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

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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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I. INTRODUCTION

In 2010, the then Indian Prime Minister Manmohan Singh called Naxalism the “biggest internal security challenge” 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.

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.

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1 Bhagat Singh’s Letter to Punjab Governor, Marxists.org (1930) https://www.marxists.org/archive/bhagat-singh/1931/x01/x01.htm.
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. Such deliberate ambiguity was because no consensus could be reached between States at the Diplomatic Conference of 1949 about the contours of an NIAC. 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. The United States emphasised that non-State actors must exercise “de facto authority over persons within a determinate territory”. Canada took this a step further suggesting that the rebels must have effective control over a substantial portion of territory. States, such as Australia, hinged the evaluation of an NIAC on recognition of the rebels as belligerents by the de jure Government.

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” since the evaluation of an NIAC was hinged upon the discretion of the de jure government, and most governments are “reluctant to admit that a state of armed conflict exists” 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”. 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”.

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”.

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7 Id, Vol. II-B, at 12.
10 Id, Vol. II-B, at 48.
11 Id, Vol. II-B, at 123.
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).
a war/ armed conflict in Malaya, Cyprus or Kenya in 1950s;\(^\text{16}\) Portugal painted the rebels in Mozambique and Angola in the 1960s and 1970s as a law and order problem.\(^\text{17}\) Contemporaneously, Turkey labelled the violence between the Kurdistan Workers Party (‘PKK’) and itself as counter-terrorism related activities.\(^\text{18}\) 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”.\(^\text{19}\)

### 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”.\(^\text{20}\) 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’),\(^\text{21}\) Special Court for Sierra Leone (‘SCSL’), International Criminal Court (‘ICC’),\(^\text{22}\) International Criminal Tribunal for Rwanda (‘ICTR’),\(^\text{23}\) international fact-finding missions,\(^\text{24}\) independent experts,\(^\text{25}\) international commissions

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\(^{19}\) Final Record Vol. II-B, supra note 6, at 37.


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


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”. 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. ‘Protracted’ violence is judged by “reference to the entire period from the initiation of hostilities to the cessation of hostilities”. Therefore, time lags between

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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).


34 Tadić, ¶ 70.


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:

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\(^{39}\) 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).


\(^{42}\) 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.


\(^{49}\) Delalić, ¶ 378.
existence of a command structure (responsible command), specialised roles of different entities, military training of members, engagement in negotiations with third parties, procurement and distribution of arms, among others. While control over territory is not a necessary condition for “organisation”, it is a “key factor” 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” to meet the threshold of organisation. Instead, the *ability* (emphasis added) to fulfil IHL obligations is the relevant factor. Systemic violations or collective policies to violate international humanitarian law will not disprove the ability of an actor to implement these norms. Ability is evaluated by “existence of disciplinary procedures and internal regulations”. Hence, the non-State actor must have a “sufficient level of organisation through a command structure in order for the basic requirements” 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. Guerrilla forces tend to be decentralised without a strict vertical chain of command, unlike State Armed Forces. 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, 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.

**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.

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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.
56 Sivakumaran, p. 179.
57 Sivakumaran, p. 176.
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*”).
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”.  

Subsequently, several eminent actors, like the IACHR, have adopted this position. 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. 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”. Instead, IHL should cover those persons “affected by an armed conflict”. Further, the ICRC has clarified that the applicability of IHL “follows from a criteria related to persons, and not to places”. This is because IHL should cover “persons affected in one way or another by the armed conflict”, 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. The traditional view was that non-state armed groups are only bound by IHL if they choose to announce their adherence to it. However, it is now


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.


well-established that customary IHL binds non-state armed groups regardless of their volition.\textsuperscript{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.\textsuperscript{73} This is to ensure that neither side can abrogate from IHL norms by claiming that the other party is not bound by them.\textsuperscript{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”.\textsuperscript{75}

This equality of obligations is supplemented by the norm of \textit{de facto} reciprocity. \textit{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”.\textsuperscript{76} Former UN Secretary-General Ban Ki-Moon had argued that “increased likelihood of reciprocal respect for the law by opposing [State] parties”,\textsuperscript{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, \textit{et al}.\textsuperscript{78} This qualification is pivotal to reconcile \textit{de facto} reciprocity with the usually asymmetrical nature of NIACs.\textsuperscript{79} However, \textit{tu quoque} is not a defence.\textsuperscript{80} Therefore, the violation of IHL by one party, \textit{cannot absolve} the other party of responsibility for their inconsistencies with IHL obligations.\textsuperscript{81} This import of the norm of reciprocity helps supplement the equality of obligations norm.

\textsuperscript{72} See \textit{e.g.} \textit{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); \textit{Abella}, ¶ 174; \textit{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); \textit{Darfur Report}, ¶ 172.


\textsuperscript{76} Sivakumaran, p. 245.


\textsuperscript{79} Sivakumaran, p. 247.

\textsuperscript{80} Sivakumaran, p. 247.

\textsuperscript{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

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.
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. Discipline is maintained within the ranks of the PLGA by punishing those who disobey orders.

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, and twice the size of India’s other insurgency-affected areas (Kashmir; Manipur). 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 set up 135 people’s clinics, 6 primary schools, 10 night schools, 25 huts for teachers, 10 village libraries, among others. 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.

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”. The total fighting force in Bastar alone is estimated at 20,000-50,000 troops. Security forces arrested 499 sanham members in 2009. The number of Naxals killed has varied from 66 in 2008, to 113 in 2009 and 99 in 2014. Government figures put civilian deaths and injuries at 268 and 706 respectively between 2005-2010, the former rising to 372 in 2014. Maoists attribute 116 civilian deaths to the Salwa Judum between 2005-2006. The Government claims that between 2004-2010, Naxalites carried out 2298 attacks in Chhattisgarh alone, with 76 security personnel dying in one incident. Violence

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89 Harriss.
92 Harriss.
93 Sundar.
94 Sundar.
95 Aman Sethi, Green Hunt: the anatomy of an operation, The Hindu (Feb. 6, 2010), (“Sethi”).
96 Ibid.
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,\textsuperscript{104} in their treatment of persons in the power of the adversary, civilians and persons hors de combat.\textsuperscript{105} For instance, the codes of conduct of the Chinese People’s Liberation Army (‘CPLA’),\textsuperscript{106} the Revolutionary United Front (‘RUF’) of Sierra Leone,\textsuperscript{107} the National Democratic Front of the Philippines (‘NDFP’),\textsuperscript{108} and the National Resistance Army (‘NRA’) of Uganda,\textsuperscript{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).\textsuperscript{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.\textsuperscript{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”.\textsuperscript{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”.\textsuperscript{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

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\textsuperscript{104} See Nicaragua, ¶¶ 218-20; Tadiæ Interlocutory, ¶ 98; Customary International Humanitarian Law (“CIHL”), Rule 87.\textsuperscript{105}
\textsuperscript{106} Common Article 3(1), Geneva Conventions; Additional Protocol II, Part II.\textsuperscript{107}
\textsuperscript{108} Mao Zedong, Eight Points for Attention, in IV Selected Works of Mao Tse-Tung 155 (1969).\textsuperscript{109}
\textsuperscript{109} Reproduced in Sesay, Kallon, ¶ 705.
\textsuperscript{110} 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).\textsuperscript{111}
\textsuperscript{112} The National Resistance Army Code of Conduct, reprinted in OO Amaza, Museveni’s Long March from Guerrilla to Statesman 246 (1998).\textsuperscript{113}
\textsuperscript{113} 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.\textsuperscript{114}
\textsuperscript{114} Nandini Sundar, The Burning Forest: India’s War in Bastar (2016).\textsuperscript{115}
\textsuperscript{115} Sesay, Kallon, ¶¶ 550-601.
\textsuperscript{116} Prosecutor v. Fofana and Kondewa, SCSL-04-14-A, Judgement, ¶ 224 (Special Court for Sierra Leone, May 28, 2008) ("Fofana").
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not personally committed”. 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”.

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”. Therefore, civilians “enjoy general protection against the dangers arising from military operations”. 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”. 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”. 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. 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

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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).
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


Red Cross, and other intergovernmental as well as non-governmental bodies can help secure compliance.\textsuperscript{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.\textsuperscript{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.

\section*{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.
