

The pseudo legal personality of non-state armed groups in international law

Introduction

The notion of the ‘Law of nations’ was generally understood to be ‘a body of rules and principles which are binding upon states in their relations with one another’.¹ By 1949, when the International Court of Justice (ICJ) rendered its opinion in the *Reparations for Injuries Suffered in the Employment of the United Nations* case, it became clear that such a traditional conception of ‘the law of nations’ had become antiquated.² Thus began the shift from a definition of ‘the law of nations’, that was limited to states as subjects of the law, to what we call now ‘international law’, which extends recognition of legal personality to entities other than states. International law scholarship and practice suggest that this extension of legal personality is very limited, and includes only international organisations, and in very exceptional circumstances, non-state organisations, such as the International Committee of the Red Cross.³

The age of the fragmentation of international law, by definition, has the effect that self-contained legal regimes can develop independently from one another.⁴ International Humanitarian Law (IHL) is one such regime. Since the adoption of the two Additional Protocols to the Geneva Conventions in 1977, it has been accepted,⁵ and largely considered uncontroversial, that non-state armed groups (NSAG) incur legal obligations in IHL in the international law sphere. However there is no generally agreed basis for such international law obligations. The fact that NSAGs incur such obligations has far-reaching ramifications. The doctrine of equality of belligerents lies at the heart of the *jus in bello* branch of law, that is to say, the very existence of IHL. It is only logical that the rules of IHL cannot ‘apply with equal force to both sides to the conflict, irrespective of who is the aggressor’,⁶ as this doctrine requires, if only one side to the conflict incurs any legal obligations in terms of IHL. Therefore,

¹Brierly *The law of nations: An introduction to the international law of peace* (1955) at 1.

²*Reparations for Injuries Suffered in the Employment of the United Nations* 1949 ICJ Rep 174.

³Lindblom *Non-governmental organizations in international law* (2005) at 68-74.

⁴See, generally, Koskeniemi ‘Fragmentation of international law: Difficulties arising from the diversification and expansion of international law’ Report of the Study Group of the International Law Commission UN Doc A/CN.4/L.682 13 April 2006; Report of the International Law Commission (ILC) Fifty-sixth session UN Doc A/59/10.

⁵Protocol I Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, adopted 8 June 1977 (entered into force 7 December 1978) 1125 UNTS 17512; and Protocol II Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, adopted 8 June 1977 (entered into force 7 December 1978) 1125 UNTS 609.

⁶Greenwood ‘Historical development and legal basis’ in Fleck (ed) *The handbook of international humanitarian law* (2008) at 11.

it is of immense importance to determine the theoretical basis of any obligations such entities incur in IHL.

Legal personality in international law and the incurring of obligations by non-state armed groups in international humanitarian law

Within municipal jurisdictions the law of persons is generally a sophisticated and well-developed area of law. The importance of this part of municipal law lies in the understanding that only those entities and persons who have legal personality can have rights, duties and capacities, and therefore, only such entities can participate in legal intercourse.⁷ Legal personality consists of three elements, legal capacity, capacity to act, and capacity to litigate (*locus standi in iudicio*).⁸ The extent to which a given legal person enjoys each of these capacities is generally determined by the status of the legal person. For purposes of this contribution, most, though not exclusive, attention will be paid to the concept of ‘legal capacity’, that is the competence to have rights, duties and capacities.

In municipal law it is understood that any entity with a margin of legal capacity has legal personality. For most of its history the international legal order operated on the same basis, as Lauterpacht noted, ‘as in any other legal system, so also in the international sphere the subjects of law are the persons, natural and juridical, upon whom the law confers rights and imposes duties’.⁹ It was only with the emergence of the League of Nations that isolated opinion emerged that an entity other than a state possibly possessed international personality. Therefore, until at least 1919 states were the only entities that could participate in legal intercourse in the sphere of international law. As Oppenheim noted during 1920:

The conception of International Persons is derived from the conception of the Law of Nations. As this law is the body of rules which the civilised States consider legally binding in their intercourse, every State which belongs to the civilised States, and is, therefore, a member of the Family of Nations, is an International Person. And since now the Family of Nations has become an organised community under the name of the League of Nations with distinctive international rights and duties of its own, the League of Nations is an International Person *sui generis* besides the several States. But apart from the League of Nations, sovereign States exclusively are International Persons – ie subjects of International Law.¹⁰

⁷Heaton *The South African law of persons* (2008) at 1-2.

⁸*Id* at 33.

⁹Lauterpacht H ‘The subjects of international law’ in Lauterpacht E (ed) *International law. Being the collected papers of Hersch Lauterpacht vol I: The general works* (1970) at 136.

¹⁰Oppenheim *International law: A treatise* Roxburgh (ed) (1920) at 125.

Formal recognition of the United Nations, the successor to the failed League of Nations, as an international person came only in 1949, when the ICJ held that:

[T]he Court has come to the conclusion that the Organization is an international person. That is not the same thing as saying that it is a State, which it certainly is not, or that its legal personality and rights and duties are the same as those of a state. Still less is it saying that it is a 'super-State', whatever that expression might mean. It does not even imply that all its rights and duties must be upon the international plane, any more than all the rights and duties of a State must be upon that plane. What it does mean is that it is a subject of international law and capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims.¹¹

In contemporary international law, it is generally agreed that such personality vests in international organisations other than the United Nations. Increasing attention is also paid to the legal status of Non-Governmental Organisations in international law,¹² the same is true of human rights obligations vesting in non-state entities.¹³ However, in both these cases the ability of these entities to operate on the international plane is recognised (or argued for) indirectly. They are not directly recognised by a formal source of international law. An exception is the International Committee of the Red Cross (ICRC). The ICRC is a Swiss Non-Governmental Organisation, governed by an Assembly, Assembly Council and Directorate.¹⁴ The Assembly consists of twenty-five persons of Swiss nationality.¹⁵ The ICRC is mandated directly by the Geneva Conventions of 1949 to perform numerous functions and is widely acknowledged as possessing a form of international legal personality.¹⁶ In contemporary international law it seems that the notion that only entities that possess international legal personality can participate in legal intercourse in the sphere of international law no longer holds true.

The heightened status of the individual in international law

The human rights law movement of the 19th century has had far reaching effects on the structure of the international legal order. Many argue that the most significant of these effects has been the recognition of the plight of the individual in international law.¹⁷ Prior to the emergence of human rights law,

¹¹*Reparations for Injuries Suffered in the Employment of the United Nations* n 2 above at 179.

¹²See, generally, Lindblom n 3 above.

¹³See, generally, Alston (ed) *Non-state actors and human rights* (2005).

¹⁴Articles 2 and 7(1) of the Statute of the International Committee of the Red Cross, adopted on 24 June 1998.

¹⁵*Ibid.*

¹⁶Lindblom n 3 above at 68-74.

¹⁷Meron *The humanization of international law* (2006); Tomuschat *Human rights: Between idealism and realism* (2008); Buergenthal 'The evolving international human rights system' (2006) 100 *AJIL* at 783.

the closest international law came to recognising the plight of the individual was through diplomatic protection. However, the right to diplomatic protection is one that belongs to a state and not an individual, and injury to the individual is recognised only in so far as such injury is also caused to the state.¹⁸ Additionally, in international law individuals are rights holders only *vis-à-vis* their state of nationality, the states on whose territory they may be, or a state who harms them while operating on the territory of another state.¹⁹

Accordingly, international human rights (IHRL) only creates direct obligations on state parties. These obligations incumbent upon state parties, bring into being rights for individuals *vis-à-vis* the relevant state parties. Nowhere are individuals afforded rights or obligations, which they can exercise independent from intercourse with a state. The International Covenant on Civil and Political Rights (ICCPR) provides, for example, that ‘Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life’.²⁰ This provision by itself is abstract and meaningless from a pragmatic perspective. For the right to be actionable, it must be read with the following provision ‘each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant’.²¹ Therefore, the concept of IHRL exists more around states’ legal personality, and less around the legal personality of individuals. This relationship is then one where the state is the legal subject and the individual the legal object.²² The implication is that IHRL is, arguably, not inconsistent with the traditional conception of legal personality in the sphere of international law sphere in that it centres around statehood.

This is not to say that the individual plays no role as actor in international law. Indeed, there are examples of the role an individual can play that long predate

¹⁸*Barcelona Traction, Light and Power Company* 1970 ICJ Rep 44 at pars 78-79. In his capacity as Special Rapporteur for the International Law Commission on Diplomatic Protection, John Dugard argued that a limited right to diplomatic protection should be recognised in international law in instances where the violation of the minimum standard amounts to a violation of a *jus cogens* norm. This proposal was rejected by the International Law Commission on the basis that it goes beyond the permissible limits of progressive development of the law. For a discussion hereof see *Van Zyl v Government of the RSA* 2008 3 SA 294 (SCA) at pars 18-19.

¹⁹Some states, such as the United States of America, argue that they are not bound by human rights law obligations when they act outside of their territory, against non-state actors. This position is untenable in light of the positive law on the subject matter. See, eg, Lubell *Extraterritorial use of force against non-state actors* (2010) at 193-235.

²⁰Article 6(1) of the International Covenant on Civil and Political Rights (entered into force 23 March 1976) 999 UNTS 171.

²¹*Id* art 2(1). See article 2 in full for a better understanding of the nature of obligations incurred by state parties.

²²Lauterpacht n 9 above at 141-142.

the human rights movement. For example, in the *Respublica v De Longchamps* decision of 1784 an individual was found guilty of a 'violation of the law of nations' for insulting a French ambassador in Pennsylvania.²³ While the correctness of this decision is questionable, by 1946 the International Military Tribunal at Nuremburg had rejected the contention that because only states are subjects of international law, individuals can't be held individually criminally responsible for violations of the law of nations. In this regard, the Nuremburg Tribunal noted, 'Crimes against International Law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of International Law be enforced'.²⁴ The very existence of the International Criminal Court and modern *ad hoc* Criminal Tribunals is subject to the rejection of this notion. While it is important to acknowledge this state of affairs when discussing the expansion of legal personality in international law, it falls beyond the scope of this contribution.

International law obligations of non-state armed groups (NSAG)

At the time of writing, the Convention on the Rights of the Child (CRC) and Additional Protocol I to the Geneva Conventions (API) had received 193 and 170 instruments of ratification or accession respectively. The CRC is a human rights law instrument, whereas API is an IHL instrument, yet both contain virtually the same provision regarding the use and recruitment of child soldiers. The CRC provides:

- 2 States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
- 3 States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.²⁵

Whereas API provides:

The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years the Parties to the conflict shall endeavour to give priority to those who are oldest.²⁶

²³*Respublica v De Longchamps* (1784) I Dallas Reports III.

²⁴Judgment of the International Military Tribunal in *The Trial of German Major War Criminals: Proceedings of the International Military Tribunal sitting at Nuremberg, Germany* Part 22 London (1950) at 447.

²⁵Article 38 of the Convention on the Rights of the Child (entered into force 2 September 1990) 1577 UNTS 3.

²⁶Article 77(2) of Protocol I Additional to the Geneva Conventions n 5 above.

These provisions are probably the substantive rules that exist in both IHL and IHRL that most closely resemble one another, and therefore the best example for present purposes. Indeed, the only material difference between these provisions are the words ‘States Parties’ used in the CRC instead of the words ‘The Parties to the conflict’, used in API. This difference is directly attributable to the fact that only state parties incur obligations in IHRL, whereas non-state groups, who can be party to armed conflict, incur obligations in IHL.

Unlike the example of IHRL, within IHL non-state entities do incur obligations within the international law sphere, which are incumbent upon them independent from any intercourse with states, or any other entity traditionally believed to hold international legal personality. Although interpretation of IHL is generally accepted, it is yet to be theoretically explained. At this stage, it is important to note that IHL does not confer rights on individuals or even groups of individuals. Instead, it regulates the conduct of hostilities by placing obligations on parties to armed conflict. Consider for example, the nature of the violation that occurs where an NSAG that is party to a non-international armed conflict captures an opposition soldier and executes him extrajudicially. Under IHL the members of the NSAG are guilty of violating their obligation in terms of common article 3, not to commit ‘violence to life’. However, applying harmoniously with IHL, IHRL holds that the individual’s right to life has been violated. Nevertheless, from strictly an IHL perspective the individual does not have the right to life, rather the NSAG has the obligation not to commit ‘violence to life’.

In treaty law, IHL maintains a strict distinction between international and non-international armed conflicts – the former are principally regulated by the Four Geneva Conventions of 1949 and Additional Protocol I, whereas the latter are principally regulated by common article 3 to the Four Geneva Conventions of 1949 and APII.²⁷ In terms of treaty law, there are many more rules that regulate international armed conflict than non-international armed conflict, and with very few exceptions, the rules regulating international armed conflict are more precise and more protective.²⁸ Customary international law does not maintain such a strict distinction between the rules of international and non-international

²⁷Common art 3 to the Four Geneva Conventions of 1949 is the only provision in the Geneva Conventions that finds application during non-international armed conflict.

²⁸Many commentators express the point of view that the law of international armed conflict is always more precise and more protective than the law of non-international armed conflict. It is worth noting that this is not always true. For example, the prohibition of the use and recruitment of child soldiers contained in art 77(2) of Protocol I Additional to the Geneva Conventions, and relating to international armed conflicts, is less precise and much less protective than art 4(3)(c) of Protocol II Additional to the Geneva Conventions, and relating to non-international armed conflicts.

armed conflict. Indeed, of the 161 substantive rules identified by the ICRC study on customary international humanitarian law, only twelve were deemed inapplicable to non-international armed conflict, and these related mostly to combatant and prisoner of war status, which applies only to international armed conflicts.²⁹ The rules of IHL create obligations on NSAGs in the context of both international and non-international armed conflict.³⁰

The pseudo legal personality of non-state armed groups in international humanitarian law

The widely supported proposition that NSAGs incur obligations in IHL raises two questions. First, does international law theory allow for direct obligations incumbent upon NSAGs? Secondly, does this mean that such entities enjoy a form of international legal personality?

The theoretical basis for obligations on non-state armed groups

Sassòli and Olson have identified two constructions that account for this phenomenon. First and foremost, when states ratify treaties or practice custom they implicitly confer the necessary legal capacity on such NSAGs to incur obligations under IHL.³¹ Secondly, such obligations will also be founded on municipal law through municipal implementation (domestication of international law).³² Neither of these explanations is satisfactory. In the first instance, it often happens that an NSAG comes into being years after a state has ratified a treaty creating international law obligations on NSAGs. For example, Sierra Leone ratified Additional Protocol II to the Geneva Conventions on 21 October 1986. The infamous Revolutionary United Front, the NSAG that was the primary agitator during the brutal eleven-year-long civil war in Sierra Leone, only came into being during 1991.³³ It is highly doubtful whether a state can implicitly confer any capacity on an entity that does not yet exist, and whose future existence could not be anticipated at the time such

²⁹See generally Henckaerts and Doswald-Beck *Customary international humanitarian law vol I: Rules* (2005).

³⁰Sassòli 'Taking armed groups seriously: Ways to improve their compliance with international humanitarian law' (2010) 1 *Journal of International Humanitarian Legal Studies* 5-51 at 11, argues that non-state entities will only be bound by IHL in international armed conflict in instances which are attributable to a state, or where a national liberation movement is fighting a war of national liberation. This interpretation may be too restrictive. Where two or more states are engaged in armed conflict, one such state can be aligned with a non-state entity in conflict against a common enemy without meeting the threshold requirements of attribution. In such instances, it would seem reasonable to apply the rules of international armed conflict and not non-international armed conflict.

³¹Sassòli *How does law protect in war* (1999) at 214-217.

³²*Ibid.*

³³See generally Waschefort 'Justice for child soldiers? The RUF Trial of the Special Court for Sierra Leone' (2010) 1 *Journal of International Humanitarian Legal Studies* at 189-204.

capacity was ostensibly conferred.

Sassòli and Olson's second construction is even less convincing. It is true that domestication of international law creates obligations in municipal law and that the sources of these obligations lie in international law. However, such obligations exist within the municipal sphere of law and can thus not be used to explain the obligations that NSAGs incur in the international sphere. In his later work, Sassòli provides a rather exhaustive list of arguments as to why and how NSAGs incur such obligations.³⁴ Most convincing among these, and at the heart of this contribution, is the argument that IHL implicitly confers a limited international legal personality on NSAGs.³⁵ However, IHL cannot confer anything on an entity, it is in fact states that recognise a limited legal personality which attaches to such NSAGs while negotiating treaties, or practising custom. As Lauterpacht noted,

the range of subjects of international law is not rigidly and immutably circumscribed by any definition of the nature of international law but is capable of modification and development in accordance with the will of states and the requirements of international intercourse.³⁶

The fact that NSAGs incur obligation in IHL is of importance only in assessing, or even ensuring, compliance with the principles of IHL. On the contrary, ensuring such compliance by NSAGs has proven almost impossible to date. However, the fact that NSAGs incur such obligations is central to the structural underpinnings of IHL as a self-contained regime of international law. The neutral approach of IHL as regards the unlawfulness of any party to a conflict's acts *ius ad bellum*, is dependent on the principle of equality of belligerents. This principle is central to the enforcement of IHL. The equality of belligerents means 'the rules of international humanitarian law apply with equal force to both sides to the conflict, irrespective of who is the aggressor'.³⁷ It is clear that IHL regulates conflicts where some parties are states and others are non-state entities. For IHL to apply equally to both these types of entity, it is absolutely necessary that both types of entity must incur equal obligations.

The pseudo legal personality of non-state groups

In addressing the question whether international law theory allows for the extension of legal personality to NSAGs it should be acknowledged that international law theory is a notoriously disputed domain. As D'Amato has commented, 'after four thousand years of being the sole and exclusive set of legal rules among nations, it is nothing short of remarkable that international

³⁴Sassòli n 30 above at 13-14.

³⁵See, eg, Draper *The Red Cross conventions* (1958) at 17.

³⁶Lauterpacht n 9 above at 137.

³⁷Greenwood n 6 above at 11.

law has not yet become thoroughly understood and explained'.³⁸ On the one hand, the argument, as supported by Lauterpacht, that if states have a full measure of international legal personality, ie their status as international legal persons is not diminished in any way, they should be able to confer limited international legal personality on other entities,³⁹ makes sense. Walter terms such legal personality 'derived personality'.⁴⁰ However, the nature of the legal personality that has been conferred on NSAGs in the context of IHL should also be considered.

In this instance, and contrary to any other example where an entity other than a state is afforded international legal personality, the NSAG plays no role in determining the nature and extent of its obligations. It incurs only obligations and no positive rights that it could not have held without a form of legal personality. These obligations essentially operate to the prejudice of the NSAG and the advantage of the state party that subscribes to the relevant norms. NSAGs, in the technical sense, can only exist once a state of armed conflict exists. Therefore, an NSAG only possesses legal personality once a state of armed conflict exists, and immediately ceases to have any international legal personality as soon as the conflict comes to an end. The implication is that the determination of whether the relevant entity possesses, or should possess, international legal personality has little to do with the nature of the entity and its structure, and more to do with external circumstances, ie the existence of armed conflict.

The last point is particularly important and requires further consideration. It may be argued that these obligations do not prejudice the NSAG on the one hand, and advantage the state party on the other, as the state party also incurs these obligations. In practice however, there is a substantial gap between the entitlements of state and non-state entities. For example, states have a criminal justice system at their disposal, and in many states plagued by civil war the separation of powers is not well observed and often these criminal justice systems do the bidding of the executive branch of government. As there are no prisoners of war in non-international armed conflict, states usually charge prisoners from opposing NSAGs with crimes. NSAGs, for their part, are barred from detaining opposing soldiers, as this will amount to arbitrary detention, in violation of the individual prisoner's human rights. Moreover, NSAGs that are engaged in conflict with state parties usually lack the infrastructure to detain opposing soldiers. The effect, therefore, of conferring legal capacity on such

³⁸D'Amato 'A few steps toward an explanatory theory of international law' (2009-10) 7/1 *Santa Clara J Int'L* at 1.

³⁹Lauterpacht n 9 above at 136-137.

⁴⁰Walter 'Subjects of international law' *Max Planck Institute Encyclopedia of Public International Law* (2007) at par 26.

NSAGs is that states can dictate the international obligations of their enemies by law-making processes, and can bring to account their enemies for violations of these obligations. It is also relevant to mention that states are empowered to denounce the application of specific IHL treaties, while non-state entities have no such capacity.

Within municipal law structures this state of affairs is, of course, not problematic, and indeed represents the *status quo*. However, within municipal legal systems, the extent to which a given legal person enjoys legal capacity is generally determined by the status of the legal person.⁴¹ Full capacity implies that the legal person has the ability to have rights, obligations and capacities. A theme consistent among most municipal jurisdictions is that when persons have diminished capacity due to a factor that influences their status, this limitation on their capacity will serve to protect their interests. Within the South African example, an *infans* is the holder of many rights and no obligations; the same is true of persons with severe mental illness. Yet, in the case of NSAGs, their limited capacity is exploited to their prejudice. NSAGs are placed in the unfortunate and untenable position of having direct obligations in international law, but not the ability to participate in the law making process, decide which obligations to subscribe to and which not, and perhaps most worrying, do not have the ability to enforce compliance of the law on their opponents. Thus, if it is accepted that NSAGs have a limited form of legal personality, they have the legal personality of the worst kind.

Conclusion

This analysis indicates that the questions of whether international law theory allows for direct obligations incumbent upon non-state entities in IHL, and whether such entities enjoy a form of international legal personality are inextricable. In the final analysis three key conclusions have been reached. First, for IHL to exist and apply to NSAGs such groups must incur obligations in the international sphere – without this effect cannot be given to the ‘equality of belligerents’ doctrine. Secondly, in order for an entity to incur legal obligations, that entity must possess legal capacity, which implies the entity must have legal personality. And finally, the measure of an entity’s legal capacity is determined by its status; diminished status implies that the entity’s legal personality is limited in order to protect the interests of the entity – NSAGs have severely diminished status, yet this results in a form of legal personality that operates not to protect the interests of the legal person, but to its prejudice.

NSAGs, therefore, have a defective form of legal personality. Commentators

⁴¹Heaton n 7 above at 37.

have only recently begun shifting their attention to methods by which to enhance the observance of IHL rules by NSAGs.⁴² Indeed, Geneva Call is a NGO that came into existence during 2000 and which is ‘dedicated to engaging armed non-State actors ... towards compliance with the norms of international humanitarian law ... and human rights law...’.⁴³ While this mission is very idealistic, it is very important, and Geneva Call has already made strides. Sassòli, for his part, has strongly argued that the key to achieving greater compliance with IHL rules by NSAGs, lies in creating a sense of ownership among such groups of the rules to which they are bound.⁴⁴ Recognising a greater sense of agency on part of NSAGs, and thus moving away from the defective legal personality they currently possess, can contribute to realising this goal. There are many ways in which this can be achieved; one way would, for example, be to create a ‘ratification mechanism’ whereby NSAGs can formally indicate their acceptance of specific IHL instruments. It is possible, and even likely considering the political ramifications, that NSAGs will subscribe to specific treaty obligations where their state has not done so.

Moreover, the current dispensation is undesirable from a theoretical point of view. International law theory is vastly underdeveloped. Nevertheless, much focus is currently on working towards an explanatory theory of international law.⁴⁵ Achieving clarity on the extent of international legal personality and the implications this holds is therefore a necessary part of this move towards a greater sense of understanding of the international legal order.

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⁴²See, eg, Sassòli n 30 above; Dabone ‘International law: Armed groups in a state-centric system’ (2011) 93/882/June *ICRC Review* 395; Bangerter ‘Reasons why armed groups choose to respect international humanitarian law or not’ (2011) 93/882/June *ICRC Review* at 353.

⁴³See <http://www.genevacall.org/about/mission.htm> (accessed 5 June 2012).

⁴⁴Sassòli n 30 above.

⁴⁵See, eg, Guzman *How international law works* (2008); Anghie *Imperialism, sovereignty and the making of international law* (2005); Kennedy *The dark sides of virtue* (2005); Koskenniemi. *From apology to Utopia* (2006); Guzman ‘A compliance-based theory of international law’ (1992) 92 *California Law Review* 53-102; Hathaway ‘Between power and principle: An integrated theory of international law’ (2005) 72 *University of Chicago LR* 469-536; Slaughter ‘International law and international relations theory: A dual agenda’ (1993) 87 *AJIL* at 205-239.