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Authority, legitimacy and military violence : de facto combatant privilege of non-state armed groups through amnesty / Pal Wrangle

Document type:	Chapter
Title:	Authority, legitimacy and military violence : de facto combatant privilege of non-state armed groups through amnesty
Author zone:	Pal Wrangle
In:	International humanitarian law and justice : historical and sociological perspectives
Editor:	London ; New York : Routledge, 2019
Physical description:	p. 60-75
Languages:	English
	Bibliography : p. 73-75
Abstract:	This chapter traces the prehistory, genesis and application of Article 6(5) of the Second Additional Protocol to the 1949 Geneva Conventions (1977) and its implications for the question of right authority. Under international law, a sovereign government has sovereign rights (and obligations) towards her subjects while the relation between belligerents is different: It is one of enmity and equality, regulated by the law of war (or international humanitarian law [IHL] or jus in bello). Rebels can be punished for using force against the sovereign, but soldiers of a belligerent not; they have the "combatant privilege" to kill other soldiers. In present international law, this right of the sovereign (a right authority) is undermined by certain tendencies in the jus in bello. To the extent that non-state armed groups (NSAGs) can start a war without negative legal consequences and thus acquire belligerent rights, they actually have a de facto authority, or at least they are undermining the state's exclusive authority. Article 6(5) states that "[a]t the end of hostilities, the authorities in power shall endeavor to grant the broadest possible amnesty to persons who have participated in the armed conflict..." The many amnesty agreements concluded since, demonstrates an emerging trend towards "retroactive combatant immunity." Thus, rebel fighters have a reasonable chance of being provided with the "combatant privilege," albeit post factum.
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Keyword in English:	ADDITIONAL PROTOCOL II AMNESTY AMNESTY NON-STATE ARMED GROUP RECOGNITION OF STATE OF BELLIGERANCE NON-INTERNATIONAL ARMED CONFLICT DEVELOPMENT OF THE LAW COMBATANT STATUS
Keyword in French:	PROTOCOLE ADDITIONNEL II AMNISTIE GROUPE ARME NON ETATIQUE RECONNAISSANCE DE BELLIGERANCE CONFLIT ARME NON INTERNATIONAL DEVELOPPEMENT DU DROIT STATUT DE COMBATTANT
Go to:	International humanitarian law and justice : historical and sociological perspectives / ed. by Mats Deland, Mark Klamberg and Pal Wrangle

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