



HILAC Lecture on The Accountability of Armed Groups under International Law


On 11 February 2016 a new lecture in the context of the Hague Initiative for Law and Armed Conflict (HILAC) Lecture Series was held at the T.M.C. Asser Instituut. Dr. Katharine Fortin, Assistant Professor at Utrecht University, delivered a lecture entitled 'Accountability of Armed Groups Under International Law: a Roadmap'.

She argued that because the majority of conflicts around the world are non-international armed conflicts between states and armed groups, it is important to shed light on the accountability of armed groups. Although the attention for armed groups has recently taken flight, the focus has mainly been on the criminal responsibility of the members of armed groups. The accountability of the organisation of the armed group itself has been neglected.

Dr. Fortin argued there are two important reasons to bring the accountability of armed groups as an organisation into focus. First, it makes sense conceptually. Under international law, both individuals and states can be held responsible, but armed groups, which by their organisational structure may facilitate international crimes, cannot. Second, from a legal point of view, armed groups can have obligations under international humanitarian law (IHL) and international human rights law (IHRL), but there are few effective mechanisms in place to hold armed groups accountable for the failure to live up to these obligations. Hence, mechanisms to hold armed groups accountable should be developed and/or improved.

But how should we assess the adequacy of accountability mechanisms? Dr. Fortin outlined five criteria that could serve as a roadmap to evaluate the merit of these mechanisms: the externality of forum, the legitimacy of norms, the authority of the forum over the actor, the ability to provide an account, and the availability of sanctions. She discussed whether these five criteria were satisfied in the existing framework regarding the accountability of armed groups, focussing especially on whether the application of the norms IHL and IHRL to armed groups is legitimate.

The first criterion, the externality of forum, has been satisfied. There are a number of fora that scrutinise the actions of armed groups. Furthermore, the application of IHL norms to armed groups has been widely accepted as being legitimate, and consensus exists on some core issues. However, the application of IHRL to armed groups is controversial. Dr. Fortin argued that the applicability of IHRL to armed groups is especially important in situations of protracted armed conflict, where civilians' everyday lives still resemble those in times of peace. In these contexts, human rights (e.g. the right to family life) are an important addition to the IHL framework that is primarily state-oriented. The practice of applying IHRL to armed groups has been widespread, but how and when it is binding upon them is still largely unclear.



To deal with these questions, Dr. Fortin proposed two criteria: the organisation requirement, dealing with whether an armed group is a legal entity capable of bearing human rights norms, and the international requirement, which concerns the justification for the application of international law to the armed group (as opposed to an entity merely dealt with by domestic law). Like the legitimacy of the norms, the remaining three criteria (authority of the forum over the actor, the ability to provide an account, and the availability of sanctions), remain, to a large extent, unsatisfied. She concluded by expressing the hope that her framework would be used as a roadmap to evaluate and eventually improve the accountability mechanisms for armed groups.

The lecture was followed by a lively Q&A session, moderated by Dr. Bérénice Boutin, Researcher at the T.M.C. Asser Instituut.