



*Webster International Relations Review:  
The Graduate Student Working Paper Series*

*2017*

ISSN 2473-9502

<http://www.library.webster.edu/wirr/>

**The Islamic State's Progression to Statehood and the Strategic Advantage of Future  
Compliance with International Humanitarian Law**

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## **Abstract**

Over the past several decades, warfare has expanded from predominantly international armed conflicts to armed conflicts of a non-international character. According to Rochester, “elements of modern warfare pose special challenges for the UN Charter and other such governance regimes, which were premised on an interstate war paradigm and a post-World War II world that no longer exists” (2016:5). Today, the problem of non-compliance with international humanitarian law (IHL) by organized armed groups is especially notable as the most significant, and violent, organized armed group -- the Islamic State (IS) -- rises in power. With the ability to conduct complex operations and occupy vast amounts of land between Syria and Iraq, some academics have come to see IS as a pseudo-State. The question is, if IS comes to be seen as a State under international law, will this impact its compliance with IHL? This paper suggests that becoming a State might incentivize IS’s compliance with IHL in order for the group to legitimately maintain its Caliphate.

## **Keywords**

The Islamic State, statehood, organized armed groups, compliance, international humanitarian law, conflict

## Introduction

In the contemporary international system, warfare has expanded from kinetic violence between States to the use of both kinetic and cyber violence between States and non-State actors and between non-State actors. Despite the proliferation of weapons in the cyber battlefield, the world continues to be characterized by recurring non-international armed conflicts (NIACs) -- wrought by kinetic violence -- in which a State's military forces engage organized armed groups and organized armed groups themselves contend with each other for resources and political objectives. In *The New Warfare: Rethinking Rules for an Unruly World*, Rochester notes that "elements of modern warfare pose special challenges for the UN Charter and other such governance regimes, which were premised on an interstate war paradigm and a post-World War II world that no longer exists" (2016:5). Organized armed groups in today's NIACs tend to neglect their specific obligations outlined in the 1949 Geneva Conventions' Common Article 3 and other treaty and custom-based international humanitarian law (IHL) obligations.

The emergence of organized armed groups on the traditional battlefield poses special problems for compliance with IHL. In "The Applicability of International Humanitarian Law to Organized Armed Groups," Kleffner explains that "organized armed groups (just as states parties to an armed conflict) are identifiable entities. They possess an organized military force and an authority responsible for its members' acts," and much like States, "they have political objectives (broadly conceived) that they pursue through violent means" (2011:450). This is not to say that States always comply with IHL: indeed, State actors have their own motivations for their violations. It has been observed that mass killings of civilians during contemporary armed conflicts are not merely "coincidental" or "collateral" of military objectives. As Valentino, Huth, and Balch-Lindsay explain, mass killings by States amount to a "calculated military strategy designed to combat powerful guerrilla insurgencies" (2004:376).

The extent to which States and organized armed groups comply with IHL differs. States have a number of incentives to comply, such as maintaining legitimacy and economic relations. However, as Bellal and Casey-Maslen assert, "many difficulties remain in seeking to ensure compliance with international norms by [organized armed groups]. The reasons for lack of compliance are diverse: strategic arguments (the nature of warfare in internal armed conflicts that may lead to the use of tactics that violate international law, such as launching attacks from within the civilian population); lack of knowledge of applicable norms; and lack of ownership" (2011:177). Thus, one can surmise that organized armed groups strategically benefit from continued non-compliance with IHL in asymmetric armed conflicts. This point is especially salient when looking at the actions of the Islamic State (IS) in maintaining its Caliphate, an entity governed in accordance with Islamic law, or *Sharia*.

IS is one of the most significant, and violent, organized armed groups today. As the United Nations Security Council determined in Resolution 2249 (2015):

[IS's] violent extremist ideology, its terrorist acts, its continued gross systematic and widespread attacks directed against civilians, abuses of human rights and violations of international humanitarian law, including those driven on religious or ethnic ground[s], its eradication of cultural heritage and trafficking of cultural

property, but also its control over significant parts and natural resources across Iraq and Syria and its recruitment and training of foreign terrorist fighters...constitutes a global and unprecedented threat to international peace and security (SC Res. 2249:pmb1).

It seems that IS's violations of IHL have further strengthened its Caliphate in terms of its ability to use force in order to permanently hold territory, a factor that increasingly points to the existence of a State under the declaratory theory of statehood. Cronin explains that "[IS] boasts some 30,000 fighters, holds territory in both Iraq and Syria, maintains extensive military capabilities, controls lines of communication, commands infrastructure, funds itself, and engages in sophisticated military operations. If anything, it is a pseudo-State led by a conventional army" (2015:87). With these State-like capabilities in mind, if IS were to achieve statehood for its Caliphate under international law, how might this impact its compliance with IHL?

This paper argues that understanding IS as a State as opposed to (solely) an organized armed group might incentivize the group's compliance with IHL because the group would seek to legitimately maintain its Caliphate. The argument proceeds in three sections. First, it examines the declaratory theory's criteria for statehood under international law and observes IS's progression in this process. This first section also looks at the constitutive theory and demonstrates how IS faces problems in achieving recognition. The second section observes IS's current actions and offers important insights on the differences in compliance between organized armed groups and States with IHL. The final section of this paper discusses the possible future of IS and its designation as a State, as well as why such a designation might increase its compliance with IHL by using an idealist perspective combined with the rational actor model and game theory. Conceptualizing IS as the government of a State rather than as an organized armed group, through either the declaratory theory or constitutive theory, could be an important step in ensuring the group's compliance with IHL. The international community -- and presumably also civilians living in territories occupied by IS -- would greatly benefit from this.

## **Literature Review**

This literature review comprises four parts. First, it delves into realism and idealism (globalism/liberalism) and demonstrates how they function in understanding the actors and interactions of the international system. Secondly, this literature review explores the process of State creation under international law. The third part examines IHL and the obligations of organized armed groups under this body of law. Finally, this literature review looks at various factors that motivate organized armed groups to violate IHL. In conjunction with the motivating factors, game theory is examined to explain the extent to which States and organized armed groups comply with their obligations.

Before the literature review commences, it is important to note that there are few substantial sources related to organized armed groups and the achievement of statehood, as well as the possibility that this would increase compliance with IHL. Thus, this research draws upon relevant international relations theories, which help support the premise that the achievement of IS's Statehood may lead to an increase in its compliance with IHL. This literature review provides the nexus between the main perspectives and theories of the paper and allows for

greater analysis of IS's current actions in order to estimate its next steps as a notable international actor within a State-centric system.

There are four primary schools of international relations theory, with each providing a basic framework about how individuals, groups, and States make decisions and interact within the global system: the realist, idealist, Marxist, and constructivist schools. As Rochester notes, “[a]ppplied to the study of world politics, these paradigms can help us tease meaningful patterns out of the welter of events, situations, trend, and circumstances that make up international affairs” (2012:18). The two paradigms most relevant to this study are realism and idealism. Realism is pertinent as “it is especially interested in conflict and war...realist scholars find it more important to study states than non-state actors. States command the greatest military and police forces to make war. Corporations, labor unions, and human rights groups do not, and if they do they are not recognized by domestic or international authorities as having the right to use such force” (Nau 2012:30-31). Idealism, as Nau mentions, “pays more attention to non-state actors than does the realist perspective. While the realist perspective anticipates conflict and [centers] on states, the liberal perspective [assumes] cooperation and focuses on non-state actors that trade and pursue common goals potentially benefitting everyone” (2012:39).

Realism, however, bases itself on understanding events and actions through reason, and it uses a prescribed logic to explain critical events. In *Theories of International Relations*, Holsti explains that, “although realists do not constitute a homogeneous school -- any more than do any of the others -- most of them share at least five core premises about international relations” (2004:14). First, the international system is anarchic in nature. Second, conflict is the natural state of affairs. Lebow states that “[o]rder advances the wealth, security, and prestige of the dominant power, but typically at the expense of the other great powers. Dominance is seldom absolute and war accordingly is possible” (2010:33). Third, States are the main actors and are rational decision-makers. The fourth premise suggests that national interests, usually defined in terms of survival, capabilities, security, and power, guide States. For Morgenthau, there is also the rational hypothesis according to which “states create rational foreign policy that minimizes risks and maximizes benefits” (1973:4). Fifth, the system grounds itself in self-help, meaning that States can only rely on themselves to ensure their security.

In the contemporary view of idealism, States continue to dominate, though idealists acknowledge other actors in the international system. The contemporary world order sees an increased presence of non-State actors -- international organizations (such as the United Nations), non-governmental organizations (such as the International Committee of the Red Cross (ICRC)), multinational corporations (such as Exxon), and organized armed groups (such as IS) -- and a greater appreciation for their progressively important roles in this system. Idealism emphasizes reciprocity and interdependence (as opposed to self-help) and independence as factors for cooperation. Nau asserts that “reciprocity determines State behavior as largely based on mutual exchanges that entail interdependent benefits or advantages” (2012:38), and interdependence refers to “the frequency and intensity with which states interact. Thus, how often states interact with and interdepend (i.e., mutually depend) on one another increases the opportunities for reciprocity and, hence, cooperation” (2012:38).

Unlike realists, who see States as rational actors, idealists look at the units -- the decision makers -- and conclude that they quite often make irrational choices when it comes to national policy. They may fail to make rational choices due to misperceptions of the strength of an adversary and under the eye of public opinion. Lyall and Wilson, III, argue that “these types of mistakes are generally due to the inhibition of information gathering capabilities of current force structures” (2009:71). As Lebow further explains in *Between War and Peace*:

Public opinion can compel policy-makers to pursue a course of action likely to provoke a confrontation with a third party. Strong public sentiment in the third party can in turn make such a confrontation [spinoff crisis] difficult to resolve (1981:49)...Brinkmanship crises [also] can be said to develop when a state knowingly challenges an important commitment of another state in the hope of compelling its adversary to back away from his commitment. The initiator’s expectation his adversary will back down rather than fight is the defining characteristic of brinkmanship crises. The initiator is not attempting to start a war, but rather aims to achieve specific political objectives by employing threats of force. Brinkmanship [therefore] succeeds only if the initiator achieves his goals without provoking war. (1981:57-58). For this reason, [it] has been analogized to the game of chicken (1981:58).

Thus, one cannot assume an international actor’s rationality or lack thereof without considering all of its parts (such as policymakers and population) and respective interests. This is an important insight for the reader to note as the argument regarding IS’s designation and differentiation in levels of compliance unfolds.

The process of statehood looks at two dominant theories. The first major section of this paper uses both the declaratory and constitutive theories to determine IS’s achievements with respect to the State creation process. Article 1 of the 1933 Montevideo Convention on the Rights and Duties of States outlines the criteria for the declaratory theory: “a permanent population; a defined territory; government; and the capacity to enter into relations with other states.” Article 3 goes on to note that a State’s existence as such operates independently of recognition. As Worster asserts:

The declaratory theory looks at the purported state’s assertion of its sovereignty within the territory it exclusively controls to determine if it can accept the international plane...recognition should be [therefore] automatic because the status of statehood is based on fact, not individual State discretion (2009:119).

The declaratory and constitutive theories are inherently at odds with each other. This is because the constitutive theory underlines the need for recognition by the international community as the criterion for statehood. And, as Worster notes, “States do not acquire international rights on the international plane until they are recognized...recognition is not automatic, rather it is based on the discretion of other States” (2009:119-20). When an entity does not change the status quo in order to achieve statehood, understanding and recognition are easier to achieve because the security of the major players within the international community is not negatively affected by the entity’s new status. As Wilde, Cannon, and Wilmshurst note:

A State can take a position which challenges the existing order, such as recognizing a new State -- Kosovo in 2008 to constitute a State comprising territory formerly part of Serbia -- or take a position which rejects a claim itself challenging the status quo (2010:2).

Therefore, if an entity seeks recognition from the international community but doing so would change the status quo, gaining recognition becomes much more difficult. However, despite these difficulties in achieving recognition, Crawford asserts the need for recognition. He states that, “in every legal system, some organ must determine with some certainty the subjects of the system. In the present international system, that can only be done by States acting individually or collectively...their determinations must have a definitive legal effect” (2007:20). Simply put, State recognition is an important factor in considering the legitimacy of a new State and whether it juridically exists as such.

There are a number of important criticisms of the constitutive theory. First, there is no explanation of what type of recognition is needed or the degree to which it is given. Secondly, as Worster asserts in “Law, Politics, and the Conception of the State in State Recognition Theory,” “[t]here is no evidence to suggest that states regard unrecognized states as *terra nullius*. Thus, there must be some international legal personality in the territory concerned that does not lapse or predate statehood” (2009:120). Finally, it is not considered the predominant theory among the two, and it inherently contradicts the declaratory theory, because as explained in *International Law* by Shaw, “it should not be assumed that non-recognition of, for example, a state will deprive that entity of rights and duties before international law. In general, the political existence of a state is independent of recognition by other states” (2008:471).

In *Recognition in International Law*, Lauterpacht seeks to reconcile the declaratory and constitutive theories, noting that “recognition is a momentous, decisive, and indispensable function of ascertaining and declaring the existence of the requisite elements of statehood with a constitutive effect for the commencement of international rights and duties of the entities in question” (1947:51). Simply put, Lauterpacht attempts to synthesize both sets of criteria by attaching recognition as a duty to alleviate cases of denial of reality. This means that even when a prospective State may have achieved the necessary criteria according to the declaratory theory, ascribing recognition as an essential criterion will allow for the taking into account of opinions of existing States when deliberating about the status and rights of the prospective State. Lauterpacht’s synthesis becomes essential when examining IS’s progression to statehood and when differentiating between the extent to which organized armed groups and States comply with IHL.

According to the ICRC’s webpage “War and Law,” IHL regulates armed conflicts, whether of an international or non-international character, and situations of occupation, “seeking to limit the effects of armed conflict. It protects people who are not or are no longer participating in hostilities and restricts the means and methods of warfare” (2016). According to the International Law Association, “at least two characteristics are found with respect to all armed conflict: 1.) the existence of armed groups 2.) engaged in fighting of some intensity” (2010:2).

The Geneva Conventions' Common Article 2 gives a clear idea of the types of obligations that States are bound to follow in international armed conflicts (IACs). The article states:

[It] shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Bellal and Casey-Maslen further clarify that “situations of occupation, i.e. when a territory ‘is actually placed under the authority of the hostile army’ (1907: art.42), are also qualified as international armed conflicts with specific regulations of the occupier’s action” (2011:180). Armed conflicts involving national liberation movements, a type of non-State actors defined in article 1(4) of Additional Protocol I (API) (1977), are also regulated as IACs.

While IHL binds States involved in IACs, Sassòli notes in “Taking Armed Groups Seriously: Ways to Improve Their Compliance with International Humanitarian Law” that “most contemporary armed conflicts are not of an international character” (2010:1). Common Article 3 to the Geneva Conventions and Additional Protocol II (APII) (1977), for those NIACs that meet the standard set forth in article 1(1) of APII, and corresponding aspects of customary IHL regulate NIACs. Common Article 3 states:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: 1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: 2) The wounded and sick shall be collected and cared for...

Despite not being High Contracting Parties to the Geneva Conventions, organized armed groups are bound by Common Article 3, which means that they are prohibited from actions such as torture, murder, taking hostages, humiliating treatment, and carrying out executions without proper judgment.

APs I and II apply to distinct types of armed conflicts. API “include[s] armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination” (API 1977:art. 1(4)). APII, on the other hand, has various obligations pertaining to specific types of NIACs. This protocol applies to:

All armed conflicts which are not covered by Article 1 of [API] and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible

command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol (APII 1977:art. 1(1)).

This means that organized armed groups are bound by the 28 provisions of AP II by virtue of operating in States Parties to APII, which includes the prohibition of the destruction of cultural heritage sites and places of worship (art. 16) and the forced movement of citizens (art. 18). Such organized armed groups are also bound by customary IHL, including the principle of distinction between combatants and civilians.

Today, it is generally accepted that IHL binds organized armed groups, “that is, those armed groups that are sufficiently organized to render them parties to an armed conflict” (Kleffner:444). As Sassòli notes in “Introducing a Sliding-Scale of Obligations to Address the Fundamental Inequality Between Armed Groups and States?”:

Certainly common Article 3 to the Geneva Conventions explicitly prescribes that “each Party” to such a conflict has to respect its provisions. Protocol II is deliberately silent on the issue. The extensive corpus of customary rules found by the International Committee of the Red Cross Study on Customary International Humanitarian Law, to apply to NIACs is exclusively based upon state practice. In addition, humanitarian players in the field report that, even with some well-organized armed groups that control territory, it may be possible to have a dialogue about humanitarian problems or access to war victims, but not about the respect of substantive legal rules by those groups (2011:427-28).

Thus, treaties and customary IHL make clear that specific provisions apply to certain parties to a NIAC, but despite being bound by various obligations under these sources of law, organized armed groups seem to have various motivations to avoid complying with IHL.

Kleffner posits a number of explanations for why organized armed groups are bound by IHL treaties and custom. The first states that IHL applies to organized armed groups because they reside within the territory of High Contracting Parties. He further explicates that “[this] entails the right of the State to impose upon them obligations that originate in international law even if those individuals take up arms to fight that State or other organized armed groups within it” (2011:445). Second, Kleffner notes the binding force via the individual. What this means is that despite being a group, violations of IHL by an individual are attributable to the individual’s organized armed group. Third, he states that much like with other bodies of international law “such duties apply to all individuals whether they possess the formal status of combatants in international armed conflicts...whether they are members of armed forces in a non-international armed conflict, or whether they are civilians” (2011:449-50). Organized armed groups are also bound by the exercise of *de facto* government functions. This means that if an organized armed group is in a position of authority, whereby it can exercise effective sovereignty, it is bound by its claim over the State or part of the State. Finally, Kleffner suggests that “organized armed groups are bound by customary IHL by virtue of their international legal personality” (2011:454).

Again, it should be stressed that organized armed groups are not the only international actors that violate international humanitarian law, as States have similar motivating factors for violating this body of law. States, however, tend to comply with IHL to a greater extent than organized armed groups. One factor that Bellal and Casey-Maslen note in this respect is that “organized armed groups often reject the legitimacy of laws they had no role in creating” (2011:191).

Sassòli “argues that armed groups should be allowed to accept IHL formally, to create -- amongst other things -- a certain sense of ownership...[they] should be allowed and encouraged to report on their implementation of IHL to an existing or already created institution” (2010:1). Other factors to consider include: ignorance of IHL obligations, the asymmetry of conflicts, self-interest, and other non-legal factors. This paper suggests that IS’s self-interest, properly leveraged, can stimulate greater levels of compliance with IHL.

Game theory models such as the Prisoner’s Dilemma and Stag Hunt help explain the incentives behind compliance with IHL. Traditionally, these are single-game scenarios in which players choose to cooperate (C) or defect (D) to receive rewards or penalties based upon their actions. In “Active Player Modeling in the Iterated Prisoner’s Dilemma,” Hyunsoo and Kyung-Joong note that, “in the original prisoner’s dilemma, two players choose to cooperate (C) or to defect (D) and receive a reward or penalty based on their choice. If two players co-operate [CC], each gets an intermediate reward. However if one defects when the other cooperates [DC,CD], the defector gets a maximum reward and the cooperator gets nothing. If all players defect to avoid punishment [DD], the two players get a minimum reward” (2016:2). According to Oye, “under single-play conditions, adherence to agreements is often irrational, and in the absence of continuing interaction, defection would emerge as the dominant strategy” (1996:87-88). However, he explains that “[u]nder iterated Prisoners’ Dilemma, a potential defector compares the immediate gain from squealing with the possible sacrifice of future gains that may result from squealing...A reputation for reliability, for resisting temptation, reduces the likelihood for defection. [Thus], if the [actors] are a permanent group and expect to [interact] again, the immediate gains from unilateral defection relative to unrequited cooperation must be balanced against the cost of diminished cooperation in the future. [Thus] defection in the present decreases the likelihood of cooperation in the future [and] iteration improves the prospects of cooperation” (1996:88). Therefore, game theory can be applied in order to ascertain the likelihood of compliance with IHL by States and organized armed groups. This is because in the international system, States typically operate in an iterated-play scenario, with repeated interactions in which reciprocity and interdependence produce higher rates of compliance with IHL. Organized armed groups, on the other hand, predominantly operate in single-game scenarios, where defection is strategically advantageous in order to secure their self-interest.

## **Methodology**

This paper argues that advancing the idea of IS as the government of a State and not simply as an organized armed group might incentivize IS’s compliance with IHL in order for the group to legitimately maintain its Caliphate. Using both primary sources (international law (treaties and custom) and a speech by IS leader Abu Bakr al-Baghdadi) and secondary sources (international relations theory, legal opinions, academic journals, academic lectures, relevant books, and news articles), this paper proceeds on the basis of a qualitative analysis. It uses a

predominantly realist perspective and a form of the rational actor model that deemphasizes State-centricity. This paper applies this model to IS as a single case study in order to explain how advancing its designation as the government of a State might enhance its compliance with IHL.

In *Politics Among Nations: The Struggle for Power and Peace*, renowned international relations theorist Morgenthau explains realism as follows:

Realism consists in ascertaining facts and giving them meaning through reason. It assumes that the character of a foreign policy can be ascertained only through the examination of the political acts performed and of the foreseeable consequences of these acts. Thus we can find out what statesmen have actually done, and from the foreseeable consequences of their acts we can surmise what their objectives might have been (1973:4).

Thus, one can surmise rationality based on decisions that align with the goals of a State -- the essence of the rational actor model.

The rational actor model helps explain why States and other international actors decide to comply with or renege on agreements and obligations. Holsti argues that the “[prevalent] assumption is that states are guided by the logic of the ‘national interest,’ usually defined in terms of survival, security, power, and relative capabilities” (2004:5). With regard to IS and its interests, Lister notes that, “over the years, members of IS and its various predecessor organizations have frequently been heard proclaiming *baqira wa tatamadad*, or ‘lasting and expanding’. This slogan concisely sums up the fundamental *modus operandi* of the IS organization” (2015:5). A speech by al-Baghdadi confirms Lister’s explanation. In his 2014 speech, al-Baghdadi states:

After long years of Jihad and perseverance, they [the mujahideen] have accomplished their goal. They hastened the establishment of their Caliphate and the appointment of an imam...I was put to the test by this heavy responsibility...I have been appointed as your wali...[But] we will not reach our goals unless the law of Allah is instated and observed and unless Islamic punishments are implemented (al-Baghdadi 2014).

Despite the condemnation that it receives, IS’s actions are indeed rational. As Slantchev, a professor of political science, explains, “rationality does not carry any connotations of normative behavior. That is, behaving rationally does not mean that one behaves morally or ethically. Hence, one can argue that Hitler was rational...similarly one can argue that suicide terrorists are rational even though we cannot relate to their choices” (2005:1-2). Simply put, in order for rationality to be established, there needs to be a positive correlation between the actions and goals of an actor. The problem is that the interactions and decision-making processes of rational actors -- from a realist perspective -- are generally State-centric. As Slantchev argues, “[i]n international relations, even though nation-States are still the dominant way the international system is organized, many other entities actively participate in that interaction” (2005:4). Thus, in order to understand the rationality of organized armed groups and their varying degrees of compliance with IHL, this paper deviates from a rigidly State-centric point of view.

The rational actor model that this paper adopts takes a slight shift away from realism. This research adopts an idealist (globalist/liberalist) paradigm that temporarily disassociates from a State-centric viewpoint and includes other types of international actors, such as organized armed groups. This is because, as Beck, Arend, and Vander Lagt explain, “within international relations...many classical realists, structural realists (or ‘neorealist’) and institutionalists...[and other such paradigms] share certain prominent epistemological and methodological affinities” (1996:4). While several factors divide these perspectives, they share similarities that allow for instances of interconnection. For example, much like realism, liberalism sees States as the main actors. However, as Moravcsik asserts, “the third assumption of liberalism [assumes] that the behavior of states -- and hence levels of international conflict and cooperation -- reflect the nature and configuration of state preferences” (1992:10). Holsti expands upon the idealist (globalist/liberalist) viewpoint as follows:

It is important to stress that the potential for action arises from self-interests, not from some utopian attribution of altruism to state leaders...Paralleling the widening agenda of critical issues is the expansion of actors whose behavior can have a significant impact beyond national boundaries; indeed the cumulative effects of their actions can have profound consequences for the international system. Thus, although states continue to be the most important international actors, they possess a decreasing ability to control their own destinies. The aggregate effect of actions by multitudes of non-state actors has potent effects that transcend political boundaries. These may include Exxon, the Palestinian Liberation Organization, and even shadowy ones such as al-Qaeda (2004:12-13).

With the understanding that non-State actors can profoundly affect the international system, the rational actor model that this paper adopts accounts for the role of non-State actors. For this reason, this research uses a slightly idealist perspective for the application of the rational actor model that includes international actors -- organized armed groups in particular -- in order to briefly move away from State-centricity without corrupting the essence of the model. This allows the author to further explore the organized armed group IS as a rational actor. And, as a rational actor, it can be reasonably assumed that IS might seek statehood in order to fulfill its core interest of maintaining its Caliphate.

In *Interpretive Guidance on the Notion of Direct Participation in Hostilities (Interpretive Guidance)*, ICRC legal advisor Melzer defines an organized armed group as one that “belong[s] to a non-State party to an armed conflict [and] include[s] both dissident armed forces and other organized armed groups. Dissident armed forces essentially constitute part of a State’s armed forces that have turned against the government. Organized armed groups recruit their members primarily from the civilian population but develop a sufficient degree of military organization to conduct hostilities on behalf of a party to the conflict, albeit not always with the same means, intensity and level of sophistication as State armed forces” (2009:31-32). The International Criminal Tribunal for the Former Yugoslavia, in its 2008 *Prosecutor v. Boskoski and Tarculovski* decision, assessed the degree of organization for organized armed groups using a variety of factors (2008:89-92). While these factors, like the concept of recognition in the constitutive theory, open themselves to individual interpretation, this paper looks to both

academic and legal authorities for confirmation that IS is indeed an organized armed group and is thus bound by IHL.

### **Forging an Islamic State: Observations and Assumptions**

Using the inclusive rational actor model presented in the methodology section of this paper, which necessitates correlation between actions and goals, this section posits that IS will eventually seek statehood. To reiterate, the idealist rational actor model mixes realism's State-centric rational actor model and an idealist perspective that includes non-State actors. This qualitative analysis is most interested in examining organized armed groups, in particular IS and its observable progression to statehood. IS's rationality can be ascertained by examining its actions and interest in pursuing an "expanding and lasting" Caliphate.

That IS might seek statehood presumes its rationality. As Slantchev argues, "determining an entity's rationality requires determining correlation between its primary goals and actions" (2015:4). In a speech on October 13, 2014, al-Baghdadi asserted that, "after long years of jihad and perseverance fighting the enemies of Allah, Allah has enabled them [the mujahideen] to accomplish their goal. Thus, they hastened to declare the establishment of its Caliphate and the appointment of an imam." He went on to say that "I was put to the test by this heavy responsibility with which I was entrusted...I have been appointed your wali [the governor of the State]" (al-Baghdadi October 13, 2014). Thus, jihad's goal has been to establish a Caliphate and appoint an imam (a ruler or teacher of Islamic law), and in this, IS has succeeded. Maintaining its Caliphate, however, "[requires] that the law of Allah is instated and observed, and Islamic punishments are implemented...this will be done through power and might" (al-Baghdadi, October 13, 2014).

Al-Baghdadi has argued that "the Caliphate can only be preserved through the installation and implementation of Sharia law and punishments, as well as regular demonstrations of IS's power, such as military operations and occupying territory, gathering supporters, and fighting IS', both in the Caliphate and in the West" (October 13, 2014). *Rumiyah*, IS's magazine, makes clear that Muslims must attack: "imams of kufr (Islamic leaders in denial of the Truth), murtadd imams (the turncoats of Islam), and those Muslims not performing their duty to the Caliphate" (2016:3-4). Regarding the successes of its operations, the magazine states:

As the soldiers of the khalifa continue waging war on the forces of kufr, we take a glimpse at a number of recent operations conducted by the mujahidin of the Islamic State. [They] have succeeded in expanding the territory of the khalifa, or terrorizing, massacring, and humiliating the enemies of Allah. These operations are merely a selection of the numerous operations that the Islamic State has conducted on various fronts across many regions over the course of the last few weeks (2016:3).

*Rumiyah* goes on to detail IS's harvest from Duh'l-Hijjah 1436 to 1437 (September 2015 to September 2016), including "38 istishhadi -- [martyrdom] -- operations, [which used] 30 explosive belts, 8 rigged vehicles, and 40 explosive devices [resulting in] the deaths of more than 2,400 rafidah [those who reject the faith]" (2016:35). Since IS acts on behalf of its self-interest in

maintaining and expanding its Caliphate, one may conclude that the organized armed group is indeed a rational actor according to the modified rational actor model.

Rationality by itself does not achieve progress in the State creation process, but as the realist paradigm suggests, power and standing within the self-help system do. Why would IS eventually seek to have its Caliphate become a State? The answer is rather simple, given that the group's core interest is to maintain its Caliphate. In a modern international system that remains largely State-centric, non-State actors have a very limited capacity to pursue their self-interest, especially governance, by means of force or otherwise. As an organized armed group, before it declared the Caliphate, IS could focus on spreading its word through propaganda and by inciting fear in order to gain control over certain territories, but it could not do so on a grand scale. Once IS declared a Caliphate, however, it invoked a perception of power and permanence, as well as a drive towards expansion, governance, and recognition by the international community. This group did indeed become one of the most renowned and violent organized armed groups in modern history.

Thus far, IS has not sought statehood because its “ideology, its revolutionary intent toward the strategically important Middle East, and its embrace of transnational terrorism” (Blanchard and Humud 2016:1) are inherently at odds with the current international world order. The problem that IS faces is that its Caliphate will not be able to last in a State-based system without eventually achieving statehood for two main reasons. First, its Caliphate has a lot of enemies, and without achieving statehood for its Caliphate, it would have swords pointed at it from all sides. This implies that once IS achieves statehood that it might begin to form alliances, which would thereby increase its security. As a State, IS's Caliphate could seek alliances, and legitimacy, with a variety of States and have a number of rights that States enjoy. For example, Boyle explains that as of now the United States “can bomb IS militants without breaking one of the cardinal principles of international law, as outlined in the UN Charter: refraining against the use of force against the territorial integrity or political independence of any state” (January 5, 2015). Second, despite its current levels of power, IS would not be able to expand forever without limits and would face a fate similar to that of organized armed groups that have overstretched their spheres of influence, namely internal collapse.

Thus, achieving statehood would allow IS to secure its Caliphate from collapse. Its expansion would be limited, but it would be part of an integrated economic system, especially as the area it now controls gives it substantial revenue from oil production. Other States might want to keep IS from collapsing, since an IS collapse would damage the global economy because of disruption in the oil market. With this in mind, it seems plausible that in the future, IS will eventually seek status as a State in order to maintain its Caliphate.

IS has made substantial progress in the Montevideo Convention's requirement of a permanent population, defined territory, government, and the capacity to enter into relations with other States. For example, it has occupied territory over the last two years between Iraq and Syria (with a capital at Raqqa), but this hold on territory will not necessarily be permanent. According to a map released by the BBC in 2016 and sourced by HIS Conflict Monitor, in 2015 the territory IS controlled was 98,000 sq. km, but in 2016, its “area was reduced by about a quarter. By October 2016, the group controlled only 65,500 sq. km.” (Islamic State and the Crisis in Iraq and

Syria in Maps). According to this same source, “IS maintains a sizeable population, though this has declined over the past year as it has lost territory. At its peak its population reached 10 million people, but today that figure is closer to 6 million.”

The Caliphate’s government is composed of highly educated and experienced individuals. *Telegraph* reporter Al-Hashimi noted that “documents seized from a member of the Islamic State in a raid by the Iraqi military [in early 2014] revealed the leadership structure of this secretive organization” (July 9, 2014). The government comprises a leader, a cabinet of seven members whose jobs range from general management to manager of arriving foreign and Arab jihadists, one deputy who oversees five governors in charge of IS-held provinces that include Baghdad, Salaheddin, Kirkuk, and Anbar, and a war office comprising three members who coordinate the affairs of martyrs and women and manage military operations. Overall, IS’s form of government has a highly complex degree of organization and a bureaucratic hierarchy. Lister notes that, “since the initiation of international strikes in Iraq and Syria, the death of such individuals cannot be discounted. Moreover, the replacement of individuals is distinctly possible” (SC Res. 2015:75). What this means is that much like modern State systems, government officials in the Caliphate can be replaced if needed, which means taking out one or more persons in charge will not cripple IS permanently.

The last criterion of the declaratory theory calls for the capacity to enter into relations with other States. This requirement will be the most difficult for IS to achieve because it has been designated a terrorist organization. Resolution 2249, for example, “Determin[ed] to combat by all means this unprecedented threat [IS] to international peace and security [and] reaffirmed that Member States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, in particular international human rights, refugee and humanitarian law” (2015:pmb). In short, States currently cannot have legitimate relations with IS because it constitutes a global threat, and States must combat IS if they are able to do so. However, recognizing IS may help the group overcome its difficulties in entering into relations with other States.

The criterion of recognition under the constitutive theory is necessary for the achievement of statehood. According to Shaw, “for the constitutive theorist, the heart of the matter is that fundamentally an unrecognized ‘state’ can have no right for obligations in international law” (2008:446). The concept of recognition, however, is ambiguous, as it depends on the subjective perspective of other States and does not give a certain numerical amount or type of recognition necessary for this process. Shaw goes on to state that “the act of recognition by one state of another indicates that the former regards the latter as having conformed with the basic requirements of international law to the creation of a state. Of course, recognition is highly political and is given in a number of cases for purely political reasons” (2008:446).

On an international scale, IS has thus far only succeeded in gaining implicit recognition in two ways. First, using its formal title of the Islamic *State*, within the media, conversation, or law-making processes gives the group recognition on a subconscious level. It makes States and their citizens uncertain of this organized armed group’s capabilities and gives the group a perception of power. Second, with the adoption of Resolution 2249 and the recognition of IS as a global threat, the international community implicitly recognizes that IS has military and

organization capabilities that put it on par with a State's illegal use of force. Thus, as this section demonstrates, IS has progressed in a majority of the necessary criteria for statehood under international law. For the near future, however, it seems that its lack of achievement in other requirements may inhibit its ability to become an explicitly recognized State.

### **Organized Armed Groups: The Islamic State and Its Compliance with International Humanitarian Law**

The previous section posited IS's rationality as an actor and noted the progress of its Caliphate along the continuum to statehood. As a rational actor, IS has a self-interest in stabilizing its Caliphate, and this will eventually lead it to seek statehood in the international system. To benefit from the rights that come with statehood, IS will also have to comply with the obligations of States, and it is on this basis that one can surmise that this will incentivize IS's compliance with IHL.

This section delves into specific aspects of IHL, such as the important difference between war crimes and the lawful conduct of hostilities. It then sets out to measure compliance with IHL and reexamines the binding measures in place for organized armed groups. Finally, this section examines IS's compliance with IHL within the context of its current status as an organized armed group. Overall, this will help when comparing IS's current compliance with IHL and pondering how its compliance might be predicted to increase if its Caliphate were to be considered a State.

As previously stated, in the modern State system, NIACs dominate contemporary armed conflicts, with IACs being less common. Dinstein states that "the carnage and devastation they [i.e., NIACs] leave behind are liable to be calamitous" (2014:2). In regard to IHL, it is important to differentiate between war crimes and the lawful conduct of hostilities. Dinstein lays out a basic difference between the two concepts as follows:

Hostilities consist of violent measures -- its preparation, planning and execution at all levels -- and non-violent operations such as gathering information, logistics, and communications. Conducted in conformity with the prescripts of LONIAC, even if their consequences are lethal (to persons) or destructive (to property) are not deemed criminal under IHL" (2014:11).

What this means is that if an organized armed group kills civilians taking a direct part in hostilities, members of other organized armed groups, or military personnel that this would not be considered murder.

According to the *Interpretive Guidance*, "all persons who are not members of State armed forces or organized armed groups of a party to the conflict are civilians and, therefore, entitled to protection against direct attack unless and for such time as they take a direct part in hostilities" (Melzer 2009:27). To take a direct part in hostilities, there are three requirements:

1. The act must be likely to adversely affect the military operations or military capacity of a party to an armed conflict or, alternatively, to inflict death, injury, or destruction on persons or objects protected against direct attack (threshold of

harm), and 2. there must be a direct causal link between the act and the harm likely to result either from that act, or from a coordinated military operation of which that act constitutes an integral part (direct causation), and 3. the act must be specifically designed to directly cause the required threshold of harm in support of a party to the conflict and to the detriment of another (belligerent nexus) (Melzer 2009:46).

Thus, if an individual partakes in actions that meet these three requirements, he or she could be targeted in an armed conflict (a NIAC as well as an IAC). It would not be considered a violation of IHL if he or she were to face injury or lethal force as a result.

War crimes, on the other hand, as Dinstein explains, “are serious violations of LONIAC for which there is individual responsibility. They are committed in a manner linearly connected to NIAC...it relates to the willing killing of victims who are taking no active part in hostilities” (2014:25). According to article 8(2) of the 1998 Rome Statute of the International Criminal Court, war crimes include “murder, rape, torture, mutilation, sexual slavery, enlisting children, and employing prohibited gases, liquids, materials or devices.” However, Dinstein further asserts that “it is easier to distinguish between conduct in an official capacity -- which is attributable to the state -- and exertions that are merely private. When it comes to insurgents, these borderlines become blurred” (2014:15). Put differently, presumptions of illegitimacy can color assessments of an organized armed group’s military operations and lead to kneejerk international condemnation without serious consideration of IHL on the facts.

This paper measures compliance by looking at an international actor’s adherence to IHL. In *New Battlefields Old Laws: Critical Debates on Asymmetric Warfare*, Banks explains that “[these] agreed upon rules humanize war by setting criteria and limits on such issues as who and what may be targeted, how targeting may be executed, the weapons that may be used, how prisoners of war and other detainees must be treated, and the rights and obligations of occupying forces” (2011:5). Thus, ensuring compliance with IHL by all parties to an armed conflict, whether a NIAC or an IAC, is necessary to reduce the costs of war in terms of suffering -- faced by combatants and civilians alike -- and casualties both on and off the battlefield.

Various factors affect an organized armed group’s compliance with IHL. Bellal and Casey-Maslen (2011:194) suggest that self-interest is a key factor. Secondary factors include: “non-legal factors such as public opinion, ethics, religion, and reciprocity” (Sassòli 2010:1); “ignorance of IHL and binding obligations” (Mack 2008:12); and “a lack of ownership in the law-making process and strategic incentives during the NIAC” (Bellal and Casey-Maslen 2011:191-92). Appreciation of these factors allows one to better understand that which incentivizes a particular organized armed group to comply with IHL.

Turning to IS’s Caliphate, it should be noted that the organized armed group wields a complex and hierarchical degree of organization, where those in power govern a large, 65,500 sq. km territory with a population of almost 6 million. To summarize the thoughts of Cronin in “ISIS is Not a Terrorist Group,” “this degree of organization, military prowess, and control of the group has lent itself the consideration of recognition as a pseudo-state” (2015:1). According to al-Baghdadi, “IS’s interest is to maintain the Caliphate under Sharia law” (al-Baghdadi 2014). Its secondary interests include “expansion, the targeting of the West, and the punishment of imams

of kufr” (Rumiyah 2016). Unfortunately, many of its interests have led to continuous violations of IHL, and such violations may be strategically advantageous to IS’s self-interest, which accounts for its non-compliance.

As an organized armed group, IS has many enemies surrounding its territory. Because of this, this has often led IS to use lethal force when conducting its operations. As noted, however, the act of killing another human being in times of armed conflict is not considered murder unless the persons killed are civilians or *hors de combat*, and therefore not directly participating in hostilities. The problem is that IS has repeatedly used torture and execution without due process and willfully murdered civilians in order to further its interests. *Rumiyah* notes that “2,400 people were killed in planned attacks from 2015 to 2016” (2016:35). Other sources, such as the Clarion Project, a non-profit organization dedicated to teaching and analyzing the dangers of Islamic extremism, demonstrate that IS’s violations of IHL have a direct strategic advantage to achieving its interests. The Clarion Project asserts in its *Special Report: The Islamic State*:

By showing extreme violence to their enemies they utilize the propaganda value of fear. This tactic is included in their propaganda arm. The Islamic State is well known for releasing extremely gruesome videos of it carrying out mass and individual killings, such as those of American journalists James Foley and Stephen Sotloff and British aid worker David Haines...This tactic is replicated in their online strategy, tweeting out messages across several different platforms to ensure maximum visibility and utilizing social media effectively, such as the use of the hashtag #AllEyesOnISIS immediately following the capture of Mosul by the Islamic State’s forces (2015:12).

Thus, violating IHL has benefited IS in two ways. First, publicizing mass killings, torture, and fear tactics over different modes of media has ensured its recognition internationally and helped increase IS’s following. IS operates using a numbers game. Friedland reports that “through its propaganda and methodology, IS is able to motivate terrorist attacks remotely without any contact with the terrorist at all beyond exposure to their narrative...an idealized and romanticized version of the Caliphate as a pure Islamic state” (November 30, 2016). Second, IS keeps its enemies wary of attacks, which creates a psychological advantage for the group.

IS’s ability to conduct operations at both the regional and international level and its asymmetric advantage of non-compliance have helped the group gain notoriety. While good for gathering support, it has also made IS a large target in the international system. Such a position will eventually make IS seek statehood -- for protection of its Caliphate -- and as a result increase the incentive for it to comply with IHL.

### **The Islamic State: State Designation, Interests, and Increased Compliance with International Humanitarian Law**

The second major section of this paper looked at the distinction between war crimes and the lawful conduct of hostilities, the obligations of organized armed groups, reasons as to why these international actors fail to comply with such provisions, and the extent to which IS complies with IHL. Exploration of these themes allows one to ascertain whether particular actions comply with IHL and appreciate how NIACs blur the distinction between organized

armed group's acts as war crimes and legitimate acts of warfare. The last section delved further into reasons why compliance may not be in the interests of an actor -- meaning if compliance undermines the ability of an actor to pursue or achieve its self-interest, then complying with IHL would be irrational. IS's demonstrated non-compliance, in its routine acts of torture, kidnapping, and execution of non-combatants, indicates its rational decision-making processes.

This section briefly examines examples of IHL and its obligations, and how States are expected to comply with such obligations. It seeks to answer the question why States generally comply with IHL obligations and concludes that they have incentives to obey their obligations. Thus, with States' incentives for compliance outlined, this section speculates that if IS were to seek statehood for its Caliphate that it would be highly probable that IS would increase its compliance with IHL in order to maintain its Caliphate, its core interest.

According to the ICRC, "the majority of obligations under IHL are geared towards States and conflicts of an international character" (October 29, 2010). Such examples include the Geneva Conventions, AP I (which includes wars of national liberation), AP II (which applies to certain types of NIACs), Security Council Resolutions, and customary IHL (ICRC October 29, 2010). The ICRC follows that "the core of IHL is the Geneva Conventions" (October 29, 2010). According to Common Article 1 of the Geneva Conventions, "High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances." Common Article 2 goes on to say that the Geneva Conventions shall also apply to "all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance." And, as previously stated, Common Article 3 binds "all parties within the conflict, one not of an international character, regardless of whether the actors are High Parties to the Conflict." To reiterate, this means that Common Article 3 also binds non-State actors, including organized armed groups.

Generally, after outlining the actors that are bound by its texts, IHL turns to specific obligations. For example, the obligations of the Geneva Convention for the Amelioration of the Condition Wounded and Sick in Armed Forces in the Field (Geneva I) are located under the general provisions. These provisions include: the protection and care of the wounded and sick, the protection of medical units and establishments, and the repression of abuses and infractions. Thus, the outline of the law, be it treaty or custom, generally follows the following format: opening remarks and rules as to who the law binds, the type of armed conflict that the law pertains to, an articulation of legal obligations, and final remarks. Therefore, obligations that States are bound to comply with under IHL are usually easy to understand.

Despite the existence of IHL, violations occur. As Spoerri noted in the 2<sup>nd</sup> Universal Meeting of National Committees on International Humanitarian Law, "treaty law governing international armed conflicts is well developed, [but] treaty law governing internal armed conflicts is not. State practice has filled a large part of this gap and has created customary rules beyond those existing in treaty law" (2007:39). As Brooks (2015) asserts:

Wartime turns rules upside down. Actions that are considered both immoral and illegal in peacetime are permissible -- even praiseworthy -- in wartime...During war a combatant can lob a grenade into a building full of sleeping people so long

as he reasonably believes the sleeping people to be enemy combatants. Even actions that he knows will cause civilian deaths are lawful when consistent with the principles of necessity, humanity, proportionality, and distinction.

Banks seems to share Brook's sentiments, stating that "one of the most troubling implications of modern asymmetric warfare is that a state's compliance with IHL may amount to an operational weakness in today's armed conflicts" (2011:1). Upon observation, States appear to share similar motives for violating IHL obligations as organized armed groups: self-interest and strategic advantage.

On a daily basis, despite the similarities in motivations for violating IHL obligations, States tend to comply more with IHL than breach it. What this means is that it is generally in a State's self-interest to comply with its obligations under IHL. One can deduce such logic when looking at game theory. However, when an entity knows there will likely be repetition between game play, the probability for cooperation increases. In his chapter "The Conditions for Cooperation in World Politics," Oye explains:

Under single play conditions without a sovereign, adherence to agreements is often irrational. In a single-play prisoner's dilemma, defection [breach] is the best option. If prisoners expect to face a similar situation in the future -- [iteration] -- empirical evidence shows the rates of cooperation increase substantially (1996:82-83).

Thus, by using game theory, one is able to effectively theorize that States might demonstrate higher rates of compliance with IHL compared to organized armed groups.

In practice, Oye notes that "States tend to comply with IHL at higher rates than organized armed groups, because of the beneficial long-term reciprocity by both allies and adversaries" (1996:88). Simply put, on a State level, compliance with IHL is necessary because of the probability of repeated interactions with other States. Thus, compliance is a strategic advantage both during and after armed conflicts. When considering the self-interest of States, compliance has the positive effect of garnering legitimacy, which in turn increases the ability to conduct international relations through alliances and future agreements. Incentivizing compliance with IHL in NIACs, on the other hand, is reduced significantly, because there is strategic advantage in non-compliance for both States and organized armed groups.

In "Rage Against the Machines: Explaining Outcomes in Counterinsurgency Wars," Lyall and Wilson, III, explain that:

Nineteenth-century militaries were organized around "foraging" principles in which soldiers extensively interacted with local populations to acquire supplies in the conflict zone. The collision of industrialization and World War I forged a new "modern" system of military organization, one premised on the substitution of machines to increase mobility and survivability on contemporary battlefields. Built for direct battle, mechanized forces struggle to solve the "identification problem" separating insurgents from noncombatants selectively -- because their structural designs inhibit information gathering among conflict-zone populations.

Faced with information starvation, mechanized forces often inadvertently fuel rather than suppress insurgencies (2009:68).

What this means is that despite the legitimacy that complying with IHL brings, sometimes compliance is not strategically viable -- especially when it comes to asymmetric conflicts where reciprocity is less likely. In NIACs, where asymmetric warfare prevails, advantage and self-interest explain the compliance rates of States and organized armed groups with IHL. Organized armed groups tend not to comply with IHL because their self-interest dictates that compliance could lead to their annihilation and undermine their primary desire to maintain and expand their influence and power. Thus, to organized armed groups, iteration is unlikely, and for the most part, they conduct operations in single-play scenarios.

When bringing game theory into the equation for rational decision making by IS, it is likely that if its Caliphate were to be considered and subsequently treated as a State, its compliance with IHL would increase. This is because, as an organized armed group, where single-play scenarios are the norm, high rates of compliance are strategically disadvantageous because this would decrease the chances that the group would survive. Thus, if IS's Caliphate were to progress towards State status, it would go from a single-play game to iterated games with multiple interactions with the international community. Simultaneously, this would decrease the necessity of non-compliance as a survival factor because entering into relations with States and being a part of law-making processes would increase its security significantly.

This paper concludes that advancing IS's designation from an organized armed group to the government of a State (the Caliphate) would increase the group's compliance with IHL. Increased compliance rates would benefit both the international community and civilians in IS-held territory. For the international community, the rules of IACs would be enforced, and distinction between combatants and civilians would be more prevalent. Thus, Lyall's and Wilson III's concern about information starvation due to high rates of mechanization would be less relevant because IS's military forces would be less likely to hide among citizens and avoid wearing distinctive emblems. The increased probability of distinction between IS armed forces and civilians would thus benefit civilians in IS-held territory because the civilians would be distinguished from military forces and be less likely to end up as collateral damage in military operations, a common occurrence in NIACs.

## **Conclusion**

This paper has advanced the argument that if IS's Caliphate were to become a State that this might lead to an increase in IS's compliance with IHL because the group would see this as indispensable to the maintenance of its Caliphate. The argument unfolded in three distinct parts. The first part established IS's rationality by demonstrating a positive correlation between its actions and its self-interest. Establishing rationality provided the explanation as to why IS might eventually seek statehood. The paper discussed the necessary requirements in order for an entity to become a State and showed IS's progression in these criteria thus far. Significant progress has been made, and for academics such as Cronin, IS is now "considered a pseudo-state" (2015:87).

The second part examined the motivations of organized armed groups. This was done in order to ascertain why, despite being bound by IHL, instances of non-compliance seem to be higher for organized armed groups than for States. The primary factor of self-interest and secondary factor of strategic advantage in asymmetric conflicts motivate these group's recurring violations of IHL. In particular, the author examined IS and its self-interest -- maintaining its Caliphate -- and its routine violations, such as torture and murder, as well as the ways in which it garners support for the Caliphate. Despite these morally deplorable actions, IS has acted rationally under the circumstances. As an organized armed group involved in an asymmetric conflict, to act otherwise would arguably lead to its annihilation, and therefore be irrational.

The paper finished its qualitative analysis with an examination of the extent to which States comply with IHL. It was noted that States tend to comply more with IHL than do organized armed groups because of the concept of reciprocity. This was established through game theory, in which single-game play is likely to end in defecting and where the likelihood of iterated game play leads to significantly increased levels of cooperation. Using game theory and applying it to the way organized armed groups and States comply with IHL led to the conclusion that organized armed groups conduct operations in predominantly single-play scenarios and are therefore likely to have decreased degrees of compliance with IHL. States, on the other hand, operate in an iterated game scenario, and compliance with IHL is essential for their long-term conduct of international relations.

The paper concludes that (as a State) the Caliphate and its government, IS, would increase compliance with IHL because IS would no longer operate in a single-game scenario in which defection would be the rational choice. Increased levels of compliance with IHL would benefit both the international system and civilians in IS-held territory. In the international system, it was determined that distinction between civilians and combatants would be clearer, as IS would have a military with a fixed emblem and symbols in order to differentiate combatants from civilians. Civilians, on the other hand, would reap the benefits of distinction and be less likely to be targeted or end up as collateral damage from proximity to belligerents.

While this paper has sought to increase understanding of the extent to which organized armed groups and States comply with IHL, it should be stressed that the rational actor model and the criteria of statehood should not be applied to every organized armed group. It needs to be noted that IS is a special case because of the progression it has made in the criteria of statehood and the amount of power it holds as an international actor. It would be beneficial -- if the time comes when the Caliphate becomes a State -- to accept this designation because of the long-term benefits that doing so would bring.

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