

ACADEMY IN-BRIEF No. 7

Human Rights Obligations of Armed Non-State Actors: An Exploration of the Practice of the UN Human Rights Council

**Geneva
December 2016**

**GENEVA
ACADEMY**

Académie de droit international
humanitaire et de droits humains
Academy of International
Humanitarian Law and Human Rights

The Academy, a joint centre of



—
INSTITUT DE HAUTES
ÉTUDES INTERNATIONALES
ET DU DÉVELOPPEMENT
GRADUATE INSTITUTE
OF INTERNATIONAL AND
DEVELOPMENT STUDIES



**UNIVERSITÉ
DE GENÈVE**

ISBN: 978-2-9701003-0-0

© Geneva Academy of International Humanitarian Law and Human Rights, December 2016.

Acknowledgements

This Academy In-Brief was researched and written by Dr Annyssa Bellal, Strategic Adviser on IHL and Research Fellow at the Geneva Academy of International Humanitarian Law and Human Rights (Geneva Academy), with the initial research support of Dr Sandra Krähenmann, Research Fellow at the Geneva Academy. The Geneva Academy would like to thank all those who commented on a draft of the text, in particular Professor Marco Sassòli, University of Geneva, Professor Lyal S. Sunga, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, Dr Katharine Fortin, University of Utrecht, Dr Daragh Murray, University of Essex, Jelena Pejic, ICRC, and Carolin Nehme, Geneva Call. The Geneva Academy would like to thank the Swiss Federal Department of Foreign Affairs (DFAE) for its support to the Academy's research on this issue. Editing, design, and layout by Plain Sense, Geneva.

Disclaimer

This Academy In-Brief is the work of the author. The views expressed in it do not necessarily reflect those of the project's supporters or of anyone who provided input to, or commented on, drafts. The designation of states or territories does not imply any judgement by the Geneva Academy or the DFAE regarding the legal status of such states or territories, or their authorities and institutions, or the delimitation of their boundaries, or the status of any states or territories that border them.

ACADEMY IN-BRIEF No. 7

**Human Rights
Obligations of Armed
Non-State Actors:
An Exploration of
the Practice of the
UN Human Rights
Council**

Contents

Introduction	3
1. ANSAs in HRC Resolutions	7
Types of Armed Non-State Actors	7
Use of the Terms ‘Abuse’ and ‘Violation’	9
2. The International Legal Framework	13
State Responsibility for Acts Committed by ANSAs	13
International Humanitarian Law	16
International Human Rights Law	18
Statements on the Applicability of Human Rights Obligations to ANSAs	21
Human Rights Obligations of De Facto Non-State Authorities	26
3. Conclusions and Recommendations	31
4. Suggested Analysis and Wording for Resolutions on ANSAs and Human Rights	35
Annex. HRC Resolutions on ANSAs 2008-2015	39
Bibliography and Further Reading	47

Introduction

The great majority of contemporary armed conflicts are fought between states and armed non-state actors (ANSAs) or between ANSAs.¹ Armed violence by ANSAs also poses a significant threat to human security outside situations of armed conflict.²

While it is well established that ANSAs are bound by the law of armed conflict, also known as ‘international humanitarian law’ (IHL), the extent to which these actors have obligations under human rights law (HRL) when they are a party to an armed conflict remains controversial. Even though the legal regime applicable to ANSAs is unclear, the United Nations has generally recognized the need to engage these actors on both IHL and HRL. For instance, in his report for the 2016 World Humanitarian Summit, the UN Secretary General emphasized that ‘at a time when most conflicts are non-international, it is critical for impartial humanitarian actors to engage in dialogue with States as well as non-State armed groups to enhance their acceptance, understanding and implementation of obligations under international humanitarian and human rights law’.³

Against this background, and in a manner resembling the practice of the UN Security Council,⁴ in country⁵ and thematic resolutions of the Human Rights Council (HRC) have increasingly reported on ANSA violations of international law.⁶ In some sessions, the HRC has adopted resolutions that directly address one or more ANSAs. For instance, resolution S-22/1 of September 2014 specifically addressed the organization known as ‘Islamic State’ and associated groups in Iraq, and in May 2015 resolution S-23/1 considered Boko Haram in ‘affected States’. Many of the special procedures set up by the HRC also cover

¹ According to *The War Report 2014*, twelve of fourteen armed conflicts (excluding military occupations) are situations of non-international armed conflict in which at least one ANSA is a party. See A. Bellal (ed), *The War Report 2014*, Oxford University Press, 2015.

² In 2015, for example, the Geneva Declaration on Armed Violence ranked the states of Honduras and Venezuela just below Syria in terms of violent death rates. Geneva Declaration, *The Global Burden of Armed Violence 2015: Every Body Counts*. Executive Summary available at: <http://www.genevadeclaration.org/measurability/global-burden-of-armed-violence/gbav-2015/executive-summary.html>.

³ UN General Assembly (2016), One humanity: shared responsibility – Report of the Secretary-General for the World Humanitarian Summit, UN Doc. A/70/709, §51.

⁴ A. Constantinides, ‘Human Rights Obligations and Accountability of Armed Opposition Groups: The Practice of the UN Security Council’, *Human Rights & International Legal Discourse* 4 (2010), 89-110.

⁵ See for example the 2012 resolution 20/17 on Mali and the 2014 resolution 26/25 on Syria.

⁶ See for example the 2015 resolution 28/17 on the effect of terrorism on human rights.

human rights abuses and violations of international humanitarian law by ANSAs. Examples include the report of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on ‘the human rights violations’ committed by the armed group known as Islamic State;⁷ and the 2014 report by the Commission of Inquiry on Syria titled ‘Rule of Terror: Living under ISIS in Syria’.

The terminology used in these resolutions is inconsistent. They sometimes speak of *violations* of human rights law and violations of international humanitarian law and at other times speak of human rights *abuses* and violations of humanitarian law. Use of the term ‘abuse’ rather than ‘violation’ reflects the unclear legal regime applicable to ANSAs involved in situations of armed conflict and violence. At the same time, it permits the HRC to consider ANSAs’ impact on human rights without adopting a firm stance on the legal framework applicable to them. As a result, its terminology appears to reflect a political choice rather than legal logic. On these grounds, Andrew Clapham has suggested that, ‘while some authors reserve the notion of human rights abuses for armed non-State actors and violations for States, one cannot necessarily derive any legal significance from such labelling’.⁸

This In-Brief sets out to describe the current legal framework applicable to ANSAs and to address the controversy about whether or not these actors have human rights obligations under international law. It explores the practice of the HRC and makes recommendations that may be of interest to states, NGOs, and other stakeholders, including when they negotiate resolutions for adoption by the HRC.

It first discusses how the HRC has dealt with human rights violations that ANSAs commit, and the types of non-state actors on which it has focused. As the main subjects of public international law, states have an obligation to ensure that treaties to which they are a party, and customary international law, are respected in territories under their jurisdiction and control. The In-Brief therefore explains the rules that determine the responsibilities of states when ANSAs violate international law. It then examines how the two main legal frameworks applicable in armed conflicts, IHL and HRL, apply to ANSAs. It focuses on the applicability of HRL because this issue is the subject of most debate. Finally, the study makes recommendations and suggests how future HRC resolutions could best address ANSAs.

7 A/HRC/29/51.

8 A. Clapham, ‘Protection of civilians under international human rights law’, in H. Willmot, R. Mamiya, S. Sheeran, M. Weller (eds), *Protection of Civilians*, Oxford University Press, 2016, p 145.

The research undertaken for this paper focused on HRC resolutions since the HRC was created in 2006. As required by General Assembly (GA) resolution 60/251 of 15 March 2006, the Council must promote human rights for all and also address gross and systematic violations of human rights.⁹ Since the majority of gross violations of human rights occur in situations of armed conflict or other situations of violence, the Council has had to cover many violations committed by ANSAs.

The research also examined the reports of Special Procedures (independent experts nominated by the HRC who report on specific human rights issues or the human rights situation of specific countries)¹⁰ and of Commissions of Inquiry (COIs) which the HRC has established. Members of COIs are usually independent experts.¹¹ COIs establish facts, identify alleged perpetrators, and make recommendations to the state concerned and to the international community on how violations should be addressed.¹² Special Procedures and COI reports therefore differ from HRC resolutions in that they are not drafted and adopted by state representatives and express expert opinions rather than the opinions of states.

9 UNGA, Resolution 60/251, adopted on 15th March 2006.

10 The HRC has created 37 thematic and 14 country mandates. See: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>.

11 Recent COIs mandated by the HRC include: the 2006 Commission of Inquiry on Lebanon (HRC resolution A/HRC/S-2/1, 11 August 2006); the 2009 United Nations Fact-finding Mission on the Gaza Conflict (HRC resolution A/HRC/RES/S-9/1, 12 January 2009); the 2010 International fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance (HRC resolution A/HRC/RES/14/1, 23 June 2010); the 2010 International Commission of Inquiry on Libya (HRC resolution A/HRC/RES/S-15/1, 25 February 2011); the 2011 International Commission of Inquiry on Ivory Coast (HRC resolution A/HRC/RES/16/25, 25 March 2011); the 2011 Independent International Commission of Inquiry on the Syrian Arab Republic (HRC resolution UN Doc. A/HRC/RES/S-17/1, 18 October 2011); and the 2013 Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea (UN Doc. A/HRC/22/13, 21 March 2013).

12 See also, P. Alston, 'The Darfur Commission as a Model for Future Responses to Crisis Situations', *Journal of International Criminal Justice*, 3 (2005), 600-607.

1. ANSAs in HRC Resolutions

Types of Armed Non-State Actors

A range of ANSAs operate today in armed conflicts or other situations of violence, but one can find very few definitions of the term in international law. The UN Security Council, for instance, has defined non-state actors quite broadly as an ‘individual or entity, not acting under the lawful authority of any State’.¹³ The African Union’s Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention) defines ‘armed groups’ as ‘dissident armed forces or other organized armed groups that are distinct from the armed forces of the state’.¹⁴ For the European Union (EU), ANSAs ‘retain the potential to deploy arms for political, economic and ideological objectives, which in practice are often translated into an open challenge to the authority of the State’.¹⁵ This In-Brief adopts the definition of Conciliation Resources which considers ANSAs to be armed actors operating ‘primarily within state borders, engaged in violent attempts to challenge or reform the balance and structure of political and economic power, to avenge past injustices and/or to defend or control resources, territory or institutions for the benefit of a particular ethnic or social group’.¹⁶

HRC resolutions and the reports of Special Procedures and COIs examined for this paper do not usually define the term ‘ANSA’. In one instance, the HRC referred to ANSAs in broad terms without defining them. In a resolution on Mali, whose content was reflected in later resolutions adopted in 2012 and 2013, the HRC condemned ‘the excesses and abuses committed in the Republic of Mali, particularly in the north of the country, by, among others, the *rebels*, *terrorist groups* and other *organized transnational crime networks*, which include violence against women and children, summary executions, hostage-taking, pillaging, destruction of cultural and religious sites and recruitment of children, as well

¹³ UNSC, Resolution 1540 (2004), 28 April 2004.

¹⁴ Article 1.

¹⁵ European Union, ‘Mediation and Dialogue in transitional processes from non-state armed groups to political movements/political parties’, Factsheet – EEAS Mediation Support Project, November 2012.

¹⁶ Conciliation Resources, ‘Engaging armed groups in peace processes’ (Accord 2004), quoted in V. Dudouet, ‘Understanding armed groups and their transformations from war to politics: A collection of insider perspectives’, Conference paper presented at the Sixth Pan-European Conference on International Relations, Turin (2007), p 4.

as all other human rights violations'.¹⁷ Although not common, this reference to 'transnational crime networks' in the resolutions on Mali shows that the HRC does not necessarily restrict its concern to armed groups that have political objectives but is prepared to address violence committed by other types of ANSA.

Box 1. Types of ANSA active in armed conflicts or other situations of violence

No categorization of ANSAs is broadly accepted. The list below classifies groups in terms of their operational rationale and does not pretend to be a scientific definition. It should also be kept in mind that particular groups may present characteristics associated with several categories or may shift from one category to another.

Armed opposition groups seek the liberation of a social class or a nation and oppose the state or its administration.

Paramilitary groups or militias are irregular combat units that usually act on behalf of, or are at least tolerated by, a governing regime.

Terrorist groups spread panic and fear in societies in order to achieve political goals.

Vigilante or self-defence groups are usually composed of armed civilians acting in self-defence, whose degree of organization varies and is often loose. Such groups do not necessarily have a political purpose (such as replacing the existing government) but rather aim to defend themselves against the attacks of enemy armed forces or other ANSAs.

Territorial gangs do not have political aims per se but try to gain control of a territory in order to oversee criminal activities or 'protect' residents in the area concerned.

See C. Homequist, 'Engaging Armed Non-State Actors in Post-Conflict Settings', *Security Governance in Post-Conflict Peacebuilding*, DCAF (2005), 46; and U. Schneckener, 'Fragile Statehood, Armed Non-State Actors and Security Governance', in *Private Actors and Security Governance*, DCAF (2006), p 25.

Use of the Terms ‘Abuse’ and ‘Violation’

In the last ten years, HRC resolutions have increasingly addressed the behaviour of ANSAs, indirectly or directly (see Annex at page 39). The majority of the resolutions examined for this research focused on country situations, but a few were also thematic resolutions.

The wording of these resolutions is not uniform, sometimes speaking of human rights ‘abuses’ and sometimes of human rights ‘violations’. References to ANSAs in early HRC resolutions tend to speak of ‘violations’ of human rights or ‘obligations under international human rights law’. In Resolution 9/17 of 18 September 2008 on the situation of human rights in the Sudan, for instance, the HRC called on ‘all parties to respect their obligations under international human rights law and international humanitarian law, in particular with regard to the protection of civilians, and to end all attacks on civilians, with a special focus on vulnerable groups, including women, children and internally displaced persons, as well as human rights defenders and humanitarian workers’ (§9). Similarly, in Resolution 7/35 of 23 March 2008 on Assistance to Somalia in the field of human rights, the HRC demanded that ‘all parties in Somalia reject and stop all acts of violence, abstain from engaging in hostilities, prevent any act likely to increase tension and security and fully respect their obligations under international human rights law and international humanitarian law’ (§2).¹⁸

It seems that the Council referred to ‘abuses’ of human rights for the first time in a resolution entitled ‘Assistance to Somalia in the field of human rights’, where it called ‘for the immediate cessation of the grave and systematic human rights abuses perpetrated against the civilian population by Al Shabab and its affiliates’.¹⁹ In 2012, the term ‘abuse’ was subsequently used in four resolutions.²⁰ The trend is not systematic. In 2013, for instance, a Council resolution entitled ‘Technical assistance to the Central African Republic in the field of human rights’ condemned ‘all the serious human rights violations and acts of violence against the civilian population, including crimes, summary executions, rape and other forms of sexual abuses ... carried out by all forces present’.²¹ A clear distinction between the terms ‘abuse’ and ‘violations’ can be found in a resolution of 3 October 2014 on the continuing grave deterioration of the human rights and humanitarian situation

¹⁸ A/HRC/7/L.11/Add.1.

¹⁹ A/HRC/RES/17/25, 14 July 2011, §2.

²⁰ A/HCR/RES/19/28 and A/HRC/RES/20/21 on Somalia; A/HCR/RES/21/25 on Mali, A/HCR/RES/21/27, and A/HCR/RES/21/31 on Sudan.

²¹ A/HRC/RES/23/18, 27 July 2013, §3.

in the Syrian Arab Republic. In that resolution, the Council expressed its grave 'concern at allegations of torture in detention facilities controlled by non-State armed groups, and stresses that such acts constitute violations of international humanitarian law and abuses of human rights'.²²

Successive resolutions on the same country often adopt identical wording. In several resolutions on Syria, for instance, the Council 'strongly condemns the terrorist acts and violence committed against civilians by the so-called Islamic State in Iraq and the Levant (Daesh), al-Nusrah Front and other extremist groups, and their continued gross, systematic and widespread abuses of human rights law and violations of international humanitarian law'. (Resolution A/HRC/RES/30/10, 13 October 2015, para. 4; see also A/HRC/RES/29/16, 22 July 2015, para. 8).²³ Similarly, resolutions on Sudan often call 'upon all parties ... to respect all human rights and fundamental freedoms'.²⁴

In contrast, several country-specific Special Procedures mandates prefer to speak of 'violations' when they refer to ANSAs. In A/HRC/7/25 (summary), the Independent Expert on the Democratic Republic of the Congo referred to 'massive human rights violations of armed groups'. In A/HRC/19/67, the Special Rapporteur on Myanmar referred to serious violations by non-state armed groups and called on them to 'ensure respect for international human rights and humanitarian law' (§59, §60, §95). Referring to the LTTE and the Karuna faction of the Tamil Makkal Viduthalai Pulikal armed group (TMVP-Karuna), the Special Rapporteur on Torture noted that 'the most serious allegations of human rights violations that come to light, including those related to torture and ill-treatment, are in relation to the conflict and are alleged to be committed by both government and non-State forces, including the LTTE and the TMVP-Karuna group'.²⁵ In relation to the Al-Shabaab armed group, the Independent Expert on Human Rights in Somalia found that: 'Al-Shabaab ... continues to perpetrate serious violations of humanitarian and human rights law, including summary executions of civilians associated with the Government, unlawful arrest and detention and acts amounting to torture and other inhumane, cruel and degrading practices, such as flogging, amputation and stoning'.²⁶

²² A/HRC/RES/27/16, §11.

²³ A/HRC/RES/30/10, 13 October 2015, §4; also A/HRC/RES/29/16, 22 July 2015, §8.

²⁴ A/HRC/RES/24/28, 8 October 2013, §13; A/HRC/RES/21/27, 15 October 2012, §12; A/HRC/RES/18/16, 14 October 2011, §8.

²⁵ A/HRC/7/3/Add.6.

²⁶ A/HRC/18/48, §31.

COIs and Fact-Finding missions tend to refer to both ‘abuses’ and ‘violations’. An OHCHR report in February 2016 on Libya reported ‘patterns of violations and abuses’.²⁷ The COI on Gaza reported in June 2015 ‘serious violations of IHL and IHRL by Israel and Palestinian armed groups’.²⁸

With regard to categories of ANSA, resolutions most frequently speak of ‘armed groups’, but some describe certain ANSAs as ‘terrorist groups’.²⁹ In its resolution on human rights and preventing and countering violent extremism, the HRC expressed its concern at the ‘serious human rights abuses and violations of international humanitarian law by violent extremists and terrorists’.³⁰ In a resolution on cooperation and assistance to Ukraine in the field of human rights, the Council strongly condemned ‘the violence and abuses committed by illegal armed groups’.³¹

²⁷ Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya, A/HRC/31/47, 15 February 2016.

²⁸ Report of the Independent Commission of Inquiry on the 2014 Gaza Conflict, 24 June 2015, A/HRC/29/52, §74.

²⁹ See A/HRC/RES/28/20, 8 April 2015, §6 on Syria; also A/HRC/RES/28/17, 9 April 2015, §5 on the Effects of terrorism on the enjoyment of human rights.

³⁰ A/HRC/RES/30/15, 12 October 2015.

³¹ A/HRC/RES/26/30, 15 July 2014, §5.

Box 2. HRC Special Sessions on ISIL and Boko Haram

On 1 September 2014, the Council adopted, without a vote, a resolution on ‘The human rights situation in Iraq in the light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups’.³² It expressed its deep concern about ‘the increasing and dramatic *human rights violations and abuses and violations of international humanitarian law* in Iraq resulting from the terrorist acts committed by the so-called Islamic State in Iraq and the Levant and associated terrorist groups against the Iraqi people, including those involving unlawful killing, the deliberate targeting of civilians, forced conversions, targeted persecution of individuals on the basis of their religion or belief, and acts of violence against members of ethnic and religious minorities, in particular Christians and Yazidis in Mosul and the surrounding areas’. It also condemned ‘in the strongest possible terms the *systematic violations and abuses of human rights and violations of international humanitarian law* resulting from the terrorist acts committed by the so-called Islamic State in Iraq and the Levant and associated groups taking place since 10 June 2014 in several provinces of Iraq, which may amount to war crimes and crimes against humanity, and strongly condemns in particular all violence against persons based on their religious or ethnic affiliation, as well as violence against women and children’.³³

A special session in 2015 considered the ‘Atrocities committed by the terrorist group Boko Haram and its effect on human rights in the affected states’. The Council condemned ‘in the strongest terms the *gross abuses of international human rights law and violations of international humanitarian law* perpetrated by the terrorist group Boko Haram’.³⁴

³² A/HRC/RES/S-22/1.

³³ *Ibid.*, §1. Emphasis added.

³⁴ A/HRC/RES/S-23/1, 21 May 2015, §1. Emphasis added.

2. The International Legal Framework

State Responsibility for Acts Committed by ANSAs

In some instances, the behaviour of an ANSA directly engages state responsibilities. The Articles on the Responsibility of States for internationally wrongful acts, which represent customary international law, foresee that possibility, for example when an ANSA in fact acts under the control of a State (article 8), or when certain forms of conduct take place due to the absence or default of official authorities (article 9), or when an ANSA becomes the new government (article 10).³⁵

Under article 8, 'the conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct'. The level of control that a state must exercise over an ANSA in order to trigger state responsibility has been discussed by the case law, and has evolved. The requirement shifted from 'effective'³⁶ to 'overall'³⁷ control over the actions of the wrongdoer. In its Application of the Convention on the Prevention and Punishment of the Crime of Genocide, however, the International

³⁵ See International Law Commission, 'Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries', in *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two.

³⁶ In *Military and Paramilitary Activities (Nicaragua v United States)*, the ICJ held that Contra rebels were not de facto agents of the United States because the United States' 'participation, even if preponderant or decisive, in the financing, organizing, training, supplying and equipping of the contras, the selection of ... targets, and the planning of the whole of its operation, is still insufficient in itself ... for the purpose of attributing to the United States the acts committed by the contras. [...] For this conduct to give rise to legal responsibility of the United States, it would in principle have to be proved that that State had effective control of the military and paramilitary operations in the course of which the alleged violations were committed'. International Court of Justice, *Military and Paramilitary Activities (Nicaragua v US)*, 1986, §115.

³⁷ In *Tadic*, the Appeal Chamber of the International Tribunal for ex-Yugoslavia (ICTY) held that the 'effective control' test was contrary to the logic of state responsibility and was inconsistent with state and judicial practice. The ICTY concluded that states needed only to exercise 'overall control' over an ANSA to incur responsibility for unlawful acts by that group. ICTY, *Prosecutor v Tadic*, Case N° IT-94-1-A, 1999, §116-144. See also D. Jinks, 'State Responsibility for the Acts of Private Armed Groups', 83 *Chicago Journal of International Law* (2003), 83-95.

Court of Justice confirmed the ‘effective control’ test.³⁸ A typical example of the application of this article would involve the actions of militias (ANSAs controlled by a state). In the context of the conflict in Syria, for instance, the HRC has repeatedly condemned ‘the systematic, widespread and gross violations and abuses of human rights and all violations of international humanitarian law by the Syrian authorities and *affiliated militias*’.³⁹

Article 9 states that ‘the conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority’. The ILC Commentary on article 9 underlines that a prior demand for government to exercise authority must have existed for this article to apply: ‘In other words the circumstances surrounding the exercise of elements of the governmental authority by private persons must have justified the attempts to exercise police or other functions in the absence of any constituted authority’.⁴⁰ An example might be the actions of Iran’s Revolutionary Guards when they performed immigration and customs functions at Teheran airport just after the revolution.

Article 10 states that ‘the conduct of an insurrectional movement which becomes the new government of a State shall be considered an act of that State under international law’. The successful takeover of the government of the Central African Republic (CAR) in March 2013 by Séléka (a coalition of armed groups) is a noteworthy and rare example of the potential application of this article. As noted in a 2013 report on CAR by the Office of the High Commissioner for Human Rights (OHCHR): ‘According to article 10 of the draft articles on the Responsibility of States for international wrongful acts, the Séléka, after it seized power, engaged the State responsibility of the Central African Republic for all the violations committed by Séléka members in the country during the armed conflict’.⁴¹

³⁸ Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v Serbia and Montenegro*) [2007], ICJ Rep. 43.

³⁹ A/HRC/RES/30/10, 13 October 2015, §3. Emphasis added.

⁴⁰ International Law Commission, ‘Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries’, *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, p 49.

⁴¹ OHCHR, Situation of human rights in the Central African Republic, A/HRC/24/59, 12 September 2013, §25.

Box 3. State responsibility for acts committed by ANSAs

In general, states are not responsible for acts committed by private entities or persons. However, in certain circumstances a state can be legally responsible at international level for violations of international law committed by an ANSA. This is so when:

- A state has exercised control over the ANSA, such that the ANSA in fact acts under its direction.
- The ANSA has exercised elements of governmental authority in the absence or default of official state authorities and in circumstances where it was necessary to so act.
- The ANSA has become the new government. The state then assumes responsibility for violations the ANSA committed before it assumed power.

Source. Responsibility of States for Internationally Wrongful Acts, Articles 8, 9 and 10, *International Law Commission*, 'Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries', *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two.

A state is also obliged to exercise due diligence and do all it can to protect all persons under its jurisdiction against threats that ANSAs, including de facto authorities and armed groups, pose to the enjoyment of human rights. States must seek to hold individual perpetrators of abuses and violations to account and guarantee the rights of victims, including their right to an effective remedy and reparation. On these grounds, the African Commission on Human Rights stated with respect to a conflict in Chad: 'The national armed forces are participants in the civil war and the Government has failed to intervene to prevent ... killing. [...] Even where it cannot be proved that violations were committed by government agents, the Government had the responsibility to secure the safety and the liberty of its citizens, and to conduct investigations.'¹⁴²

¹⁴² African Commission on Human Rights, *Commission Nationale des droits de l'Homme et des Libertés v Chad*, Commission N° 74/92 (1995).

International Humanitarian Law

International Humanitarian Law (IHL) only applies in times of armed conflict. It distinguishes conflicts between States ('international armed conflicts') from conflicts between ANSAs or between ANSAs and a state ('non-international armed conflicts').⁴³

Box 4. Definition of 'armed conflict' for the purpose of the application of IHL

As spelled out by the International Criminal Tribunal for ex-Yugoslavia (ICTY), 'an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or in the case of internal conflicts, a peace settlement is achieved. Until that moment, international humanitarian law continues to apply to the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there.'

ICTY, *Prosecutor v Dusko Tadic*, 2 October 1995, §70.

According to case law, two conditions determine the occurrence of a non-international armed conflict: protracted violence, and the level of organization of the ANSA involved. In the IHL context, 'protracted violence' implies that armed violence is intense as well as enduring, notwithstanding the ordinary meaning of these words.⁴⁴

With respect to ANSAs' level of organization, international tribunals and scholars have developed a variety of indicators and guidelines to establish whether a group has the requisite level of organization; taken alone, however, none are sufficient to fulfil the organizational requirement. Elements listed by the ICTY include: the existence of a command structure and disciplinary rules and mechanisms within the group; the existence of a headquarters; the fact that the group controls a

⁴³ See S. Vité, 'Typology of armed conflicts in international humanitarian law: legal concepts and actual situations', 91 *International Review of the Red Cross* 873 (2009), 69-94.

⁴⁴ See also S. Sivakumaran, *The Law of Non-International Armed Conflicts*, Oxford University Press, 2012.

certain territory; the ability of the group to gain access to weapons, other military equipment, recruits and military training; its ability to plan, coordinate and carry out military operations, including troop movements and logistics; its ability to define a unified military strategy and use military tactics; and its ability to speak with one voice and negotiate and conclude agreements such as ceasefires or peace accords.⁴⁵

Scholars continue to discuss the precise legal means by which ANSAs are bound by IHL.⁴⁶ However, state practice, international case law, and scholarship all agree that Common Article 3 of the 1949 Geneva Conventions, Additional Protocol II of 1977 to the 1949 Geneva Conventions (AP II), and customary IHL apply to all categories of ANSA that are parties in non-international armed conflicts.⁴⁷

Additional Protocol II also applies to conflicts of a non-international character. In addition to the existence of an armed conflict in the territory of a High Contracting Party between an ANSA and the government,⁴⁸ three cumulative material conditions under para. 1 of Article 1 must be fulfilled before the treaty is applicable to the ANSA in question:

1. The ANSA must be under responsible command.
2. It must exercise such control over a part of the national territory as to enable it to carry out sustained and concerted military operations.
3. Territorial control must be such as to enable the ANSA to be able to implement the Protocol.

⁴⁵ ICTY, *Prosecutor v Haradinaj*, Case No IT-04-84-84-T, Judgment (Trial Chamber), 3 April 2008, §60.

⁴⁶ For example, in 2004 the Appeals Chamber of the Sierra Leone Special Court held that 'it is well settled that all parties to an armed conflict, whether states or non-state actors, are bound by international humanitarian law, even though only states may become parties to international treaties'. See *Prosecutor v Sam Hinga Norman*, Case No. SCSL-2004-14-AR72(E), Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment), Decision of 31 May 2004, §22, available at: www.unhcr.org/refworld/docid/49abc0a22.html. For the different theories on the applicability of IHL to ANSA, see S. Sivakumaran, 'Binding Armed Opposition Groups', 55 *International and Comparative Law Quarterly* (2006), 381; and A. Cassese, 'The Status of Rebels Under the 1977 Geneva Protocol on Non-International Armed Conflicts', 30 *International & Comparative Law Quarterly* 2, (1981), 429.

⁴⁷ In *Nicaragua v United States of America*, the International Court of Justice confirmed that Common Article 3 was applicable to the Contras (an ANSA). 'The conflict between the contras' forces and those of the Government of Nicaragua is an armed conflict which is "not of an international character". The acts of the contras towards the Nicaraguan Government are therefore governed by the law applicable to conflicts of that character.' See ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, Judgment of 27 June 1986, ICJ Reports 1986, §219.

⁴⁸ In contrast to Additional Protocol II, Common Article 3 also regulates armed conflicts between ANSAs.

Where these cumulative criteria for application of the Protocol are objectively met, the Protocol becomes ‘immediately and automatically applicable’, irrespective of the views of the parties to that conflict.⁴⁹

Finally, customary international humanitarian law is applicable to all actors in international and non-international armed conflicts,⁵⁰ including ANSAs that meet the necessary criteria. Customary IHL rules applicable to ANSAs include those on the conduct of hostilities, such as the principle that requires parties to an armed conflict to distinguish civilians and civilian objects from military objectives.⁵¹

International Human Rights Law

The International Court of Justice has formally confirmed on several occasions that HRL also applies in situations of armed conflict, whether these have an international or non-international character.⁵² However, whether ANSAs also have obligations under human rights law in situations of armed conflicts or other situations of violence remains controversial.

49 See Yves Sandoz, Christophe Swinarski, and Bruno Zimmermann (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, p. 1353; and International Criminal Tribunal for Rwanda (ICTR), *Prosecutor v Akayesu*, Case No. ICTR-96-4-T, Judgment, 2 September 1998, §624.

50 See, for example, Special Court for Sierra Leone, *Prosecutor v Morris Kallon and Brima Buzzy Kamara*, SCSL-2004-15-AR72(E) and SCSL-2004-16-AR72(E), Decision on Challenge to Jurisdiction: Lomé Accord Amnesty, Appeals Chamber, 13 March 2004, §45–47. This asserted: ‘There is now no doubt that this article [Common Article 3] is binding on states and insurgents alike, and that insurgents are subject to international humanitarian law. [...] A convincing theory is that [insurgents] are bound as a matter of customary international law to observe the obligations declared by Common Article 3 which is aimed at the protection of humanity.’ See also L. Moir, *The Law of Internal Armed Conflict*, Cambridge University Press, 2002, p. 56–58.

51 The customary international humanitarian law study conducted by the ICRC has identified 161 Rules of which the great majority are also applicable in non-international armed conflicts. See https://www.icrc.org/customary-ihl/eng/docs/v1_rul.

52 See ICJ, 1996 Nuclear Weapons Advisory Opinion, as well as its Advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory of 9 July 2004, ICJ Reports 2004. The ICJ also confirmed that international human rights law is applicable in situations of armed conflict in a case concerning Armed Activities in the Territory of the Congo (*Congo v Uganda*), Judgment of 9 December 2005, ICJ Reports 2005.

Indeed, whereas some IHL provisions specifically address ANSAs as parties to a conflict and therefore bound by relevant rules,⁵³ few human rights treaties explicitly refer to ANSAs.⁵⁴ It has been argued that the objective of human rights treaties is to establish norms for regulating the relationship between states and individuals living under their jurisdiction, and that in consequence human rights treaties are 'neither intended, nor adequate, to govern armed conflict between the state and armed opposition groups'.⁵⁵ Scholars do not unanimously support this interpretation of human rights law. For one author, 'the foundational basis of human rights is best explained as rights which belong to the individual in recognition of each person's inherent dignity. The implication is that these natural rights should be respected by everyone and every entity.'⁵⁶

The argument that human rights law does not apply to ANSAs is both theoretically and practically problematic for several reasons.

53 Common Article 3 to the 1949 Geneva Conventions 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...' (emphasis added). Article 1 of Additional Protocol II states that 'This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) 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'.

54 Article 4 of the 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict states: '1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18; 2. State Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices. 3. The application of the present article shall not affect the legal status of any party to an armed conflict.' Article 2 of the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa states that an objective of the treaty is to 'provide for the respective obligations, responsibilities and roles of armed groups, non-state actors and other relevant actors, including civil society organizations, with respect to the prevention of internal displacement and protection of, and assistance to, internally displaced persons'. Article 3 of the 2006 International Convention for the Protection of All Persons from Enforced Disappearance states: 'Each State Party shall take appropriate measures to investigate acts defined in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice'.

55 See L. Zegveld, *The Accountability of Armed Opposition Groups in International Law*, Cambridge University Press, 2002, p 54.

56 A. Clapham, 'The Rights and Responsibilities of Armed Non-State Actors: The Legal Landscape and Issues Surrounding Engagement', 1 February 2010, p 24, available at SSRN: <http://dx.doi.org/10.2139/ssrn.1569636>.

First, while IHL, through treaty and customary rules, potentially affords a significant level of protection, especially to civilians, its remit is limited to acts directly associated with armed conflict. IHL only partially addresses the range of harmful actions that ANSAs may perpetrate against a civilian population.⁵⁷

Second, the main purpose of IHL is to regulate armed conflicts and limit their negative impacts on victims and those who have laid down their arms. It does not cover all violations of international law that occur in these situations, such as violations of freedom of expression or gender discrimination. More generally, unlike HRL, IHL does not regulate the everyday life of people in situations of non-international armed conflict.⁵⁸

Third, if states are primarily responsible under international law for ensuring that the human rights of persons under their jurisdiction are respected,⁵⁹ during situations of armed conflict (and sometimes outside that context) states may lose control over part of their territory and population.

Finally, IHL may not apply in situations where its conditions of applicability are unfulfilled (where violence is insufficiently intense or the ANSA is insufficiently organized). In such cases, the only remaining legal framework other than domestic

57 The scope of IHL extends throughout the territory in which hostilities take place (*ratione loci*) and must involve a person protected by the instruments (*ratione personae*): ICTY, *Prosecutor v Tadic*, 1995, §69–70; ICTR, *Prosecutor v Kayishema and Ruzindana*, Case No. ICTR-95-1-T, Judgment and Sentence, 21 May 1999, §189. However, international tribunals have developed slightly different tests to determine the requisite nexus between alleged crimes and conflict. According to ICTY, *Prosecutor v Tadic*, Case No. IT-94-1-T, Opinion and Judgment, 7 May 1997, § 573: 'It is sufficient that the alleged crimes were closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict'. According to ICTY, *Prosecutor v Kunarac, Kovac and Vukovic*, Case No. IT-96-23, Appeals Chamber Judgment, 12 June 2002, §57: 'As indicated by the Trial Chamber, the requirement that the acts of the accused must be closely related to the armed conflict would not be negated if the crimes were temporally and geographically remote from the actual fighting. It would be sufficient, for instance, for the purpose of this requirement, that the alleged crimes were closely related to hostilities occurring in other parts of the territories controlled by the parties to the conflict.' According to ICTR, *Prosecutor v Musema*, Case No. ICTR-96-13-T, Judgment and Sentence, 27 January 2000, §260: 'The alleged crimes ... must be closely related to the hostilities or committed in conjunction with the armed conflict'.

58 See K. Fortin, 'The Application of Human Rights Law to Everyday Civilian Life under Rebel Control', *Netherlands International Law Review* (2016), 1–21.

59 As noted by the Office of the High Commissioner for Human Rights: 'Everyone has rights and obligations under human rights law. The State holds primary responsibility, as not only must it respect human rights and respond when it violates them, but it also has the duty to protect against violations by third parties and to create an environment where all rights are respected. While, for example, armed actors, landlords and businesses must all respect human rights and be accountable for violations they commit, the State, through its policies, programmes and laws, must act to stop these violations and prevent their repetition.' Annual report of the United Nations High Commissioner for Human Rights, Addendum, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 7 January 2013, A/HRC/22/17/Add.3, summary, p. 2.

law is HRL: this is problematic if HRL only binds states, especially where a state's institutions have failed.

In all these different scenarios, the fact that IHL may not cover all the violations committed by ANSAs or may not be applicable at all makes it likely that victims under the control of ANSAs in situations of armed conflict or situations of violence will be inadequately protected unless ANSAs are obliged to respect human rights.

The debate on the applicability of human rights law to ANSAs also has an impact on field operations. As one author observed: 'Human rights monitoring experience in Nepal suggests that the lack of a clear framework addressing the human rights obligations of non-state actors can impact the effectiveness of field operations. [...] A narrow focus on the state's responsibility to protect its citizens from violence by non-state actors has proven unsatisfactory. As a consequence, human rights organizations struggle to justify their monitoring and interventions, host states become suspicious of international field presences, and policy makers at the headquarters of monitoring organizations become concerned about potential political fallout from human rights monitoring.'⁶⁰

Statements on the Applicability of Human Rights Obligations to ANSAs

For the reasons explained above, many organizations, including UN bodies, have addressed human rights violations committed by ANSAs.

The need to ensure that ANSAs are accountable in contexts where IHL is not applicable seems to be a particular concern. In her 2010 report, the Special Rapporteur on the situation of human rights defenders observed: 'Defenders are also the victims of attacks by non-State actors, in time of peace. Evidence shows that, in certain countries, paramilitary groups make death threats against human rights defenders who advocate land rights and denounce the granting of mining concessions. Several leaders of communities fighting for economic, social and cultural rights have also been killed, allegedly by paramilitaries.'⁶¹

It is worth noting that experts from the Institute of International Law, in a resolution adopted at its Berlin session in 1999, already considered that: 'To the extent that certain aspects of internal disturbances and tensions may not be covered

⁶⁰ F. Rawski, 'Engaging with armed groups: a human rights field perspective from Nepal', *6 International Organizations Law Review* 2 (2009), 601–626.

⁶¹ A/65/223, 4 August 2010, §7.

by international humanitarian law, individuals remain under the protection of international law guaranteeing fundamental human rights. All parties are bound to respect fundamental human rights under the scrutiny of the international community.⁶²

The Commission of Inquiry on Syria also addressed the issue of ANSAs' responsibility in situations where IHL is not applicable. In February 2012, the Free Syrian Army (FSA) did not exercise any effective control over territory and the Commission considered that IHL was not yet applicable, leaving HRL as the only normative framework to assess its conduct. In its report, the Commission affirmed that, 'at a minimum, human rights obligations constituting peremptory international law (jus cogens) bind States, individuals and non-State collective entities, including armed groups. Acts violating jus cogens – for instance, torture or enforced disappearances – can never be justified.'⁶³

Box 5. ANSAs and international crimes

International criminal law establishes the criminal responsibility of individual members of armed groups when international crimes have been perpetrated, including international crimes not committed in the context of an armed conflict, which are therefore outside the ambit of international humanitarian law. Examples include the crime of genocide and crimes against humanity, situations in which massive and criminal human rights violations occur.

⁶² Institut de Droit International, The Application of International Humanitarian Law and Fundamental Human Rights, in Armed Conflicts in which Non-State Entities are Parties, Berlin session, 1999, Article X. No definition of what constitutes 'fundamental human rights' has been agreed, nor has it been settled which human rights norms are part of jus cogens. In its commentary on the Draft articles on State Responsibility, the International Law Commission has identified as peremptory norms of international law the 'prohibitions of aggression, genocide, slavery, racial discrimination, crimes against humanity and torture, and the right to self-determination' (Commentary on Article 26, in Yearbook of the International Law Commission Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, 2001, Vol. 2, Part Two, p 85). However, this list is exemplary rather than definitive. The UN Human Rights Committee has identified the following acts that violate jus cogens norms: arbitrary deprivation of life, torture and inhuman or degrading treatment, taking hostages, imposing collective punishments, arbitrary deprivation of liberty, and deviating from fundamental principles of fair trial, including the presumption of innocence. See Human Rights Committee, General Comment No. 29: States of Emergency (Article 4), CCPR/C/21/Rev.1/Add.11, 31 August 2001.

⁶³ Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/19/69, §106. See T. Rodenhäuser, 'Human Rights Obligations of Non-State Armed Groups in other situations of violence: The Syria Example', *International Humanitarian Legal Studies* 3 (2012), 263-290.

Article 6. Genocide.

For the purpose of this statute, 'genocide' means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Article 7. Crimes against humanity.

1. For the purpose of this Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Source. The Rome Statute, www.icc-cpi.int.

A number of UN Special Procedures have discussed the applicability of human rights to ANSA. For instance, following a mission to Sri Lanka, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions stated: ‘Human rights law affirms that both the Government and the LTTE [Liberation Tigers of Tamil Eelam] must respect the rights of every person in Sri Lanka. Human rights norms operate on three levels – as the rights of individuals, as obligations assumed by States, and as legitimate expectations of the international community. The Government has assumed the binding legal obligation to respect and ensure the rights recognized in the International Covenant on Civil and Political Rights. As a non-State actor, the LTTE does not have legal obligations under [the International Covenant on Civil and Political Rights], but it remains subject to the demand of the international community, first expressed in the Universal Declaration of Human Rights, that every organ of society respect and promote human rights.’⁶⁴

In a 2014 report to the Human Rights Council, the Special Rapporteur on human rights while countering terrorism suggested that persons who commit terrorist acts, whether organized in armed groups or not, violate human rights. He stated: ‘Certainly, when viewed from a victim’s perspective, the mass killing of civilians which is the objective of most terrorist campaigns, involves the deprivation of the most fundamental human right of all. The Special Rapporteur acknowledges that there is a responsible body of opinion to the effect that only States and comparable entities can violate human rights. However, he does not share this view.’⁶⁵

Finally, many ANSAs claim to be bound by human rights and some have even established institutions to monitor their respect. An example is the Human Rights Court established by the SPLM-N (Sudan).

⁶⁴ Special Rapporteur on extrajudicial, summary or arbitrary executions, Phillip Alston, E/CN.4/2006/53/Add.5, 27 March 2006, §25.

⁶⁵ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, Framework principles for securing the human rights of victims of terrorism, A/HCR/20/14, 4 June 2012, §13.

Box 6. The Human Rights Court established by the SPLM-N (Sudan)

SPLM-N
Office of the Chairperson
Resolution No. (6) - 2013

In accordance with my designative authorities and provision 20 (2) of the Constitution of the Sudan People Liberation Movement/Army- North (SPLM/A-N), 2013, I hereby issue the following resolution:

- (a) Name of Resolution and Entering into Force: SPLM/AN Chairperson resolution to establish a Human Rights Court. The resolution enters into force from the date it was signed.
- (b) The Establishment: An independent Human Rights Court is hereby established to address complaints of human rights violations in SPLM/A-N's liberated areas.
- (c) The Mandate of the Court: the mandate of the Human Rights Court is the following:
 1. Study and make decisions about complaints and accusations of human rights violations received from individuals, SPLM/A-N's institutions and/or civil society organizations.
 2. Receive complaints from individuals and other civic institutions of violations, conduct investigations and take the appropriate actions.
 3. Protect and promote human rights through monitoring of violations and dissemination of information.

Source: www.theirwords.org (Geneva Call).

Human Rights Obligations of De Facto Non-State Authorities

The practice of intergovernmental organizations such as the UN strongly suggests that ANSAs must respect human rights law when they exercise governmental functions or have de facto control over territory and a population. This view is supported by a number of resolutions, decisions or reports adopted by various UN organs and bodies, including the UN Security Council, the UN Secretary-General, UN human rights treaty bodies, as well as by Special Procedures, COIs and fact-finding missions. De facto authorities have been defined as 'entities, which exercise effective authority over some territory, no matter whether they are engaged in warfare with the sovereign or are subsisting in times of peace'.⁶⁶ They include partially recognized or not recognized states, but are not limited to these actors.

OHCHR, for instance, has consistently taken the position that 'non-State actors that exercise government-like functions and control over a territory are obliged to respect human rights norms when their conduct affects the human rights of the individuals under their control'.⁶⁷

In its 2007 report to the Security Council, the Panel of Special Procedures Experts on the Sudan also concluded that 'although it is the primary responsibility of the Government of the Sudan to guarantee the human rights of its citizens and to protect them from any transgression, the different armed opposition movements also bear responsibility in areas under their control. [...] Members of the SLA/MM [Sudan Liberation Army-Minni Minnawi] armed groups have consistently committed grave violations of human rights in areas where the armed group has a presence'.⁶⁸

⁶⁶ *Arantzazu Mendi* case, House of Lords, Judgment of 23 February 1939, L.R., [1939] A.C. 256 (House of Lords), reproduced in 1942 *International Law Review* 60, at §65 et seq. See also M. Schoiswohl, 'De facto regimes and human rights obligations – the twilight zone of public international law?' *Austrian Review of International and European Law* 6 (2001), 50; and J. Van Essen, 'De Facto Regimes in International Law', 28 *Utrecht Journal of International and European Law* 74 (2012), 31-49.

⁶⁷ OHCHR, Human rights violations emanating from Israeli military attacks and incursions in the Occupied Palestinian Territory, particularly the recent ones in the occupied Gaza Strip - Report of the High Commissioner for Human Rights on the implementation of Human Rights Council resolution 7/1, A/HRC/8/17, 6 June 2008, §9. OHCHR reiterated its position in a 2011 publication on the international legal protection of human rights in armed conflict: 'Concerning international human rights obligations, the traditional approach has been to consider that only States are bound by them. However, in evolving practice in the Security Council and in the reports of some special rapporteurs, it is increasingly considered that under certain circumstances non-State actors can also be bound by international human rights law.' See OHCHR, The international legal protection of human rights in armed conflict, 2011, p 24.

⁶⁸ Report of the Panel of Experts established pursuant to resolution 1591 (2005) concerning the Sudan prepared in accordance with paragraph 2 of resolution 1713 (2006), S/2007/584, §282 and §330.

In a report of June 2011 the International Commission of Inquiry on Libya affirmed: 'Although the extent to which international human rights law binds non-State actors remains contested as a matter of international law, it is increasingly accepted that where non-State actors exercise control over territory they must respect fundamental human rights of persons in that territory. The Commission has taken the approach that since the [National Transitional Council] has been exercising de facto control over territory akin to that of a Government authority, it will examine also allegations of human rights violations committed by its forces.'⁶⁹

The 2014 Joint Report on the mission to Lebanon and Israel by a group of four special procedure mandate holders noted, in relation to Hezbollah, that 'the Security Council has long called upon various groups which Member States do not recognize as having the capacity to do so, to formally assume international obligations to respect human rights. It is especially appropriate and feasible to call for an armed group to respect human rights norms when it "exercises significant control over territory and population and has an identifiable political structure".'⁷⁰

The ICRC has also recognized 'a limited exception to its principled position that non-state armed groups do not incur IHL obligations where a group, by virtue of stable control over territory, has the ability to act like a state authority. In these circumstances, such a group's human rights responsibility may be recognized "de facto".'⁷¹

It is important to note that, where a state has lost effective control of part of its territory to de facto authorities, it still remains under an obligation to take all appropriate diplomatic, economic, judicial and other measures in its power to protect the human rights of the population living in the part of its territory that is outside its control. In relation to the obligations of the Republic of Moldova vis-à-vis the population in the Transnistrian region, which is under the control of de facto authorities, for instance, the Human Rights Committee stated that the State party

⁶⁹ Report of the International Commission on Libya established by the Human Rights Council resolution S-15/1 of February 2011, (A/HRC/17/44). The Commission also noted that 'since the NTC has been exercising de facto control over territory akin to that of a Governmental authority, it will examine also allegations of human rights committed by its forces', §72.

⁷⁰ Mission to Lebanon and Israel (7-14 September 2006), prepared jointly by the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, the Representative of the Secretary General on human rights of internally displaced persons, Walter Kälin, and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, A/HRC/2/7, 22 December 2014, §19.

⁷¹ A. Breitegger, 'The legal framework applicable to insecurity and violence affecting the delivery of health care in armed conflicts and other emergencies', 95 *International Review of the Red Cross* 889, (2015), 104. The author notes, however, that the ICRC's use of the term 'responsibilities' falls short of recognizing legally-binding obligations.

was under the 'continuing obligation to ensure respect for the rights recognized in the Covenant in relation to the population of Transnistria within the limits of its effective power'.⁷²

Scholars generally support the idea that ANSAs that exercise territorial control or de facto governmental authority have human rights obligations. Indeed, the need to regulate the relationship between those who govern and those who are governed, which many consider underpins human rights law, justifies the application of that law.⁷³

Box 7. The position on ANSAs of the Committee on the Elimination of all Forms of Discrimination against Women

In its General Recommendation No 30 of 18 October 2013 on women in conflict prevention, conflict and post-conflict situations, the Committee on the Elimination of all Forms of Discrimination against Women (CEDAW) stated: 'Under international human rights law, although non-State actors cannot become parties to the Convention, the Committee notes that under certain circumstances, in particular where an armed group with an identifiable political structure exercises significant control over territory and population, non-State actors are obliged to respect international human rights'. The Committee went on to urge 'non-State actors such as armed groups: (a) to respect women's rights in conflict and post-conflict situations, in line with the Convention; (b) to commit themselves to abide by codes of conduct on human rights and the prohibition of all forms of gender-based violence'.

Source. CEDAW, General Recommendation No 30 on women in conflict prevention, conflict and post-conflict situations, CEDAW/C/GC/30, 18 October 2013, §16 and §18.

⁷² See CCPR/C/MDA/CO/2 (2009), §5.

⁷³ See for instance N. Rodley, 'Can Armed Opposition Groups Violate Human Rights', in K. E. Mahoney and P. Mahoney (ed), *Human Rights in the Twenty-First Century: A Global Challenge*, Martinus Nijhoff, 1993, p 297-318; and L. Zegveld, *The Accountability of Armed Opposition Groups in International Law*, Cambridge University Press, 2002.

One weakness of this approach is that it is unclear for how long and to what extent an ANSA must exercise control over a territory and population before it becomes subject to human rights law.⁷⁴ Some guidance may be found in a 2014 report of the Special Rapporteur on freedom of religion or belief, who stated: ‘While international human rights law traditionally focused only on the obligations of States, an evolving approach recognizes the importance and impact of certain non-State actors, arguing that some human rights obligations also apply to them, including non-State armed groups with (or arguably even without) effective control over a territory. [...] “Effective control” means that the non-State armed group has consolidated its control and authority over a territory to such an extent that it can exclude the State from governing the territory on a more than temporary basis. Furthermore, armed groups without effective control over territory have been held to have committed human rights violations. In May 2014, a report by the United Nations Mission in the Republic of South Sudan stressed that the most basic human rights obligations, in particular those emanating from peremptory international law (*jus cogens*), bind both the State and armed opposition groups in times of peace and during armed conflict.’⁷⁵

A further challenge is to determine which human rights norms are applicable to ANSA. Should *de facto* non-state authorities or ANSAs that control territory be bound by all or only some human rights norms? It has been argued that this question should be determined by ANSAs’ capacity to implement the norms in question.⁷⁶

Some UN reports have attempted to list the human rights norms that might be binding on ANSAs. Following a mission to Sri Lanka, the Special Rapporteur on extrajudicial, summary or arbitrary executions argued: ‘The LTTE should refrain from violating human rights, including those of non-LTTE-affiliated Tamil civilians. This includes in particular respect for the rights to freedom of expression, peaceful assembly, freedom of association with others, family life, and democratic participation, including the right to vote. The LTTE should specifically affirm that it will abide by the North-East Secretariat on Human Rights charter.’⁷⁷

74 T. Rodenhäuser, ‘Armed Groups under International Humanitarian Law, Human Rights Law, and International Criminal Law: What Degree of Organization is Required?’ PhD Thesis, Graduate Institute of International and Development Studies, 2016 (forthcoming 2017).

75 Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, A/HCR/28/66, 29 December 2014, §54 and §56.

76 See D. Murray, *Human Rights Obligations of Non-State Armed Groups*, Hart, 2016.

77 Special Rapporteur on extrajudicial, summary or arbitrary executions, in the context of his mission to Sri Lanka, E/CN.4/2006/53/Add.5, 27 March 2006, §85.

In a 2012 report on Mali, the OHCHR categorized violations that had occurred in the north of the country, which was controlled by ANSAs. It listed: violation of the right to life; extrajudicial and summary execution; torture and other cruel, inhuman or degrading treatment; arbitrary arrest and detention; recruitment of child soldiers; sexual abuse; attacks on property; violation of freedom of expression and the right to information; violation of the right to education; violation of the right to health; violation of cultural rights; and violation of the right to freedom of religion.⁷⁸

It is also unclear from these statements whether human rights law binds all types of ANSAs that exercise territorial control, including 'territorial criminal gangs'. In principle, there is no theoretical obstacle to considering territorial armed gangs as ANSAs to which international law could apply. As has been noted above, IHL only requires an armed group to reach a certain level of organization before it becomes subject to IHL obligations, regardless of its objectives.⁷⁹ While urban gang violence does not initially seem relevant to the traditional framework of IHL and HRL, it has nevertheless been shown that there are good reasons to consider applying humanitarian norms to territorial gangs, and many humanitarian agencies and NGOs, including national Red Cross and Red Crescent societies, already work in such contexts.⁸⁰

⁷⁸ Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali, 7 January 2012, A/HRC/22/33.

⁷⁹ See for example Jennifer M. Hazen, 'Understanding gangs as armed groups', 92 *International Review of the Red Cross*, 878 (2010), 369-386.

⁸⁰ O. Bangerter, 'Territorial gangs and their consequences for humanitarian players', 92 *International Review of the Red Cross*, 878 (2010), 392- 400.

3. Conclusions and Recommendations

There is room for discussion as to how and to what extent ANSAs are bound by human rights law, but it is clear that the international community increasingly holds ANSAs accountable for human rights violations, despite legal uncertainties.

Several reasons explain this trend. Certain human rights obligations that apply to situations of armed conflict are also protected by IHL, including the prohibitions of torture, inhuman and degrading treatment, murder, and sexual violence and slavery. To an extent, therefore, the application of IHL to ANSAs in situations of armed conflict protects civilian populations as well as people who are *hors de combat*. However, most contemporary armed conflicts persist for years or even decades. IHL was not meant to regulate the everyday life of people living in areas under the control of ANSAs over such an extended period. In many countries, civilians living in ANSA-controlled areas strive to lead ‘normal’ lives, despite conditions of extreme violence. In addition, IHL is applicable to ANSAs only in situations that are legally defined as armed conflicts, and human rights are threatened by ANSAs in many other contexts. The state remains responsible for ensuring that the human rights of populations under its jurisdiction are protected, but in some instances it is not able to access ANSA-controlled areas or cannot prevent or punish ANSA violations, notably where its institutions are failing. In all such contexts, the Human Rights Council, many UN special procedures, COIs, and other UN bodies have felt called by their mandates to address the responsibility of ANSAs for human rights violations.

Recognizing that ANSAs have human rights obligations has important operational and policy consequences. First, it may increase the legitimacy of ANSAs at international level, which may be politically sensitive for states and international organizations. One should note, at the same time, that a body bound by international norms does not automatically incur a particular legal status. This is made clear by Common Article 3 of the 1949 Geneva Conventions.⁸¹ Second, if ANSAs are required to respect and implement human rights norms, they might

⁸¹ Common Article 3, §2, of the Geneva Conventions states: ‘An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. *The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.*’ (Emphasis added.)

need support from the international community to do so. This raises concerns similar to those associated with the issue of legitimacy. The fact that some ANSAs are listed as terrorist groups makes it difficult for many organizations to cooperate with them or build their capacity.⁸²

HRC resolutions referring to ANSAs have not been systematic in speaking of 'abuses' or 'violations' of human rights law. It seems that, as the main UN body trusted with promoting human rights, the Council has wished to signal politically that it cannot ignore the role of ANSAs and their impact on human rights, but simultaneously it has been unwilling to take a firm stance on the applicable legal framework. That said, the Human Rights Council should cease to speak misleadingly of human rights 'abuses' rather than human rights 'violations', thereby avoiding giving any impression that all categories of ANSA, including de facto authorities, might be free of human rights obligations.

In 2014 and 2015, the HRC held two special sessions specifically on ANSAs, one on the so-called Islamic State in Iraq and the Levant and the other on Boko Haram. While it is interesting that ANSAs were the subject of these two resolutions, it is significant that the HRC denounced the human rights and humanitarian law violations of only one party to these armed conflicts. If such resolutions appear biased, their influence on the conduct and policies of ANSAs is likely to diminish, making ANSAs less ready to acknowledge that they have human rights obligations.

HRC resolutions have also sometimes employed the term 'terrorist groups' when referring to ANSAs. While it is true that some ANSAs are listed in national and international lists of terrorist organizations, states will tend to label *any* armed group that opposes it as 'terrorist'. The branding of ANSAs as 'terrorist', regardless of their nature and motivation, has created difficulties and dilemmas both legally and for policy. First, since the legal qualification of an 'armed conflict' is based on fact, it is important to note that an ANSA can be party to a conflict and bound by the same relevant rules of international law as other parties to that conflict, whether or not it is labelled as a 'terrorist group'.⁸³ Second, as noted by the ICRC, 'a recent challenge for IHL has been the tendency of States to label as terrorist all acts of warfare against them committed by armed groups, especially in non-international armed conflicts. This has created confusion in differentiating between lawful acts of war, including such acts committed by

⁸² See Geneva Call, *The Positive Obligations of Armed Non-State Actors: Legal and Policy Issues*, Report from the 2015 Garance Talks, 2016.

⁸³ See S Vité, 'Typology of armed conflicts in international humanitarian law: legal concepts and actual situations', 92 *International Review of the Red Cross*, 873, March 2009, 69-94.

domestic insurgents against military targets, and acts of terrorism.⁸⁴ Indeed, under IHL, both in international and non-international armed conflicts, only 'acts or threats of violence the primary purpose of which is to spread terror among the civilian population'⁸⁵ can be considered as falling into the category of an 'act of terrorism' which entails individual criminal responsibility under customary international law.⁸⁶ In other words, attacks that exclusively target military objectives do not fall into this category. The main UN treaties on terrorism include a clause requiring that they must be interpreted in accordance with IHL.⁸⁷ Accordingly, under such treaties, attacks by ANSAs on governmental armed forces in armed conflicts cannot be considered as acts of terrorism prohibited by the conventions. For these reasons, we suggest that states, including when they negotiate resolutions on ANSAs at the Human Rights Council, should be attentive to the legal and policy consequences of labelling any armed group as a terrorist group.⁸⁸ For instance, it has been noted that associating ANSAs with terrorism has had 'a direct impact on the EU and the international community's capacity for mediation and dialogue in transition processes'.⁸⁹

More generally, experts tend to agree that it is important to consider ANSAs not only as perpetrators of violations of international humanitarian law and human rights law but also as actors who can play positive roles in the implementation of international law, if only because they are often very close to their constituencies.⁹⁰

84 ICRC, 'Contemporary challenges for IHL: Overview', 29 October 2010, at: <http://www.icrc.org/eng/war-and-law/contemporary-challenges-for-ihl/overview-contemporary-challenges-for-ihl.htm>.

85 See Art 51(2), Additional Protocol I, and Art 13(2), Additional Protocol II.

86 ICTY, Judgment, *Galić* (IT-98-29-T), Trial Chamber, 5 December 2003, § 113-129.

87 See Article 19 of the 1997 International Convention for the Suppression of Terrorist Bombings (1997 Convention); Article 4 of the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism (2005 Convention); and Article 21 of the 1999 International Convention for the Suppression of the Financing of Terrorism. See also A. Cocco, 'The Mark of Cain, The Crime of Terrorism in Times of Armed Conflict as Interpreted by the Court of Appeal of England and Wales in *R v. Mohammed Gul*', 11 *Journal of International Criminal Justice*, 2, 425-440.

88 See B. Saul, 'Terrorism, Counter-Terrorism and International Humanitarian Law', Sydney Law School Legal Studies Research Paper No 16/37, May 2016. See also D. Lewis, N. Modirzadeh, and G. Blum, *Medical Care in Armed Conflict: International Humanitarian Law and State Responses to Terrorism*, Harvard Law School Program on International Law and Armed Conflict (HLS PILAC), Sept. 2015, at: https://dash.harvard.edu/bitstream/handle/1/22508590/HLS_PILAC_Medical_Care_in_Armed_Conflict_IHL_and_State_Responses_to_Terrorism_September_2015.pdf?sequence=1. The authors describe the emerging conflict of norms between national and international counter-terrorism laws and some IHL provisions on health care and humanitarian assistance.

89 See EU Factsheet, 'Mediation and Dialogue in transitional processes from non-state armed groups to political movements/political parties', 2012.

90 R. Dudai and K. McEvoy, 'Thinking critically about armed groups and human rights praxis', 4 *Journal of Human Rights Practice* 1 (2012), 15.

The HRC, in common with other UN bodies that engage or address ANSAs, should take these considerations into account, with the aim of providing better protection to victims of both IHL and HRL violations.

This In-Brief has reviewed the human rights obligations of ANSAs and the practice of the HRC with respect to them. It suggests that more research is needed to develop a shared and more comprehensive understanding of the notion of de facto authorities, and to identify the content of human rights norms that might be binding on ANSAs. It also recommends that the views of ANSAs should be taken into account on the norms and issues that concern them.⁹¹ Finally, the international community should consider creating judicial or non-judicial mechanisms⁹² that will make ANSAs more accountable for IHL and HRL violations that they commit.

⁹¹ See M. Sassòli, 'Taking Armed Groups Seriously: Ways to Improve their Compliance with International Humanitarian Law', *Journal of International Humanitarian Legal Studies* 1 (2010), 5–51.

⁹² See A. Bellal, 'Non-state armed groups in transitional justice processes', *International Centre for Transitional Justice*, 2017.

4. Suggested Analysis and Wording for Resolutions on ANSAs and Human Rights

As an intergovernmental body the practice of the HRC reflects to some extent ‘state practice’, and as such may also influence the formation of customary international law.⁹³ In that perspective, HRC resolutions should not only be founded on international law but should be as clear and systematic as possible. Because the term ‘abuse’ does not have any legal content, and is therefore vague and misleading, this In-Brief does not recommend making a distinction between ‘abuses’ and ‘violations’ when assessing or denouncing the human rights conduct of ANSAs.

The HRC should not distinguish ‘abuses’ from ‘violations’ when it addresses the human rights conduct of ANSAs in its resolutions. At a minimum, the term ‘violations’ should be used when:

1. The ANSA is a de facto authority or controls territory and a population over an extended period of time.
2. The ANSA violates norms that amount to an international crime or can be considered to violate jus cogens.

A two step analysis, which should not necessarily be taken in a precise order, is suggested when addressing ANSAs in a specific resolution. The proposed analysis and wording, which will necessarily be a simplification of the issues at stake, should be understood as a framework for discussion and can, as such, be questioned. It is aimed at stimulating thoughts and ideas on this important matter, rather than closing the debate.

⁹³ Article 38 (b) of the Statute of the International Court of Justice defines ‘international custom’ as ‘general practice accepted as law’.

Step 1. Determine an ANSA's characteristics and the applicable legal framework.

As explained in this research, there is clear practice suggesting that ANSAs are bound by a broader set of human rights obligations when they exercise de facto governmental functions or exercise control over a population. Whenever ANSAs are addressed in HRC resolutions, we therefore recommend that their characteristics are carefully analysed and determined. In particular, drafters should assess whether the ANSA in question can be considered a de facto authority or whether a population lives under its control.

Determining the ANSA's level of organization will also clarify the applicability of IHL. Determining the applicability of IHL to a given situation is a difficult exercise. Information and guidance on this issue can be found in the *Rule of Law in Armed Conflict Project* (www.rulac.org) or *The War Report* of the Geneva Academy of International Humanitarian Law and Human Rights.

Where a situation cannot be qualified as a non-international armed conflict, only human rights law is applicable and it becomes particularly important to determine types of violation in order to avoid a gap in protection.

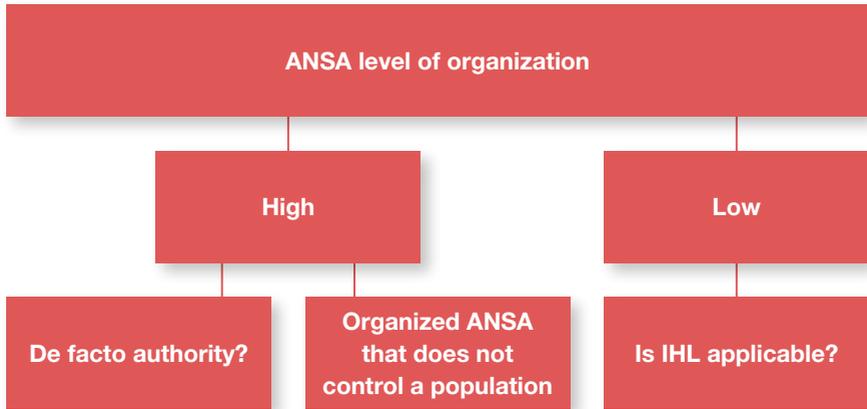
Step 2. Determine the types of violation.

Some practice tends to show that all forms of ANSA are bound to respect human rights which are peremptory norms of international law (or jus cogens) and whose violation can lead to the establishment of individual criminal responsibility, whether or not the ANSA responsible controls territory and whether or not IHL is applicable. For other types of violations, where the legal framework is less clear, it is suggested that only ANSAs that act as de facto authorities may be bound by human rights law. Two questions may be considered:

- Do the acts violate peremptory norms of HRL? Can they lead to the establishment of individual criminal responsibility?
- Do the acts violate other types of human rights norms?

These recommendations are summarized in the two charts below.

Step 1. Identify an ANSA's characteristics and the applicable legal framework.



Step 2. Determine the types of violation.



Annex. HRC Resolutions on ANSAs 2008-2015

Resolution No	Year & Session	Type	Term used to describe human rights (HR) abuses by ANSAs	Context of Armed Conflict (AC)	Vote
30/1	30th, 2015	Country: Sri Lanka	OP 5: need for a process of accountability and reconciliation for the violation and abuses committed by the LTTE.	AC in Sri Lanka	No vote
30/15	30th, 2015	Country: Syria	OP 3: condemns the systematic, widespread and gross violations and abuses of HR and violations by the Syrian authorities and affiliated militias, including foreign terrorist fighters and those foreign organizations on behalf of the Syrian authorities, in particular Hizbullah. OP 4: condemns the gross, systematic and widespread abuses of HR and violations of IHL by ISIL, al-Nusrah and other extremist groups. OP 5: condemns the gross and systematic abuse of women's and children's rights by ISIL. OP 6: condemns all violations and abuses of HRL and all violations of IHL and urges all parties to the conflict to comply with their obligations under IHL and respect HR.	AC in Syria	29 to 6; 12 abstentions

Resolution No	Year & Session	Type	Term used to describe human rights (HR) abuses by ANSAs	Context of Armed Conflict (AC)	Vote
30/15	30th, 2015	Thematic: Preventing violent extremism	PP: condemns serious HR abuses and violations of IHL by violent extremists and terrorists.	NA	37 to 3; 7 abstentions
29/15	29th, 2015	Country: Syria	OP 3: condemns the systematic, widespread and gross violations and abuses of HR and violations by the Syrian authorities and affiliated militias, including foreign terrorist fighters and those foreign organizations on behalf of the Syrian authorities, in particular Hizballah, Asa'ib Ahl al-Haq and Liwa Abu al-Fadl al-Abbas. OP 8 : condemns the systematic and widespread abuses of HR and violations of IHL by ISIL, al-Nusra front and other extremist groups. OP 9: condemns all violations and abuses of IHRL and all violations of IHL and urges all parties to the conflict to comply with their obligations under IHL and respect HRL.	AC in Syria	29 to 6; 12 abstentions
28/17	28th, 2015	Thematic: Effects of terrorism on the enjoyment of HR	OP 1: condemns all terrorist acts and expresses grave concern at their detrimental effects on HR, including the right to life, liberty and security.	No	25 to 16; 6 abstentions

Resolution No	Year & Session	Type	Term used to describe human rights (HR) abuses by ANSAs	Context of Armed Conflict (AC)	Vote
28/20	28th, 2015	Country: Syria	OP 12: strongly condemns the gross, systematic and widespread abuses of HR and violations of IHL by ISIL. OP 14: condemns all violations of IHRL and all violations of IHL and calls upon all groups in Syria to comply with their obligations under IHL and to respect HR.	AC in Syria	29 to 6; 12 abstentions
24/27	24th, 2013	Technical assistance and capacity building: DRC	PP: condemns wave of violence and serious crimes, including acts of sexual violence, by armed groups.	AC in DRC	No vote
24/18	24th, 2013	Technical assistance and capacity building: Sudan	PP: calls on parties to stop abuses and violations of HR. OP 12: calls on the government to ensure compliance with HR and IHL by all parties.	AC in Darfur	No vote
24/30	24th, 2013	Technical assistance and capacity building: Somalia	OP 4: condemns grave and systematic HR abuses by al-Shabaab.	AC in Somalia	No vote
24/32	24th, 2013	Technical assistance and capacity building: Yemen	OP 8: calls on armed groups to end the recruitment and use of children.	AC in Yemen	No vote
23/1	23rd, 2013	Country: Syria	OP 2: condemns all HR violations and abuses.	AC in Syria	36 to 1; 8 abstentions

Resolution No	Year & Session	Type	Term used to describe human rights (HR) abuses by ANSAs	Context of Armed Conflict (AC)	Vote
23/18	23rd, 2013	Technical assistance and capacity building: CAR	OP 3: condemns serious HR violations and acts of violence by all forces present.	Not clear	No vote
22/18	22nd, 2013	Technical assistance and capacity building: Mali	OP 4: condemns excesses and abuses committed by rebels, terrorist groups and other organized trans-national crime networks. OP 5: calls on all forces and armed groups to ensure that human rights law and IHL are respected.	AC in Mali	
21/25	21st, 2012	Country: Mali	OP 1: condemns the excesses and abuses committed by rebels, terrorist groups and other organized transnational crime networks.	AC in Mali	No vote
21/22	21st, 2012	Technical assistance and capacity building: Yemen	OP 4: calls on government and armed opposition groups to end recruitment of children.	AC in Yemen	No vote
21/26	21st, 2012	Country: Syria	OP 4: condemns violations of HR by Syrian authorities and the government controlled militia Shabbiha.	AC in Syria	41 to 3; 3 abstentions
21/27	21st, 2012	Technical assistance: Sudan	PP: condemns HR abuses and violations by all parties. OP 12: on the situation in South Kordofan and Blue Nile; calls on all parties to respect all HR and fundamental freedoms.	AC in Sudan	No vote

Resolution No	Year & Session	Type	Term used to describe human rights (HR) abuses by ANSAs	Context of Armed Conflict (AC)	Vote
21/31	21st, 2012	Technical assistance: Somalia	PP: condemns the violations and abuses by state and non-state actors. OP 1: condemns grave and systematic HR abuses and violations perpetrated, in particular by al-Shabaab and its affiliates. OP 4: holds perpetrators of HR violations and abuses accountable. OP 5: urges non-State actors, in particular al-Shabaab, to refrain from abusing the rights of women.	AC in Somalia	No vote
20/17	20th, 2012	Country: Mali	OP 2: Condemns the HR violations and acts of violence committed in norther Mali in particular by the rebels, terrorist groups, and other organized trans-national crime networks. NB: no reference to 'abuses' anywhere in the resolution.	AC in Mali	No vote
20/21	20th, 2012	Assistance to Somalia	OP 2: condemns the grave and systematic HR abuses, in particular by al-Shabaab and its affiliates. OP 10: urges all parties to take steps to protect children and to end abuses and violations against them. OP 12: urges all parties to take steps to proect women and to end abuses and violations of their HR.	AC in Somalia	No vote

Resolution No	Year & Session	Type	Term used to describe human rights (HR) abuses by ANSAs	Context of Armed Conflict (AC)	Vote
20/22	20th, 2012	Country: Syria	OP 1: condemns HR violations and crimes committed by the government controlled Shabbiha.	AC in Syria	41 to 3; 3 abstentions
19/21	19th, 2012	Country: Myanmar	OP 10: calls on the authorities and all armed groups to protect the civilian population and respect their HR.	AC in Myanmar	No vote
19/28	19th, 2012	Assistance to Somalia	OP 2: condemns the grave and systematic HR abuses, in particular by al-Shabaab and its affiliates. OP 3: urges all parties to take steps to protect children and to end abuses and violations against them.	AC in Somalia	No vote
18/16	18th, 2011	Technical assistance: Sudan	OP 8: calls on all parties to ... respect HR and fundamental freedoms.	AC in South Sudan	No vote
18/19	18th, 2011	Technical assistance and capacity building: Yemen	OP 4: condemns all violations of HR by all parties.	AC in Yemen	No vote
17/17	17th, 2011	Country: Libya	OP 4: urges all parties concerned to respect applicable IL, in particular HRL and IHL.	AC in Libya	No vote
17/25	17th, 2011	Assistance to Somalia	OP 2: Condemns and calls for cessation of the grave and systematic HR abuses by al-Shabab and its affiliates.	AC in Somalia	

Resolution No	Year & Session	Type	Term used to describe human rights (HR) abuses by ANSAs	Context of Armed Conflict (AC)	Vote
S-14/1	2010, 14th special session	Country: Côte d'Ivoire	OP 1: (condemns HR violations without naming actors). OP 2: calls on all relevant parties to put an end to HR violations and to respect HR. OP 3: urges all actors, particularly defence and security forces, to refrain from violence and respect all HR.	Violence after contested election	No vote
S-9/1	2009, 9th special session	Grave violations of HR in the OPT	OP 2: calls for end of launching of rockets against Israeli civilians. OP 10: urges all parties concerned to respect the rules of IHL and international human rights law.	AC in Palestinian Territories	33 to 1; 13 abstentions
Res. 9/17	2008, 9th session	Country: Sudan	OP 9: urges all parties to respect IHL and international human rights law.	AC in Sudan	No vote
Res. 7/1	2008, 7th session	Country: OPT	OP 3: calls for the immediate cessation of ... firing of crude rockets. OP 6: urges all parties to respect IHL and international human rights law.	AC in Palestinian Territories	33 to 1; 13 abstentions
Res. 7/35	2008, 7th session	Country: Somalia	OP 2: demands that all parties ... respect their obligations under IHL and international human rights law.	AC in Somalia	No vote

Resolution No	Year & Session	Type	Term used to describe human rights (HR) abuses by ANSAs	Context of Armed Conflict (AC)	Vote
Res. S-8/1	2008, 8th special session	Country: DRC	OP 1: calls on all parties (in North Kivu) to comply with their obligations under IHL, international human rights law and refugee law. OP 2: calls for an immediate end to all HR violations. OP 5: condemns acts of violence, HR violations and abuses committed in Kivu, in particular sexual violence and recruitment by the militia of child soldiers.	AC in DRC	No vote

NB: nothing relevant in 2007 and 2006 sessions.

Bibliography and Further Reading

O. Bangerter, 'Territorial gangs and their consequences for humanitarian players', 92 *International Review of the Red Cross* 878 (2010), 387-406.

A. Bellal, 'Beyond the pale? Engaging the Islamic State on international humanitarian law', 18 *Yearbook of International Humanitarian Law* 2015 (2016), 123-153.

A. Bellal, 'Non-state armed groups in transitional justice processes', *International Centre for transitional Justice*, 2017.

A. Bellal (ed.), *The War Report 2014*, Oxford University Press, 2015.

A. Bellal, 'Central African Republic: From Conflict to Chaos and Back Again?' in S. Casey-Maslen (ed), *The War Report 2013*, Oxford University Press, 2014, p. 411-427.

A. Bellal, 'Establishing the Direct Responsibility of Non-State Armed Groups for Violations of International Norms: Issues of Attribution', in N. Gal-Or, C. Ryngaert, M. Noortman (eds), *Responsibilities of the Non-State Actor in Armed Conflict and the Market Place, Theoretical Considerations and Empirical Findings*, Brill/Nijhoff, 2015, 304-22.

A. Bellal, G. Giacca and S. Casey-Maslen, 'International law and armed non-state actors in Afghanistan', 93 *International Review of the Red Cross* 881 (2011), 47-79.

A. Bellal and S. Casey-Maslen, 'Rules of Engagement: Protecting Civilians through engagement with Armed Non-State Actors', Geneva Academy of international Humanitarian Law and Human Rights, 2011.

A. Breitegger, 'The legal framework applicable to insecurity and violence affecting the delivery of health care in armed conflicts and other emergencies', 95 *International Review of the Red Cross* 889 (2015), 83-127.

A. Coco, 'The Mark of Cain, The Crime of Terrorism in Times of Armed Conflict as Interpreted by the Court of Appeal of England and Wales in R v. Mohammed Gul', 11 *Journal of International Criminal Justice* 2 (2013), 425-440.

C. Danwood Mzikenge, 'The Doctrine of State Responsibility as a Potential Means of Holding Private Actors Accountable for Human Rights', 5 *Melbourne Journal of International Law* 1 (2004), 1-36.

A. Clapham, 'Protection of civilians under international human rights law', in H. Willmot, R. Mamiya, S. Sheeran, M. Weller (eds), *Protection of Civilians*, Oxford University Press, 2016, 141-159.

A. Clapham, 'Focusing on Armed Non-State Actors', in A. Clapham and P. Gaeta (eds), *The Oxford Handbook of International Law in Armed Conflict*, Oxford University Press, 2014, 766-810.

A. Clapham, 'Non-State Actors', in D. Moeckli, S. Shah, S. Sivakumaran, D. Harris (eds), *International Human Rights Law*, Oxford University Press, 2014.

A. Clapham, 'The Rights and Responsibilities of Armed Non-State Actors: The Legal Landscape and Issues Surrounding Engagement' (February 1, 2010), SSRN, at: <http://dx.doi.org/10.2139/ssrn.1569636>.

A. Clapham, 'Human rights obligations of non-state actors in conflict situations', 88 *International Review of the Red Cross* 863 (2006), 491-523.

A. Clapham, *Human rights obligations of non-state actors*, Oxford University Press, 2006.

A. Constantinides, 'Human Rights Obligations and Accountability of Armed Opposition Groups: The Practice of the UN Security Council', *Human Rights and International Legal Discourse* 4 (2010), 89-110.

J. Crawford, *State Responsibility: The General Part*, Cambridge University Press, 2014.

G. Cronogue, 'Rebels, Negligent Support, and State Accountability: Holding States Accountable for the Human Rights Violations of Non-State Actors', 23 *Duke Journal Comparative and International Law* (2012-2013), 365-388.

E. De Brabandere, 'Non-State Actors, State-Centrism and Human Rights Obligations', 22 *Leiden Journal of International Law* (2009), 191-209.

R. Dudai and K. McEvoy, 'Thinking critically about armed groups and human rights praxis', 4 *Journal of Human Rights Practice* 1 (2012), 1-29.

Ends and Means: Human Rights Approaches to Armed Groups, International Council for Human Rights Policy, 2000.

K. Fortin, 'The Application of Human Rights Law to Everyday Civilian Life under Rebel Control', *Netherlands International Law Review* (2016), 1-21.

K. Fortin, 'The Accountability of Armed Groups under Human Rights Law' (Utrecht University, 2015, PhD thesis), forthcoming, Oxford University Press, 2017.

Geneva Call, *The Positive Obligations of Armed Non-State Actors: Legal and Policy Issues*, Report from the 2015 Garance Talks, 2016.

G. Giacca, *Economic, Social and Cultural Rights in Armed Conflict*, Oxford University Press, 2014.

F. Gutiérrez-Sanín, 'Organization and Governance: The Evolution of Urban Militias in Medellín, Colombia', in A. Arjona, N. Kasfir, and Z. Mampilly (eds), *Rebel Governance in Civil War*, Cambridge University Press, 2015, 246-264.

J. Hazen, 'Understanding gangs as armed groups', 92 *International Review of the Red Cross* 878 (2010), 369-386.

J.-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law - Volume 1: Rules*, Cambridge University Press, 2005.

J. Hessbruegge, 'Human rights violations arising from conduct of non-state actors', *Buffalo Human Rights Law Review* 11 (2005), 21-88.

C. Homequist, 'Engaging Armed Non-State Actors in Post-Conflict Settings' in *Security Governance in Post-Conflict Peacebuilding*, DCAF (2005).

I. Siatitsa, 'A Serious Violation of International Human Rights Law, An Attempt to Clarify a Crucial Provision of the Arms Trade Treaty', *European Journal of Human Rights* 5 (2015), 606-630.

Institut de Droit International, 'The Application of International Humanitarian Law and Fundamental Human Rights in Armed Conflicts in which Non-State Entities are Parties', Berlin session, 1999.

International Law Commission, 'Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries', *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two.

D. Jinks, 'State Responsibility for the Acts of Private Armed Groups', 83 *Chicago Journal of International Law* (2003), 83-95.

C. Jochnick, 'Confronting the impunity of non-state actors: new fields for the promotion of human rights', 21 *Human Rights Quarterly* 1(1999), 56-79.

K. Mastorodimos, *Armed Non-State Actors in International Humanitarian and Human Rights Law: Foundation and Framework of Obligations, and Rules on Accountability*, Ashgate Publishing, 2016.

- M. Mattiolo, S. Casey-Maslen, A. Priddy, 'Reactions to Norms: Armed Groups and the Protection of Civilians', Geneva Academy of International Humanitarian Law and Human Rights, 2014.
- K. Mills and D. J. Karp, *Human Rights Protection in Global Politics: Responsibilities of States and Non-State Actors*, Palgrave Macmillan, 2015.
- L. Moir, *The Law of Internal Armed Conflict*, Cambridge University Press, 2002.
- D. Murray, *Human Rights Obligations of Non-State Armed Groups*, Hart, 2016.
- M. Noortmann, A. Reinisch, and C. Ryngaert (eds), *Non-state Actors in International Law*, Bloomsbury Publishing, 2015.
- T. Obokata, 'Smuggling of Human Beings from a Human Rights Perspective: Obligations of Non-State and State Actors under International Human Rights Law', 17 *International Journal of Rights Law* (2005), 394-415.
- F. Rawski, 'Engaging with armed groups: a human rights field perspective from Nepal', 6 *International Organizations Law Review* 2 (2009), 601-626.
- T. Rodenhäuser, 'Human Rights Obligations of Non-State Armed Groups in other situations of violence: The Syria Example', *International Humanitarian Legal Studies* 3 (2012), 263-290.
- T. Rodenhäuser, 'Armed Groups under International Humanitarian Law, Human Rights Law, and International Criminal Law: What Degree of Organization is Required?', PhD Thesis, Graduate Institute of International and Development Studies, 2016.
- U. Schneckener, 'Fragile Statehood, Armed Non-State Actors and Security Governance', in *Private Actors and Security Governance*, DCAF (2006).
- N. Rodley, 'Can Armed Opposition Groups Violate Human Rights', in K. E. Mahoney and P. Mahoney (eds), *Human Rights in the Twenty-First Century: A Global Challenge*, Martinus Nijhoff, 1993, 297-318.
- Y. Ronen, 'Human Rights Obligations of Territorial Non-State Actors', *Cornell International Law Journal* (2013), 21-50.
- C. Rose, 'An Emerging Norm: The Duty of States to Provide Reparations for Human Rights Violations by Non-State Actors', 33 *Hastings International and Comparative Law Review* (2010), 307-344.
- M. Sassòli, 'Taking Armed Groups Seriously: Ways to Improve their Compliance with International Humanitarian Law', *Journal of International Humanitarian Legal Studies* 1 (2010), 5-51.

M. Sassòli and L. Olson, 'The relationship between international humanitarian law and human rights law where it matters: admissible killing and internment of fighters in non- international armed conflicts', 90 *International Review of the Red Cross* 871 (2008), 599-627.

M. Schoiswohl, 'De facto regimes and human rights obligations—the twilight zone of public international law?', *Austrian Review of International and European Law* 6 (2001), 50.

S. Sivakumaran, *The Law of Non-International Armed Conflicts*, Oxford University Press, 2012.

S. Sivakumaran, 'Binding Armed Opposition Groups', 55 *International and Comparative Law Quarterly* (2006), 369-394.

M. Ssenyonjo, 'The Applicability of International Human Rights Law to Non-State Actors: What Relevance to Economic, Social and Cultural Rights?', 12 *International Journal of Human Rights* (2008), 725-60.

M. Ssenyonjo, 'Accountability of non-state actors in Uganda for war crimes and human rights violations: Between amnesty and the International Criminal Court', 10 *Journal of Conflict and Security Law* 3 (2005), 405-434.

J. Van Essen, 'De Facto Regimes in International Law', 28 *Utrecht Journal of International and European Law* 74 (2012), 31-49.

S. Vité, 'Typology of armed conflicts in international humanitarian law: legal concepts and actual situations', 91 *International Review of the Red Cross* 873 (2009), 69-94.

L. Zegveld, *The Accountability of Armed Opposition Groups in International Law*, Cambridge University Press, 2002.

The **Geneva Academy of International Humanitarian Law and Human Rights** provides post-graduate education, conducts academic legal research and policy studies, and organizes training courses and expert meetings.

It concentrates on branches of international law that relate to situations of armed conflict, protracted violence, and protection of human rights.

Master of Advanced Studies programmes at the Geneva Academy:

LL.M. in International Humanitarian Law and Human Rights

Executive Master - Master of Advanced Studies in International Law in Armed Conflict (equivalent to an LL.M.)

Master in Transitional Justice, Human Rights and the Rule of Law

Villa Moynier

Rue de Lausanne 120B - CP 67 - 1211 Genève 21 - Switzerland

Phone +41 22 908 44 83 - Fax +41 22 908 44 99

info@geneva-academy.ch - www.geneva-academy.ch

**GENEVA
ACADEMY**

Académie de droit international
humanitaire et de droits humains
Academy of International
Humanitarian Law and Human Rights

ISBN 978-2-9701003-0-0



9 782970 100300 >