of West African States was ready to invade Gambia in order to ensure the transfer of power to the newly elected President Barrow. Resolution 2337 does not constitute a legal authorization of that invasion (which later proved unnecessary), but constitutes an implicit political endorsement. Given the absence of clear legal rules, such an assessment would be at least partly political, but it could be informed by legal standards on internal self-determination and human rights as well as by the more traditional standards of effective control.

[55] Again, Paust believes that this criterion is too relaxed. See Paust, "Armed Opposition Groups," p. 281. However, it is generally referred to by international lawyers, and for the limited purposes of this paper I have assumed that it is a statement of the law.

[56] There are some indications that nonstate actors can have human rights obligations, but it is not necessary to settle that issue here.

[57] Article 2(1)(b) of the 1999 International Convention for the Suppression of the Financing of Terrorism.

[58] By "law-making," I mean a resolution that has a general application, and hence does not apply only to specific states, groups, or individuals. Resolution 1373, adopted after 9/11, is a well-known example. In distinction to Resolution 1267 and other similar resolutions, it applies not only to al-Qaeda or any other specified group but to all "entities or persons involved in terrorist acts." Of course, an armed group could also be subjected to ad hoc sanctions, such as through the aforementioned Resolution 1267. However, for that to happen it is not necessary that the group be determined to engaged in terrorism; under the Security Council's police powers, it can intervene whenever there is a threat to international peace and security. As is well known, how to define a "terrorist group" or entity is a contentious matter, but under relevant international conventions, armed groups are not included under that definition. See,

for instance, Article 4(2) of the International Convention for the Suppression of Acts of Nuclear Terrorism, UN document A/RES/59/290: "The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by this Convention." As stated, groups that fall under this carve-out should not be listed as terrorist groups. Armed groups that sometimes use terrorist tactics will, however, be subjected to counterterrorism measures, such as prohibitions of funding, travel restrictions, and the like.

[59] Andrew Clapham and Paola Gaeta, eds., *The Oxford Handbook of International Law in Armed Conflict* (New York: Oxford University Press, 2014), p. 318.

[60] Jean-Marie Henckaerts, "Study on Customary International Humanitarian Law: A Contribution to the Understanding and Respect for the Rule of Law in Armed Conflict," *International Review of the Red Cross* 87, no. 857 (2005), pp. 175–212, esp. p. 190 and 198. For a useful discussion, see Noam Lubell, *Extraterritorial Use of Force Against Non-State Actors* (New York: Oxford University Press, 2010), pp. 147–55.

[61] According to rule 159 of the ICRC study of customary law, the authorities actually *must* "endeavour to grant the broadest possible amnesty to persons who have participated in a non-international armed conflict." Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol. 1 (New York: Cambridge University Press, 2005).

[62] Marco Sassòli, "Transnational Armed Groups and International Humanitarian Law," Program on Humanitarian Policy and Conflict Research, Harvard University, Occasional Paper Series No. 6 (2006), pp. 1–45.

[63] Jean S. Pictet, ed., *The Geneva Conventions of 12 August 1949, Commentary, Geneva Convention (III) Relative to the Treatment of Prisoners of War* (Geneva: International Committee of the Red Cross, 1960), p. 40.

[64] See "Practice Relating to Rule 159. Amnesty," Customary IHL Database, International Committee of the Red Cross, retrieved November 11, 2016, ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule159.

[65] Chris Kraul, "Colombian Congress Passes Amended Peace Deal to End Decades of Civil War," *Los Angeles Times*, November 30, 2016, www.latimes.com/world/mexico-americas/la-fg-colombia-peace-deal-20161130-story.html.

[66] For a brief discussion, see Christine Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (New York: Oxford University Press, 2008), pp. 135–36.

[67] See Fabre, "Cosmopolitanism, Just War Theory and Legitimate Authority," pp. 963–76.

[68] Simon Chesterman and Chia Lehnardt, eds., *From Mercenaries to Market: The Rise and Regulation of Private Military Companies* (New York: Oxford University Press, 2007).

[69] See, for instance, Lindsey Cameron and Vincent Chetail, *Privatizing War: Private Military and Security Companies Under Public International Law* (New York: Cambridge University Press, 2013).

[70] On the impossibility of creating a coherent collective security system, see my "Protecting Which Peace for Whom against What? A Conceptual Analysis of Collective Security," in Cecilia M. Bailliet and Kjetil Mujezinović Larsen, eds., *Promoting Peace Through International Law* (New York: Oxford University Press, 2015), pp. 185–207.