



Biggest Internal Security Threat or Non-International Armed Conflict?

Rishabh Bajoria

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RED CORRIDOR: “BIGGEST INTERNAL SECURITY THREAT” OR NON-INTERNATIONAL ARMED CONFLICT?

—Rishabh Bajoria*

In this paper, I argue that the Maoist insurgency against the Indian State in the “Red Corridor”, spanning a quarter of the Independent Indian State’s territory, including areas in Jharkhand, Chhattisgarh, Andhra Pradesh, Orissa and Maharashtra, constitutes a Non-International Armed Conflict (NIAC) under International Humanitarian Law (IHL). I analyse the development of International law on the question of non-international armed conflicts from Common Article 3 of the Geneva Conventions, to the 1977 Additional Protocol II to the Geneva Conventions, and the recent ICTY and ICTR jurisprudence. This paper asserts that the two main elements required to constitute an NIAC, namely, sufficient organisation of the non-state actor and protracted, intense violence between the non-state actor and the State are fulfilled in the case of the Maoist insurgency by relying upon State Reports, documents released by the Maoists and anthropological/ journalistic accounts of the conflict. Therefore, the Naxals are legal contestants of the Indian State in the Red Corridor, instead of being a mere ‘internal security challenge’.

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* Rishabh Bajoria is a V Year law student pursuing B.A., LL.B (Hons.) from Jindal Global Law School, Sonapat, Haryana. He is interested in Law and Sociology.

*Bhagat Singh: "Let us declare that the state of war does exist"*¹

I. INTRODUCTION

In 2010, the then Indian Prime Minister Manmohan Singh called Naxalism the "biggest internal security challenge"² facing the Indian State. In this paper, I argue that the Naxal insurgency is no mere 'internal security threat'. Instead, the armed conflict between the Indian State and the Naxals, spanning almost a quarter of Indian territory, constitutes a Non-International Armed Conflict ('NIAC') under International Humanitarian Law ('IHL'). This classification is not merely semantic, and has several substantive implications on the rights and obligations of the Indian State, the Naxals, and the non-combatant civilians inhabiting the 'Red Corridor'. Most importantly, classifying the armed conflict as an NIAC acknowledges the Naxals as *legal contestants* of the Indian State in the 'Red Corridor', rather than mere outlaws/terrorists.³

In the second section, I analyse the historical background of NIACs in IHL. Moving away from the indeterminacy of the second section, the third section details the International Criminal Tribunal for the former Yugoslavia's formulation of NIACs in its famous *Tadić* decision. I explicate the two relevant factors required to constitute an NIAC, namely, the protracted nature of the violence, and requisite organisation of both parties. I restrict my analysis to NIACs simpliciter, not delving into the additional requirements required to constitute an NIAC under the 1977 Additional Protocol II or Article 8(2)(f) of the Rome Statute. Next, I explain the scope of application of the rule of NIAC, including the extent to which they bind the parties to a conflict. In the fifth section, I briefly look at the history of the Maoist insurgency in India, particularly focusing on the post 2004 stage of this insurgency. I argue that the clear organisational structures which emerge post 2004, combined with the heightened incidences of violence leave little room for doubt that the Maoist insurgency in India's 'Red Corridor' constitutes an NIAC under IHL. Lastly, before concluding, I provide a brief glimpse of the substantive obligations upon the Indian State and the Naxals under customary norms of IHL.

¹ Bhagat Singh's Letter to Punjab Governor, Marxists.org (1930) <https://www.marxists.org/archive/bhagat-singh/1931/x01/x01.htm>.

² Naxalism biggest threat to internal security: Manmohan, *The Hindu*, May 24, 2010, <http://www.thehindu.com/news/national/Naxalism-biggest-threat-to-internal-security-Manmohan/article16302952.ece>.

³ Rosalyn Higgins, *Internal War and International Law, in The Future of the International Legal Order*, 88 (Cyril Black & Richard Falk eds., 2015).

II. HISTORICAL EVOLUTION OF INTERNATIONAL LAW OF NIAC

While Common Article 3 to the Geneva Convention mentions NIACs, it provides no guidance about interpreting this term.⁴ Such deliberate ambiguity was because no consensus could be reached between States at the Diplomatic Conference of 1949 about the contours of an NIAC.⁵ France and Italy focused on the organisation of the non-State actor, and argued that the capability of the actor to implement the Convention would be the clinching factor, to constitute an NIAC.⁶ The United States emphasised that non-State actors must exercise “de facto authority over persons within a determinate territory”.⁷ Canada took this a step further suggesting that the rebels must have effective control over a substantial portion of territory.⁸ States, such as Australia, hinged the evaluation of an NIAC on recognition of the rebels as belligerents by the *de jure* Government.⁹

Symptomatic of the systemic disagreements among relevant stakeholders, the First Working Group’s proposed draft was rejected after heavy criticism. The International Committee of the Red Cross (‘ICRC’) argued that the draft was defunct because it “could never have been applied in any recent case of civil war”¹⁰ since the evaluation of an NIAC was hinged upon the discretion of the *de jure* government,¹¹ and most governments are “reluctant to admit that a state of armed conflict exists”¹² in their territory. This is because legal recognition is “an indication that the recognising State regards the insurgents as *legal contestants*, and not as *mere lawbreakers*”.¹³ Recently, the International Criminal Tribunal for Rwanda (‘ICTR’) has emphasised that “the ascertainment of the intensity of a non-international conflict does not depend on the subjective judgment of the parties to the conflict”.¹⁴

For instance, France tagged the armed wing of the *Front de Libération Nationale* (‘FLN’), *Armée de Libération Nationale* (‘ALN’), which was fighting for Algerian liberation, as “criminals and brigands” and their treatment as a “police operation”.¹⁵ Similarly, the United Kingdom denied the existence of

⁴ Geneva Convention relative to the protection of civilian persons in time of war art. 3, Oct. 21 1950, 75 U.N.T.S. 287.

⁵ Sandesh Sivakumaran, *The Law of Non-International Armed Conflict* (2012).

⁶ Federal Political Department, Berne, *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. III, 27 & Vol. II-B, 121.

⁷ *Id.*, Vol. II-B, at 12.

⁸ *Id.*, Vol. II-B, at 13.

⁹ *Id.*, Vol. II-B, at 121; Vol. III, at 27.

¹⁰ *Id.*, Vol. II-B, at 48.

¹¹ *Id.*, Vol. II-B, at 123.

¹² UK Ministry of Defence, *The Manual of the Law of Armed Conflict*, 384 (2004).

¹³ Hersch Lauterpacht, *Recognition in International Law*, 270 (2012).

¹⁴ *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgement, ¶ 603 (Sep. 2, 1998).

¹⁵ Mohammed Bedjaoui, *Law and the Algerian Revolution*, 142 (1961).

a war/ armed conflict in Malaya, Cyprus or Kenya in 1950s;¹⁶ Portugal painted the rebels in Mozambique and Angola in the 1960s and 1970s as a law and order problem.¹⁷ Contemporaneously, Turkey labelled the violence between the Kurdistan Workers Party ('PKK') and itself as counter-terrorism related activities.¹⁸ To avoid this pitfall, the Second Working Party used the vague phrase "armed conflict not of an international character". However, no guidance about interpreting this term of art was provided. Several commentators have observed that "[n]o one has been completely sure as to what factual situations the article applies".¹⁹

III. THE TADIĆ FORMULATION

Due to the lack of consensus on the contours of an NIAC, for the next 45 years, treaties included the phrase "armed conflict not of an international character" without any explanation, including the Preamble of the 1977 Additional Protocol II. However, in its 1997 *Tadić* decision, the International Criminal Tribunal for the former Yugoslavia (ICTY) ruled that NIACs referred to situations where "there is...*protracted* armed violence between governmental authorities and *organised* armed groups or between such groups within a State".²⁰ Thus, two core characteristics need to be analysed to determine if a situation qualifies as an NIAC: organisation of the non-State actors and intensity (including duration) of violence.

The *Tadić* formulation has subsequently been adopted and endorsed within and outside the domain of international criminal law, by the International Court of Justice ('ICJ'),²¹ Special Court for Sierra Leone ('SCSL'), International Criminal Court ('ICC'),²² International Criminal Tribunal for Rwanda ('ICTR'),²³ international fact-finding missions,²⁴ independent experts,²⁵ international commissions

¹⁶ Veuthey, *Les Conflits Armés de Caractère Non-International et le Droit Humanitaire*, in Cassese (ed), *Current Problems of International Law: Essays on UN Law and on the Laws of Armed Conflict* 179, 246 (Giuffrè, 1975).

¹⁷ James E. Bond, *The Rules of Riot: Internal Conflict and the Law of War*, 59-60 (1974).

¹⁸ Letter from Ambassador Türkekul Kurttekn in response to the characterization of the PKK (Dec. 15, 2005) (Landmine Monitor Report).

¹⁹ Final Record Vol. II-B, *supra* note 6, at 37.

²⁰ *Prosecutor v. Tadić*, Case No. IT-94-I-T, Opinion and Judgement, ¶ 561 (Int'l Crim. Trib. for the Former Yugoslavia May 7, 1997), ("*Tadić*").

²¹ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgement, 2005 I.C.J. Rep. 168, ¶ 23 (Dec. 19, 2005), (separate opinion by Judge Simma).

²² *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Judgement, ¶ 95 (Special Court for Sierra Leone Mar. 2, 2009) ("*Sesay, Kallon*"); *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06, Decision on the Confirmation of Charges, ¶ 233 (Jan. 29, 2007).

²³ *Akayesu*, ¶ 619; *Prosecutor v. Rutaganda*, Case No. ICTR-96-3, Trial Chamber Judgement, ¶ 92 (Int'l Crim. Trib. for Rwanda Dec. 6, 1999).

²⁴ UN's Secretary-General's Panel of Experts on Accountability in Sri Lanka, *Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka*, ¶ 181 (Mar. 31, 2011).

²⁵ For examples, see Rep. of the Special Rapporteur on the Human Rights Situation in the Sudan, Sima Samar, ¶ 8, U.N. Doc. E/CN.4/2006/111 (Jan. 11, 2006); Robert K. Goldman, *Rep. of*

of enquiry,²⁶ Human Rights Council,²⁷ International Law Commission,²⁸ national courts²⁹ and legislation,³⁰ ICRC,³¹ and State military manuals.³² Further, several eminent scholars have argued that the adoption of this threshold in the Rome Statute of the ICC evidences its customary status.³³

A. Intensity and Duration of Violence

In *Tadić*, the Appeals Chamber concluded that because the violence in Yugoslavia began in 1991 and persisted until the decision was rendered (1997), the violence was “protracted”.³⁴ The Tribunal’s framing of the violence as ‘protracted’ marks a departure from the Additional Protocol II, where military operations needed to be “sustained and concerted” to qualify as an NIAC.³⁵ ‘Protracted’ violence is judged by “reference to the entire period from the initiation of hostilities to the cessation of hostilities”.³⁶ Therefore, time lags between

the Independent Expert on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, 30, U.N. Doc. E/CN.4/2005/103 (Feb. 7, 2005); Kalliopi K. Koufa, *Terrorism and Human Rights: Final Report of the Special Rapporteur*, 30, U.N. Doc. E/CN.4/Sub.2/2004/40 (June 25, 2004); Rep. of the Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in the Palestinian Territories Occupied by Israel since 1967, ¶ 18, U.N. Doc. E/CN.4/2002/32 (March 6, 2002); Report of the Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in the Palestinian Territories Occupied by Israel since 1967, ¶ 13, U.N. Doc. A/56/440 (Oct. 4, 2001); Report on the Situation of Human Rights in Somalia, prepared by the Independent Expert of the Commission on Human Rights, Mona Rishmawi, pursuant to Commission Resolution 1996/57 of 19 April 1996, ¶ 54, U.N. Doc. E/CN.4/1997/88, (March 3, 1997) (“*Report on Human Rights in Somalia*”).

²⁶ Rep. of the Commission of Inquiry on Lebanon pursuant to Human Rights Council Resolution S-2/1, ¶ 51, U.N. Doc. A/HRC/3/2 (Nov. 23, 2006); Rep. of the Int’l Commission of Inquiry on Darfur to the United Nations Secretary-General pursuant to Security Council Resolution 1564 of 18 September 2004, ¶ 74 (Jan. 25, 2005) (“*Darfur Report*”). See also Rep. of the Sierra Leone Truth and Reconciliation Commission, vol. 1, ¶ 57 (Oct. 5, 2004); Rep. of the Commission for Reception, Truth and Reconciliation Timor-Leste, ¶ 141 Oct. 31, 2005).

²⁷ Human Rights Council, Rep. of the Independent Expert on the situation of human rights in Somalia, ¶¶ 53-4, U.N. Doc. A/HRC/36/62 (Sep. 6, 2017).

²⁸ First Rep. on the Effects of Armed Conflicts on Treaties, ¶ 30 (Draft Article 2(b)), U.N. Doc. A/CN.4/627 (Mar. 22, 2010).

²⁹ *HH v. Secy. of State* for the Home Department, 2008 UKAIT 22.

³⁰ [Philippines] Act on Crimes against International Humanitarian Law, Genocide, and other Crimes against Humanity, sec. 3(c).

³¹ *How is the Term “Armed Conflict” Defined in International Humanitarian Law?: International Committee of the Red Cross (ICRC) Opinion Paper*, 4 (March 2008).

³² Canadian Department of National Defence, *Prisoner of War Handling Detainees and Interrogation and Tactical Questioning in International Operations*, Joint Doctrine Manual; Ottawa: Department of Defence, 2004, sections 1-7, fn. 21; *The Manual on the Law of Non-International Armed Conflict with Commentary 2* (2006).

³³ Bothe, *War Crimes*, in *The Rome Statute of the International Criminal Court: A Commentary* 423 (Cassese, Gaeta & Jones eds., 2002); *Sivakumaran*, p. 122.

³⁴ *Tadić*, ¶ 70.

³⁵ Zimmermann, *War Crimes*, in *Commentary on Statute of the International Criminal Court* 285 (Triffterer ed., 1999).

³⁶ Thahzib-lie & Swaak-Goldman, *Determining the Threshold*, in *Making the Voice of Humanity Heard* 248 (Lijnzaad, Sambeek & Tahzib-lie eds., 2004).

bouts of violence would not defeat its ‘protracted’ nature. Instead, the violence needs to be assessed holistically.

The time period for which the violence subsists is an important consideration when analysing whether violence amounts to ‘protracted’. For instance, in the *Tablada* case before the Inter-American Commission on Human Rights (IACHR), the Court found that despite the violence lasting only 30 hours, the threshold of “protracted armed violence” was met because of the intensity of the violence.³⁷ To judge ‘intensity’ of violence, a number of indicia can be looked at, none of which are themselves determinative. These include number of deaths, injuries,³⁸ number of fighters on both sides,³⁹ kind of weapons used,⁴⁰ involvement of State armed forces (not police),⁴¹ geographic spread,⁴² and duration of violence.⁴³ For instance, in the *Tablada* case, due to the “carefully planned, coordinated”⁴⁴ quasi-military attack, the Court found that the violence satisfied the intensity criteria.⁴⁵

B. Organisation

The threshold of organisation for non-State actors is nebulous and relatively low. The *Akayesu* Trial Chamber noted that groups needed to be “organised to a greater or lesser extent”,⁴⁶ whereas the *Limaj* Trial Chamber ruled that “some degree of organisation by the parties will suffice”.⁴⁷ The *Hadžihasanović* Appeals Chamber ruled that “military organisation implies responsible command”,⁴⁸ which implies a more flexible command structure where individual(s) have some effective control over the acts of others, including the power to issue sanctions.⁴⁹ Therefore, to determine organisation, a number of indicia can be looked at:

³⁷ *Juan Carlos Abella v. Argentina*, Case 11.137, Nov. 18, 1997, OEA/Ser.L/V/II.98, Doc.6 rev, ¶¶ 154-6 (April 13, 1998) (“*Abella*”).

³⁸ *Prosecutor v. Limaj*, Bala and Musliu, IT-03-66-T, Judgement, ¶¶135-67 (Int’l. Crim. Trib. for the former Yugoslavia Nov. 30, 2005) (“*Limaj*”).

³⁹ *Prosecutor v. Delalić*, Mucić, Delić and Landžo, IT-96-21-T, Judgement, ¶ 188 (Nov. 16, 1998).

⁴⁰ *Prosecutor v. Haradinaj*, Balaj and Brahimaj, IT-04-84-T, Judgement, ¶ 49 (April 3, 2008).

⁴¹ *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-T, Judgement, ¶¶ 243, 245-6 (July 10, 2008) (“*Boškoski*”).

⁴² *Prosecutor v. Milošević*, IT-02-54-T, Decision on Motion for Judgement of Acquittal, ¶ 29 (June 16, 2004).

⁴³ *Boškoski*, ¶¶ 216-34.

⁴⁴ *Abella*, ¶¶ 154-6.

⁴⁵ One could argue that this lowers the threshold too much, potentially importing terrorist attacks, like the 26/11 attacks in Mumbai, India. However, two doctrinal points could prevent that importation. First, the Court in *Tablada* emphasised that the attack was on a military base, with a ‘quintessential military objective’ (¶ 155). Second, any attack would still have to meet the other criteria required to qualify as an NIAC. Nonetheless, an analysis of whether terrorist attacks should be imported into the NIAC standard is beyond this paper’s scope.

⁴⁶ *Akayesu*, ¶ 620.

⁴⁷ *Limaj*, ¶ 89.

⁴⁸ *Prosecutor v. Hadžihasanović*, Alagić, and Kubura, IT-01-47-AR72, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, ¶ 17 (July 16, 2003).

⁴⁹ *Delalić*, ¶ 378.

existence of a command structure (responsible command), specialised roles of different entities,⁵⁰ military training of members,⁵¹ engagement in negotiations with third parties,⁵² procurement and distribution of arms, among others. While control over territory is not a necessary condition for “organisation”, it is a “key factor”⁵³ in assessing whether the group is “organised”.

In *Limaj*, the Chamber explicitly rejected arguments that non-State actors must “possess a basic understanding of the principles laid down in Common Article 3”⁵⁴ to meet the threshold of organisation. Instead, the *ability* (emphasis added) to fulfil IHL obligations is the relevant factor.⁵⁵ Systemic violations or collective policies to violate international humanitarian law will not disprove the ability of an actor to implement these norms.⁵⁶ Ability is evaluated by “existence of disciplinary procedures and internal regulations”.⁵⁷ Hence, the non-State actor must have a “sufficient level of organisation through a command structure in order for the basic requirements”⁵⁸ of international humanitarian law to be implemented.

Armed non-State actors often operate as guerrilla forces, and the method of organisation of guerrilla forces is intrinsically different from regular armed forces.⁵⁹ Guerrilla forces tend to be decentralised without a strict vertical chain of command, unlike State Armed Forces.⁶⁰ However, such decentralisation does not mean that the forces are not ‘organised’. For instance, the Taliban, despite not having an organised military, or a formal command structure typical of a regular military,⁶¹ has been acknowledged by commentators to fulfil the threshold of organisation under IHL due to the Taliban’s ability to systematically wage violence, enforce orders and ensure internal discipline.⁶²

IV. SCOPE OF APPLICATION OF NIAC RULES

In this section, I briefly clarify two things. *First*, the geographical scope of an NIAC. *Second*, I clarify that both, State and Non-State Armed groups, are bound by customary norms of IHL in an NIAC.

⁵⁰ *Limaj*, ¶¶ 100-1.

⁵¹ *Boškoski*, ¶ 269.

⁵² *Prosecutor v. Đorđević*, IT-05-87/1-T, Judgement, ¶ 1576 (Feb. 23, 2011).

⁵³ *Prosecutor v. Al Bashir*, ICC-02/05-01/09, Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, ¶ 60 (Mar. 4, 2009).

⁵⁴ *Limaj*, ¶ 88.

⁵⁵ Int’l L. Asso. Comm. on the Use of Force, Final Rep. on the Meaning of Armed Conflict in International Law, 15 (2010) (“*Report on Armed Conflict*”).

⁵⁶ *Sivakumaran*, p. 179.

⁵⁷ *Sivakumaran*, p. 176.

⁵⁸ *Report on Armed Conflict*, 29.

⁵⁹ Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, 1352 (Sandoz, Swinarski, and Zimmermann eds., 1987) (“*ICRC Commentary*”).

⁶⁰ Tse-Tung, On Guerrilla Warfare 48 (S.B. Griffith trans., 1978).

⁶¹ Parks, *Combatants*, in, *The War in Afghanistan: A Legal Analysis* 247, 258 (Schmitt ed., 2009).

⁶² Kleffner, *The Collective Accountability of Organized Armed Groups for System Crimes*, in *System Criminality in International Law* 238, 243 (van der Wilt & Nollkaemper eds., 2009).

A. Geographical Scope

In *Tadic*, the ICTY Appeals Chamber held that “international humanitarian law continues to apply in...the whole territory under the control of a party, whether or not actual combat takes place there”.⁶³ Subsequently, several eminent actors, like the IACHR, have adopted this position.⁶⁴ Hence, it is not necessary to establish the existence of armed combat in each municipality/district to bring that area within the scope of IHL. As long as that area is part of the larger region where the armed conflict exists, it would be covered by IHL.⁶⁵ However, this approach can lead to absurd results. For instance, if India is ‘party’ to an NIAC, then the entirety of Indian territory would be covered by IHL.

Hence, eminent commentators have argued that a geographical focus inevitably “constitutes the drawing of arbitrary boundaries”.⁶⁶ Instead, IHL should cover those persons “affected by an armed conflict”.⁶⁷ Further, the ICRC has clarified that the applicability of IHL “follows from a criteria related to persons, and not to places”.⁶⁸ This is because IHL should cover “persons affected in one way or another by the armed conflict”,⁶⁹ regardless of whether they are in the combat zone at the time of the conduct in question or not.

B. Equality of Obligations

Customary norms of IHL apply equally to states, and non-state armed groups.⁷⁰ The traditional view was that non-state armed groups are only bound by IHL if they choose to announce their adherence to it.⁷¹ However, it is now

⁶³ *Prosecutor v. Tadić*, IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, ¶ 70 (Int’l Crim. Trib. for the former Yugoslavia Oct. 2, 1995) (“*Tadić Interlocutory*”). See also *Akayesu*, ¶ 635. See further Greenwood, *Scope of Application of Humanitarian Law*, in *The Handbook of Humanitarian Law in Armed Conflicts* 39, 51 (D. Fleck ed., 1995).

⁶⁴ See e.g. *Report on the Situation of Human Rights in Somalia*, para 55; Inter-American Commission on Human Rights, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116 Doc 5 rev 1 corr, 22 October 2002, para 60.

⁶⁵ *Prosecutor v. Kordić and Cerkez*, Case No. IT-95-14/2-T, Trial Chamber Judgement, ¶ 27 (Int’l Crim. Trib. for the former Yugoslavia Feb. 26, 2001). See also *Prosecutor v. Blaskić*, Case No. IT-95-14, Trial Chamber Judgement, ¶ 64 (Int’l Crim. Trib. for the former Yugoslavia Mar. 3, 2000).

⁶⁶ *Sivakumaran*, p. 251. See also L. Arimatsu, *Territory, Boundaries and the Law of Armed Conflict*, 12 Y.B. INT’L. HUMANITARIAN L. 157, 189 (2009).

⁶⁷ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, art. 2(1), June 8, 1977, 1125 U.N.T.S. 609 (“*Additional Protocol II*”).

⁶⁸ *ICRC Commentary*, p. 1360.

⁶⁹ *ICRC Commentary*, p. 134.

⁷⁰ Military and Paramilitary Activities in and Against Nicaragua (*Nicaragua v. United States of America*), Judgement, 1986 I.C.J. Rep. 14, 114, ¶¶ 113-14 (June 27, 1986) (“*Nicaragua*”).

⁷¹ Glahn, *The Protection of Human Rights in Time of Armed Conflicts*, 1 ISRAEL’S Y. HUM. RTS. 208, 217 (1971). See also Baxter, *Forces for Compliance with the Law of War*, 58 PROC. AMERICAN SOC’Y. INT’L. L. 82, 87 (1964).

well-established that customary IHL binds non-state armed groups regardless of their volition.⁷² The principle of ‘equality of belligerents’ holds that each party to an armed conflict has equivalent legal rights and obligations, independent of the ‘justness’ of their cause.⁷³ This is to ensure that neither side can abrogate from IHL norms by claiming that the other party is not bound by them.⁷⁴ For instance, Guatemala had argued that “it was unacceptable to appraise the conduct of their security forces by stricter standards than the conduct of the guerrilla forces”.⁷⁵

This equality of obligations is supplemented by the norm of *de facto* reciprocity. *De facto* reciprocity “relates to one of the parties to the conflict respecting the law in the hope that it will induce the other party to similarly respect the law”.⁷⁶ Former UN Secretary-General Ban Ki-Moon had argued that “increased likelihood of reciprocal respect for the law by opposing [State] parties”,⁷⁷ would incentivize non-state armed groups to comply with the law. Such reciprocity is qualified by the possibilities on either side, depending on material resources, *et al.*⁷⁸ This qualification is pivotal to reconcile *de facto* reciprocity with the usually asymmetrical nature of NIACs.⁷⁹ However, *tu quoque* is not a defence.⁸⁰ Therefore, the violation of IHL by one party, *cannot absolve* the other party of responsibility for their inconsistencies with IHL obligations.⁸¹ This import of the norm of reciprocity helps supplement the equality of obligations norm.

⁷² See e.g. *Prosecutor v. Norman*, SCSL-2004-14-AR72(E), Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment), ¶ 22 (Special Court for Sierra Leone May 31, 2004); *Abella*, ¶ 174; *Prosecutor v. Kallon and Kamara*, SCSL-2004-15-AR72(E) and SCSL-2004-16-AR72(E), Decision on Challenge to Jurisdiction, Lomé Accord Amnesty, ¶ 47 (Special Court for Sierra Leone Mar. 13, 2004); *Darfur Report*, ¶ 172.

⁷³ *Sivakumaran*, p. 243. See Lauterpacht, *The Limits of the Operation of the Law of War*, 30 BRIT. Y.B. INT’L. L. 206 (1953); C. Greenwood, *The Relationship between Jus ad Bellum and Jus in Bello*, 9 REV. INT’L. STUD. 221 (1983). Arguably, such content-neutral ‘equality’ creates a troubling equivalence between the parties, and their violence.

⁷⁴ See Doswald-Beck, *The Right to Life in Armed Conflict: Does International Humanitarian Law Provide all the Answers?*, 864 INT’L. REV. RED CROSS 881, 903 (2006); Kleffner, *From “Belligerents” to “Fighters” and Civilians Directly Participating in Hostilities—On the Principle of Distinction in Non-International Armed Conflicts One Hundred Years After the Second Hague Peace Conference*, 54 Neth. Int’l. L. Rev. 315, 322-3 (2007). See also Somer, *Jungle Justice: Passing Sentence on the Equality of Belligerents in Non-International Armed Conflict*, 89 INT’L. REV. RED CROSS 655, 659–64 (2007).

⁷⁵ Tomuschat, *The Applicability of Human Rights Law to Insurgent Movements*, in *Krisensicherung und Humanitärer Schutz—Crisis Management and Humanitarian Protection: Festschrift für Dieter Fleck* 573, 576 (Fischer ed., 2004).

⁷⁶ *Sivakumaran*, p. 245.

⁷⁷ Report of the Secretary-General on the Protection of Civilians in Armed Conflict, ¶ 41, U.N. Doc. S/2009/277 (May 29, 2009).

⁷⁸ Int’l Comm. of the Red Cross, Rep. on the Work of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva, 24 May-12 June 1971, ¶ 343 (August 1971).

⁷⁹ *Sivakumaran*, p. 247.

⁸⁰ *Sivakumaran*, p. 247.

⁸¹ *Sivakumaran*, p. 247.

C. Relevance

The categorisation of a conflict as an NIAC is not merely symbolic or discursive. It has important legal ramifications as it alters and supplements the obligations of the parties under domestic constitutions. For instance, Article 21 of the Indian Constitution may encompass some of the obligations captured by customary norms of IHL. However, the key difference between a constitutional lens, and an IHL lens is the legitimacy accorded to the revolting faction. Under the Indian Constitutional scheme, Maoists are the aberrant criminals seeking to harm the ‘unity and integrity’ of the country. Not only does this approach accord too much power to the State by assuming its legitimacy, but it may also give the State greater leeway to deal with these ‘criminal elements’ under the guise of ‘maintaining public order’. Therefore, the scope of application of IHL norms is important to determine the legal obligations of the parties to the conflict.

V. MAOIST INSURGENCY IN INDIA

A detailed history of the Maoist insurgency in the heart of the Indian Subcontinent is beyond the scope of this paper. In this section, I analyse the aspects of the insurgency relevant to determining whether the conflict between the Indian State and the Maoists constitutes an NIAC. The drawback of such an analysis of the ‘Red Corridor’ is that it is decontextualised, since I rather superficially analyse limited aspects of a conflict which can be traced back to 1854.⁸² However, this analysis is sufficient to answer the question posed in this paper.

The origins of the Maoist insurgency lie in the peasant uprising in Naxalbari village, located in West Bengal, in 1967. The movement quickly spread to parts of Bihar, Orissa and Jharkhand but was brutally crushed by the Indian State by 1972.⁸³ Some survivors of the initial movement continue to lead the insurgency today. Formation of the Communist Party of India (Maoist) in 2004 was key to the insurgency,⁸⁴ because it brought several factions within one umbrella organisation with a chain of command and a commitment to “protracted armed struggle” against the Indian State.⁸⁵ The Party commands the People’s Liberation Guerrilla Army (‘PLGA’),⁸⁶ which is said to contain between 10,500⁸⁷-40,000⁸⁸

⁸² Nandini Sundar, *Subalterns and Sovereigns: An Anthropological History of Bastar, 1854-2006* (2008).

⁸³ Nandini Sundar, *Bastar, Maoism and Salwa Judum*, 41(29) *ECON. & POL. WKLY.* 3187 (2006), (“Sundar”).

⁸⁴ The group was banned in June 2009 under the Unlawful Activities (Prevention) Act, 1967.

⁸⁵ John Harriss, *What is going on in India’s “red corridor”?* *Questions about India’s Maoist insurgency- Literature Review*, 84(2) *PACIFIC AFFAIRS* 309 (2011) (“Harriss”).

⁸⁶ *Sundar*.

⁸⁷ *Sundar*.

⁸⁸ Shashank Chouhan & Sankalp Phartiyal, *Who are India’s Maoists and why they are in the news*, Reuters (May 29, 2013), <http://blogs.reuters.com/india/2013/05/29/who-are-indias-maoists-and-why-they-are-in-the-news/>.

cadre, according to different estimates. The PLGA is armed either through stealing weapons from State security forces, or through money acquired as a result of deals struck between Maoist leaders and local businesses exploiting the area's natural resources.⁸⁹ Discipline is maintained within the ranks of the PLGA by punishing those who disobey orders.⁹⁰

The 'Red Corridor' or the area of Maoist influence/control extends over 120-160 out of 607 districts in India; that is, a quarter of Indian territory,⁹¹ and twice the size of India's other insurgency-affected areas (Kashmir; Manipur).⁹² Several of these districts, such as South Bastar and Gadchiroli, are what Maoists call 'Liberated Zones', and are completely under Maoist control. In these areas, Maoists claim to have setup 135 people's clinics, 6 primary schools, 10 night schools, 25 huts for teachers, 10 village libraries, among others.⁹³ Maoists claim (backed by anthropological evidence) to govern 60 lakh people in the Dandakaranya 'guerrilla zone' consisting of Gadchiroli, Bhandara, Balaghat, Rajnandgaon, undivided Bastar and Malkangiri via a Special Zonal Committee. Mass organisations such as the Dandakaranya Adivasi Kisan Mazdoor Sangathan ('DAKMS') and Krantikari Adivasi Mahila Sanghathan ('KAMS'), known as *sanghams*, are instrumental in the functioning of Gram Rajya Committees which handle the governance of these areas.⁹⁴

The Indian State, through its police and paramilitary forces (Operation Green Hunt) as well as through the State sponsored militia, Salwa Judum, has waged a brutal war against the Maoists. The Maoists have been labelled the "biggest internal security threat to India".⁹⁵ The total fighting force in Bastar alone is estimated at 20,000⁹⁶-50,000⁹⁷ troops. Security forces arrested 499 *sangham* members in 2009. The number of Naxals killed has varied from 66 in 2008, to 113 in 2009 and 99 in 2014.⁹⁸ Government figures put civilian deaths and injuries at 268 and 706 respectively between 2005-2010, the former rising to 372 in 2014.⁹⁹ Maoists attribute 116 civilian deaths to the Salwa Judum between 2005-2006.¹⁰⁰ The Government claims that between 2004-2010, Naxalites carried out 2298 attacks in Chhattisgarh alone, with 76 security personnel dying in one incident.¹⁰¹ Violence

⁸⁹ *Harriss*.

⁹⁰ Gautam Navlakha, *Days and Nights in the Maoist Heartland*, 45(16) *ECON. & POL. WKLY.* 38(2010).

⁹¹ *Nandini Sundar v. State of Chhattisgarh*, (2011) 7 SCC 547 ("Nandini") ¶ 20.

⁹² *Harriss*.

⁹³ *Sundar*.

⁹⁴ *Sundar*.

⁹⁵ Aman Sethi, *Green Hunt: the anatomy of an operation*, *The Hindu* (Feb. 6, 2010), ("Sethi").

⁹⁶ *Ibid*.

⁹⁷ A. Bellai, *Armed Conflict in India in 2014*, in *The War Report: Armed Conflict in 2014* 180 ("Bellai").

⁹⁸ *Bellai*, p. 178.

⁹⁹ *Bellai*, p. 181.

¹⁰⁰ *Sethi*.

¹⁰¹ *Nandini*, ¶ 37.

of this magnitude shows that the call for ‘protracted violence’ has been backed by practice.

A. Maoist Insurgency: A Non-International Armed Conflict?

Therefore, does the Maoist insurgency meet the two criteria required to qualify as an NIAC: some degree of organisation of the Maoists and intensity of violence? I argue that the command structure of the CPI (Maoist), along with the DAKMS and the KAMS, combined with the control over vast portions of territory where the Maoists have effectively replaced the Indian State, help meet the threshold of organisation outlined in the first section of the paper. The punishment of those who step out of line within the PLGA demonstrates an internal discipline through a system of responsible command. Consequently, the Maoists possess the *ability* to implement humanitarian law norms, if required, through discipline. The specialised roles of entities such as the DAKMS and the KAMS, coupled with the Maoists having held peace talks with the Andhra Pradesh Government in 2004, and the system of procuring and distributing arms, help establish “organisation” under IHL.

The high death toll over the past decade, spanning nearly a quarter of Indian territory, demonstrates that the violence is collective, and not isolated or sporadic. The scale and duration of violence, along with huge numbers of fighters involved on both sides, far exceeds some of the cases cited in the first section, where NIACs were recognised (for instance, *Tadić*). In *Tadić*, the violence had persisted for 6 years. The Naxals have been fighting the Indian State for nearly 51 years. While involvement of State armed forces is not a condition precedent, it is an important factor. The Indian Military is not directly deployed (Central Reserve Police Force is deployed) in the ‘Red Corridor’. However, it has provided training and know-how to State-sponsored militia and paramilitary battalions.¹⁰²

As a result, I argue that the conflict between the Indian State and the Maoists in the ‘Red Corridor’ constitutes an NIAC under IHL since the Maoists demonstrate the requisite level of organisation, and the intensity of the violence fulfils the threshold under IHL. This implies that both the Indian State and the Maoists are bound by customary norms of International Humanitarian Law.

VI. SUBSTANTIVE IMPLICATIONS

Classifying a conflict as an NIAC has significant substantive implications and is not merely a semantic matter of legal classification. As I have already argued, parties to an NIAC are bound, at least, by customary norms of IHL.¹⁰³ A comprehensive review of the customary norms of IHL which would be implicated in the

¹⁰² *Sethi*.

¹⁰³ *See supra* Section titled, “Scope of Application”.

‘Red Corridor’ are beyond the scope of this paper. Nonetheless, in this section, I give a modest glimpse of the kind of principles which would bind the armed forces of both the Indian State and the Naxals.

Both parties would be bound by the customary principle of humane treatment,¹⁰⁴ in their treatment of persons in the power of the adversary, civilians and persons *hors de combat*.¹⁰⁵ For instance, the codes of conduct of the Chinese People’s Liberation Army (‘CPLA’),¹⁰⁶ the Revolutionary United Front (‘RUF’) of Sierra Leone,¹⁰⁷ the National Democratic Front of the Philippines (‘NDFP’),¹⁰⁸ and the National Resistance Army (‘NRA’) of Uganda,¹⁰⁹ contained injunctions against ill-treating civilians and captives. Concrete obligations flowing from the principle of humane treatment would include prohibitions on (threats to) violence to life and person, outrages upon personal dignity, slavery, pillage, taking of hostages and *collective punishments* (emphasis added).¹¹⁰

The obligations against collective punishments would be of particular relevance in the ‘Red Corridor’. Indian Sociologist, Nandini Sundar’s book, ‘The Burning Forest: India’s War in Bastar’ is replete with examples of Indian forces burning down entire villages as reprisal for the villagers’ suspected sympathies/ involvement with Naxals.¹¹¹ This is similar to French reactions to the Algerian war of independence, where “if an attack took place, the nearest village was considered collectively responsible”.¹¹² Such collective punishments are firmly prohibited under customary IHL.

The Special Court of Sierra Leone described collective punishments as “the indiscriminate punishment imposed collectively on persons for omissions for acts for which some or none of them may or may not have been responsible”.¹¹³ Collective punishments are prohibited under IHL because “responsibility [for acts] is personal in nature and...no one may be punished for an act he or she has

¹⁰⁴ See *Nicaragua*, ¶¶ 218-20; *Tadić Interlocutory*, ¶ 98; Customary International Humanitarian Law (“CIHL”), Rule 87.

¹⁰⁵ Common Article 3(1), Geneva Conventions; *Additional Protocol II*, Part II.

¹⁰⁶ Mao Zedong, *Eight Points for Attention*, in IV Selected Works of Mao Tse-Tung 155 (1969).

¹⁰⁷ Reproduced in *Sesay, Kallon*, ¶ 705.

¹⁰⁸ Basic Rules of the New People’s Army, Principle IV, reproduced in NDFP, *Declaration of Undertaking to Apply the Geneva Conventions of 1949 and Protocol I of 1977* 85, 90 (NDFP Human Rights Monitoring Committee Booklet No 6).

¹⁰⁹ The National Resistance Army Code of Conduct, reprinted in OO Amaza, Museveni’s Long March from Guerrilla to Statesman 246 (1998).

¹¹⁰ *Common Article 3; Additional Protocol II*, art. 4(1). For customary status of rules, see *Nicaragua*, ¶¶ 218-19; Rome Statute, art. 8(2)(c); ICTR Statute, art. 4; SCSL Statute, art. 3; *Tadić Interlocutory*, ¶ 98; Rep. of the Secretary-General on the Establishment of a Special Court for Sierra Leone, ¶ 14, U.N. Doc. S/2000/915 (Oct. 4, 2000); *Akayesu*, ¶ 610; *CIHL*, Rules 88-105.

¹¹¹ Nandini Sundar, *The Burning Forest: India’s War in Bastar* (2016).

¹¹² *Sesay, Kallon*, ¶¶ 550-601.

¹¹³ *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-A, Judgement, ¶ 224 (Special Court for Sierra Leone, May 28, 2008) (“*Fofana*”).

not personally committed”¹¹⁴ Therefore, membership of, or sympathies towards a group should not lead to punishment. Punishment is understood broadly, including “fine[s], confinement or a loss of property or rights”¹¹⁵

Additionally, parties to an NIAC have a range of other IHL obligations. These include the principle of distinction, that is, “the Parties to a conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives”¹¹⁶. Therefore, civilians “enjoy general protection against the dangers arising from military operations”¹¹⁷ Non-state groups have consistently affirmed this principle. For instance, the Justice and Equality Movement (‘JEM’) of Sudan and the Sudan Liberation Army (‘SLA’) stated their “commitment to refrain from targeting...civilian populations”¹¹⁸ Further, groups have condemned attacks on civilians. The Liberation Tigers of Tamil Eelam (‘LTTE’) of Sri Lanka categorically stated that “directly targeting civilians...cannot be justified under any circumstances”¹¹⁹ Thus, both the Indian State and the Naxals are bound by the obligation not to attack civilians indiscriminately under customary IHL.

A. Possibility of Enforcement?

However, enforcement of NIAC norms is particularly weak in IHL because most enforcement mechanisms have been developed for International Armed Conflicts and are unsuitable for NIACs.¹²⁰ Theoretically, the Universal Jurisdiction of the International Criminal Court, combined with ‘armed conflict not of an international character’ being included in Article 8, Rome Statute, makes judicial enforcement of NIAC norms possible through international

¹¹⁴ *Prosecutor v. Brima, Kamara, and Kanu*, SCSL-04-16-A-675, Judgement, ¶ 678 (Special Court for Sierra Leone June 20, 2007). See also *Fofana*, ¶ 178.

¹¹⁵ *Fofana*, ¶¶ 181, 222.

¹¹⁶ *CIHL*, Rule 1. This is a fundamental principle of IHL. See Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. Rep. 226, ¶ 78 (July 8).

¹¹⁷ Additional Protocol II, art. 13(1).

¹¹⁸ ‘Statement by the Opposition Movements’ [JEM and SLM-Unity], undated (published on 11 July 2008).

¹¹⁹ Liberation Tigers of Tamil Eelam Peace Secretariat, Press Release (June 15, 2006) (quoted in Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Follow-up to Country Recommendations, A/HRC/8/3/Add.3, May 14, 2008, para 66).

¹²⁰ G.I.A.D. Draper, *The Implementation and Enforcement of the Geneva Conventions of 1949 and of the Two Additional Protocols of 1978*, in 164 COLLECTED COURSES OF THE HAGUE ACADEMY OF INTERNATIONAL LAW 9 (1979); H.P. Gasser, *Ensuring Respect for the Geneva Conventions and Protocols: The Role of Third States and the United Nations*, in *Armed Conflict and the New Law*, Volume II: Effecting Compliance 15, 17 (H. Fox & M.A. Meyer eds., 1993); G.H. Aldrich, *Compliance with the Law: Problems and Prospects*, in *Armed Conflict and the New Law*, Volume II: Effecting Compliance 3, 4 (H. Fox & M.A. Meyer eds., 1993); S. Oeter, *Civil War, Humanitarian Law and the United Nations*, in 1 MAX PLANCK YEARBOOK OF UNITED NATIONS LAW 195, 210 (1997); Y. Sandoz, *Implementing International Humanitarian Law*, in *International Dimensions of Humanitarian Law* (1988).

criminal responsibility.¹²¹ This is supplemented by the experiences of Special Courts and Tribunals, like the ICTY, ICTR and SCSL.¹²² This was one of the major causes of India's controversial abstention from voting on the Rome Statute.¹²³

Non-Judicial enforcement mechanisms are of three types. *First*, there are internal mechanisms of state and non-state armed groups, such as dissemination of information, instruction, legal advice regarding IHL obligations, drafting of codes of conduct and internal regulations in consonance with such advice, and sanctioning of non-compliance.¹²⁴ *Second*, there are responses to the activities of the other party, including belligerent reprisals.¹²⁵ *Finally*, international entities external to the conflict like the International Humanitarian Fact-Finding Commission, United Nations, Protecting Powers, Human Rights Watch, International Committee of the

¹²¹ Sivakumaran, pp. 475-520. See also S. Boelaert-Suominen, *Grave Breaches, Universal Jurisdiction and Internal Armed Conflict: Is Customary Law Moving Towards a Uniform Enforcement Mechanism for All Armed Conflicts?*, 5 J. CONFLICT & SECURITY L. 63 (2000); L. Moir, *Grave Breaches and Internal Armed Conflicts*, 7 J. INT'L. CRIM. JUST. 763 (2009); M. Bothe, War Crimes, in *The Rome Statute of the International Criminal Court: A Commentary* 379, 417-18 (A. Cassese, P. Gaeta, & J.R.W.D. Jones eds., 2002); A. Zimmermann, Preliminary Remarks on para 2(c)-(f) and para 3: War crimes committed in an armed conflict not of an international character, in *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article*, 475, 476-7 (O. Triffterer ed., 2008); H. von Hebel & D. Robinson, *Crimes within the Jurisdiction of the Court*, in *The International Criminal Court: The Making of the Rome Statute, Issues, Negotiations, Results* 79, 119 (R.S. Lee ed., 1999).

¹²² See to the Development of International Law (2005); R. Cryer, *Prosecuting International Crimes* (2005).

¹²³ Usha Ramanathan, *India and the ICC*, 3(3) J. INT'L. CRIM. JUST. 627 (2005).

¹²⁴ N. Farrell, *Dissemination in Bosnia and Herzegovina Lessons Learned*, 37 INT'L. REV. RED CROSS 409 (1997); R. Bigler, *Disseminating International Humanitarian Law in Colombia: Dissemination is Everyone's Job—A Firsthand Report by an ICRC Delegate*, 37 INT'L. REV. RED CROSS 421 (1997); É. Baeriswyl & A. Aeschlimann, *Reflections on a Dissemination Operation in Burundi—Declaration for Standards of Humanitarian Conduct: Appeal for a Minimum of Humanity in a Situation of Internal Violence*, 37 INT'L. REV. RED CROSS 385 (1997); O. Bangert, *Disseminating and Implementing International Humanitarian Law within Organized Armed Groups: Measures Armed Groups Can Take to Improve Respect for International Humanitarian Law*, in *Non-State Actors and International Humanitarian Law* 187, 193 (International Institute of Humanitarian Law ed., 2010); A.M. La Rosa & C. Wuerzner, *Armed Groups, Sanctions and the Implementation of International Humanitarian Law*, 90 INT'L. REV. RED CROSS 327, 334 (2008). See M. Sassòli, *The Implementation of International Humanitarian Law: Current and Inherent Challenges*, 10 Y. INT'L. HUMANITARIAN L. 45, 65 (2007); A.A. Bouvier & K.E. Sams, *Teaching International Humanitarian Law in Universities: the Contribution of the International Committee of the Red Cross*, 5 Y. INT'L. HUMANITARIAN L. 381 (2002); E. David, *Dissemination of International Humanitarian Law at University Level*, 257 INT'L. REV. RED CROSS 155 (1987).

¹²⁵ F.J. Hampson, *Belligerent Reprisals and the 1977 Protocols to the Geneva Conventions of 1949*, 37 INT'L. & COMP. L. Q. 818, 828-9 (1988); C. Greenwood, *The Twilight of the Law of Belligerent Reprisals*, 20 NETH. Y. INT'L L. 35, 65 (1989); F. Kalshoven, *Belligerent Reprisals* (1971); F. Kalshoven, *Reprisals and the Protection of Civilians: Two Recent Decisions of the Yugoslavia Tribunal*, in *Man's Inhumanity to Man: Essays on International Law in Honour of Antonio Cassese* 481, 489-90 (L.C. Vohrah et al eds., 2003); S. Darcy, *The Evolution of the Law of Belligerent Reprisals*, 175 MIL. L. REV. 184, 219 (2003); S. Darcy, *Collective Responsibility and Accountability under International Law*, 148 (2007). A.P.V. Rogers, *Law on the Battlefield*, 235 (2004).

Red Cross, and other intergovernmental as well as non-governmental bodies can help secure compliance.¹²⁶ Human Rights organisations are particularly adept at swaying public opinion, and generating pressure on the parties to the conflict to comply with IHL norms.¹²⁷ Nonetheless, the possibilities of enforcing IHL norms on the Indian State and the Maoists should not be overstated, and would be contingent on geo-political pressures.

VII. CONCLUSION

In this essay, I have argued that the armed conflict between the Indian State and the Naxals in the 'Red Corridor' is not merely an internal security threat to the former, but constitutes a Non-International Armed Conflict under International Humanitarian Law. The high-intensity violence, spanning well over 50 years, meets the threshold of 'protracted' violence under IHL. Further, the highly organised nature of the Naxals, particularly since the formation of the Communist Party of India (Maoist) in 2004, combined with their structures of civil administration vast swathes of India's heartland, means that the Naxals easily fulfil the requirement of 'organisation' under IHL.

In the domestic legal framework, the Indian State is the clear sovereign and, thus, the Naxals are the lawbreakers. Therefore, the conflict is between the sovereign and the deviant criminals. Historically, nation-states are averse to acknowledging any claims which unsettle their claim to sovereignty. The Indian State is no different. Therefore, Naxalism is framed as an 'internal security challenge'. However, classifying the conflict as an NIAC under IHL puts both parties on a formally equal pedestal. The Indian State and the Naxals are transformed into legally equal contestants for sovereignty in the Red Corridor. This elevation is accompanied by an array of rights and obligations for the Naxals. While I have detailed some of the specific legal implications of this classification, the larger relevance of calling the Red Corridor an NIAC, beyond rhetoric, is to acknowledge the claim the Naxals make to sovereignty over significant parts of the 'Indian' territory.

¹²⁶ D.P. Forsythe, *Who Guards the Guardians: Third Parties and the Law of Armed Conflict*, 70 AMERICAN J. INT'L. L. 41 (1976); G. Abi-Saab, *The Implementation of Humanitarian Law*, in, *The New Humanitarian Law of Armed Conflict* 310, 311-14 (A. Cassese ed., 1979); G.A.B. Peirce, *Humanitarian Protection for the Victims of War: The System of Protecting Powers and the Role of the ICRC*, 90 MIL. L. REV. 89 (1980); See F. Kalshoven, *The International Humanitarian Fact-Finding Commission: Its Birth and Early Years*, in *Reflections on the Laws of War: Collected Essays* 793 (F. Kalshoven ed., 2007); Volume II: Effecting Compliance 53 (H. Fox & M.A. Meyer eds., 1993); A. Mokhtar, *Will this Mummification Saga Come to an End? The International Humanitarian Fact-Finding Commission: Article 90 of Protocol I*, 22 PA. ST. INT'L. L. REV. 243 (2003-4).

¹²⁷ See R. Brett, *Non-Governmental Human Rights Organizations and International Humanitarian Law*, 38 INT'L. REV. RED CROSS 531, 532 (1998); R.K. Goldman, *International Humanitarian Law: Americas Watch's Experience in Monitoring Internal Armed Conflicts*, 9 AMERICAN UNI. J. INTERNAL L. & POL'Y 49 (1993).