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Non-state armed groups, detention authority in non-international armed conflict, and the coherence of international law : searching for a way forward / Daragh Murray

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Author zone:	Daragh Murray
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Abstract:	<p>International humanitarian law establishes explicit safeguards applicable to detention occurring in non-international armed conflict. However, debate exists as to whether these treaty provisions establish an implicit legal basis for detention. This article approaches this debate in light of the application of international humanitarian law to non-state armed groups. It examines the principal arguments against implicit detention authority and then applies the law of treaty interpretation to international humanitarian law's detention-related provisions. On the basis of current understandings of international law – and the prohibition of arbitrary detention in particular – it is concluded that international humanitarian law must be interpreted as establishing implicit detention authority, in order to ensure the continued regulation of armed groups. Although, perhaps, problematic from certain states' perspective, this conclusion is reflective of the current state of international law. However, this is not necessarily the end of the story. A number of potential 'ways forward' are identified: implicit detention authority may be (i) rejected; (ii) accepted; or (iii) re-examined in light of the non-state status of armed groups, and what this means for the content of the prohibition of arbitrary detention. These scenarios are examined in light of the desire to ensure: the coherency of international law including recognition of the role of armed groups, the continued effectiveness of international humanitarian law, and state sovereignty. An emphasis is placed on understanding the non-state status of armed groups and what this means for international regulation and the content of imposed obligations.</p>
Authors:	Murray, Daragh
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