# POSSIBLE LEGAL MECHANISMS TO IMPROVE COMPLIANCE BY ARMED GROUPS WITH INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL HUMAN RIGHTS LAW

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## I. INTRODUCTION

This paper will first explore how armed groups could participate in the development, interpretation and operationalization of International Humanitarian Law (IHL) and of International Human Rights Law, and how they could accept those laws, *inter alia* to create a certain sense of ownership. Second, possible ways to encourage, monitor and control the respect of those laws by armed groups will be described. Finally, if violations occur, ways to apply criminal, civil and international responsibility, including sanctions will be described. Before those options can be presented, some preliminary remarks must be made to describe the legal and factual context.

### 1. The need to improve respect by armed groups

By definition, at least half the belligerents in the most widespread and most victimizing of armed conflicts around the world, *i.e*. non-international armed conflicts, are non-State armed groups. According to the theory the U.S. applies to its "war against terrorism", a conflict between a State and an armed group may also be qualified, in some circumstances, as an international armed conflict.[1] In both situations, it is urgent to improve the compliance, by such armed groups, of International Humanitarian Law (IHL) and of International Human Rights Law. The latter branch, applying equally in instances short of armed conflicts, also deserves better respect by armed groups involved in internal tensions and disturbances. Such respect certainly depends mainly from non-legal factors,[2] just as violations are often due to such factors and not to

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[1] *See* for a legal explanation of the U.S. position excerpts from an interview with Charles Allen, Deputy General Counsel for International Affairs, U.S. Department of Defense, 16 December 2002, online: Crimes of War Project, <http://www.crimesofwar.org/onnews/news-pentagon-trans.html>, and *Respondents' Response to, and Motion to Dismiss, the Amended Petition for a Writ of Habeas Corpus*, at 7, *Padilla v. Rumsfeld* (S.D.N.Y. August 27, 2002) (Civ. 4445 (MBM)), online: Findlaw <http://news.findlaw.com/hdocs/docs/padilla/padillabush82702grsp.pdf>. Such position was partly accepted by the court in Hamdi v. Rumsfeld, 296 F.3d 278 (4th Cir. 2002), and *Hamdi v. Rumsfeld* (4th Cir. January 8, 2003) (No. 02-7338), online: Findlaw <http://laws.lp.findlaw.com/>.

[2] See Marco Sassòli & Antoine Bouvier, *How does Law Protect in War?* (Geneva: ICRC, 1999) at 259; Michel Veuthey, *Guérilla et droit humanitaire,* 2d ed. (Genève: CICR, 1983) at 338-347.

shortcomings of the law or its mechanisms of implementation. It may nevertheless be appropriate to explore possible legal mechanisms to increase such respect.

2. International law remains State-centred

Armed groups as understood in this paper are not States. Whereas international reality is less and less state-centred, international law remains very much state-centred. Not only are most of its rules still exclusively addressed to States; its implementation mechanisms are even more state-centred. Even when rules apply to non-State actors or are claimed to apply to them, in most cases no international forum exists in which the individual victim, the injured State, an international intergovernmental or non-governmental organization or a third State could invoke the responsibility of a non-State actor and obtain relief.

3. Ways to enforce international law against armed groups

International law can be enforced against armed groups in three ways.[3] First, indirectly, by attributing their behaviour to a State and using the traditional enforcement mechanisms against such responsible States. Sometimes a State may be responsible for an armed group fighting under its jurisdiction, either because it controls it, directs it, adopts its conduct as its own, for lack of due diligence in controlling it or because a former armed group has become the government of the State.[4] In other cases a third State may be responsible for an armed group because the former possesses effective or overall control over the latter,[5] because it aids or assists the group in violations of international law,[6] or it may breach, as far as IHL is concerned, its obligation to ensure that law's respect by others,[7] including by parties to non-international armed conflicts abroad.[8]

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[3] Liesbeth Zegveld, *Accountability of Armed Opposition Groups in International Law* (Cambridge: Cambridge University Press, 2002) at 97-228.

[4] Draft Arts. 8 and 10 of the *Draft Articles on Responsibility of States for internationally wrongful acts* [*Draft Articles*], in United Nations, International Law Commission, *Report on the work of its fifty-third session (23 April - 1 June and 2 July - 10 August 2001)*, UN GAOR, 55th Sess., Supp. No. 10, A/56/10, at 29, online: United Nations <http://www.un.org/law/ilc/reports/2001/2001report.htm> [*Report*]. The UN General Assembly took note of the Draft Articles in Resolution A/RES/56/83 of 12 December 2001.

[5] See, for the effective control standard, the ICJ in the case *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United Statesof America)*, Merits, [1986] I.C.J. Rep. 14 at para. 115 and, for the overall control standard, the International Criminal Tribunal for the former Yugoslavia (ICTY) in the Case *Prosecutor v. Tadic* (1999), Judgement, Case No. IT-94-1-A (International Criminal Tribunal for the former Yugoslavia, Appeals Chamber) ILM 1518 (1999), at paras. 116-144.

[6] *Draft Articles*, *supra* note 4, Arts. 8, 16.

[7] *Convention [No.I] for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 12 August 1949, 75 U.N.T.S. 31 - 83; *Convention [No. 2] for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, 12 August 1949, 75 U.N.T.S. 85 - 133; *Convention [No. III] relative to the Treatment of Prisoners of War*, 12 August 1949, 75 U.N.T.S. 135 - 285; *Convention [No. IV] relative to the Protection of Civilian Persons in Time of War*, 12 August 1949, 75 U.N.T.S. 287 – 417, Art. 1 common. See on this obligation Luigi Condorelli & Laurence Boisson De Chazournes, "Quelques remarques à propos de l'obligation des États de 'respecter et faire respecter' le droit international humanitaire en toutes circonstances", in *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet*, (The Hague, Geneva : ICRC, Martinus Nijhoff Publishers, 1984) 17 ; Laurence Boisson De Chazournes & Luigi Condorelli, "Common Article 1 of the Geneva Conventions Revisited: Protecting Collective Interests" (2000) 837 Int'l Rev. Red Cross 67.

[8] *Nicaragua v. United States of America*, *supra* note 5, at para. 220.

Second, international criminal law, a branch piercing the corporate veil of the State, is directly addressed to individuals and possesses mechanisms, including international criminal tribunals, which directly enforce it against such individuals. It is today no longer controversial that some international crimes such as war crimes, crimes against humanity and genocide may be committed not only by individuals acting for a State, but equally by individuals acting for a non-State group.[9]

The third possibility, which is even more innovative and less explored than individual criminal responsibility, is to enforce the law directly against the armed group. While the other two approaches have their advantages, the present paper exclusively focuses upon this approach. There are several reasons in favour of exploring it.[10] First, governments have often lost any control of armed groups. In other cases, attribution is difficult to prove or enforcement exclusively through the territorial State (*e.g*. criminal prosecution of members of an armed group) is less effective as a deterrent than is punishment by the group itself. Second, individual criminal responsibility exists only for the most egregious violations and may only be enforced through a fair trial in which the facts and their individual attribution have to be proven beyond reasonable doubt. Such standards of evidence are not necessary towards the group itself. Furthermore, groups may take preventive steps, which cannot be and are not requested from every individual involved in a conflict. Only they can disseminate the law, instruct and train their members, or "legislate" for the benefit of persons under their control. Third, as Liesbeth Zegveld points out, international law must be adapted to the international political order, in which a variety of actors from multinational corporations to indigenous peoples, non-governmental organizations and armed groups play an increasing role.[11]

### 4. International Humanitarian Law and arguably International Human Rights Law bind armed groups

Logically, compliance by armed groups presupposes that they are bound by a given rule. For IHL, or more precisely that part of it applicable to non-international armed conflicts, it is undisputed that it binds, under the explicit wording of Article 3 common to the four Geneva Conventions of 1949, "each party to the conflict", *i.e*. as much the non-State armed group as the governmental side.[12] For International Human Rights law this is much more controversial. Even prominent Human Rights defenders advance good reasons why armed groups should not be seen as addressees of Human Rights.[13] On the other hand, an increasing number of international soft law in the Human Rights field, pronouncements of international and non-governmental bodies,

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[9] See Art. 8 (2) (c)-(f) of the *Rome Statute of the International Criminal Court*, 17 July 1998, U.N. Doc. A/CONF.183/9, and William A. Schabas, "Punishment of Non-State Actors in Non-International Armed Conflict" (2003) 26 Fordham Int'l L.J. 907.

[10] Zegveld, *supra* note 3, at 220-228.

[11] *Ibid*. at 224.

[12] *Ibid*. at 9-38, with further references.

[13] Nigel S. Rodley, "Can Armed Opposition Groups Violate Human Rights Standards?" in Kathleen E. Mahoney & Paul Mahoney, ed., *Human Rights in the Twenty-First Century* (The Hague: Nijhoff, 1993) 297. See also para. 47 of the *Report of the consultative meeting on the draft Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international Human Rights and humanitarian law*, UN ESCOR, 59th Sess., UN Doc E/CN.4/2003/63 (27 December 2002).

some judicial decisions and a growing part of scholarly writings consider that non-State actors or specifically armed groups have Human Rights obligations.[14] While the issue is fully discussed in another paper, I will assume in the rest of this paper that armed groups have Human Rights obligations. I will explore for both IHL and International Human Rights Law together how their compliance could be improved. It is however evident that Human Rights provisions need much more practical translation and adjustment to the special problems raised by armed groups involved in armed conflicts than do the rules of behaviour of IHL, which were made for such situations and such actors. For most, but not all problems specific to armed conflicts, IHL can be considered as *lex specialis* prevailing over the general provisions of International Human Rights Law. In addition, provisions of International Human Rights Law other than those of its hard core may be suspended in times of emergency, such as armed conflicts.[15]

## 5. The diversity of armed groups

Armed groups are very diverse, in their degree of organization and control over their members, territory or people, their aims, and in particular in their inclination to respect humanitarian rules. Most people who write about them make distinctions between different categories and suggest certain methods to improve compliance only for certain categories. Very often it is argued that some groups (*e.g.* Al-Qaeda) cannot possibly be brought to respect IHL or Human Rights. I dare to suggest that the international community should try to apply all the legal mechanisms suggested to all armed groups. I would then leave the decision to exclude a given group from those mechanisms (and therefore the renunciation of any hope to obtain some restraint) to that group, if it rejects the mechanism, does not take it seriously or only abuses it for propaganda purposes. There are several reasons for this inclusive approach. First, it is very difficult to define objective criteria to characterize those groups that are "hopeless". Even the Algerian civil war started with sixty indiscriminate terrorist attacks perpetrated during one night.[16] Second, even if such criteria exist, it will be very difficult to convince the State(s) or armed groups, which fight against a given group, that this group merits inclusion and that they should therefore tolerate the functioning of international mechanisms in respect of that group. To give but some practical examples: Were the Afghan Mujaheddins fighting against the Soviet Union, the FLMN in El Salvador, or are the FARC in Colombia and the LTTE in Sri Lanka sufficiently "civilized" that they deserve efforts to improve their compliance with international standards? If our answer (for

[14] See the debate in *Minimum Humanitarian Standards, Analytical Report of the Secretary-General submitted pursuant to Commission of Human Rights Resolution 1997/21*, UN ESCOR, 54th Sess., UN Doc. E/CN.4/1998/87 (5 January 1998), at paras 59-69, with further references; David Matas, "Armed opposition groups" (1997) 24 (3) Man. L.J. 621 at 630ff (armed groups); Zegveld, *supra* note 3, at 38-55 (armed groups); Andrew Clapham, *Human Rights in the private sphere* (Oxford: Clarendon Press, 1993) at 94 ff, 188, 230ff (non state actors); Silvia Danaloiv, "The Accountability of Non-State Actors for Human Rights Violations: the Special Case of Transnational Corporations" (October 1998), online: Menschenrechte Schweiz MERS <http://www.humanrights.ch/bildungarbeit/seminare/pdf/000303_danailov_studie.pdf> at 32ff (non state actors); International Council on Human Rights Policy, "Ends & means: Human Rights approaches to armed groups" (2000) online: Relief Web <http://www.reliefweb.int/library/documents/2001/EndsandMeans.pdf>, at 59-62.

[15] See on the relationship between the two branches Sassòli & Bouvier, *supra* note 2, at 263-272, with further references, and the ICJ in *The Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, [1996] I.C.J. Rep. 226 at para. 25.

[16] François Bugnion, *Le Comité international de la Croix-Rouge et la protection des victimes de la guerre*, 2d ed., (Genève: CICR, 2000) at 739.

some of them) is affirmative, does anyone believe that the governments of the Soviet Union, El Salvador, Nicaragua, Colombia or Sri Lanka would agree with our qualification?

## II. PROMOTION OF INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS AMONG ARMED GROUPS

### 1. Dissemination

If those who fight for armed groups are not properly instructed, *i.e.*, not only by informing of and explaining the rules but also by making everyone understand that IHL applies also and precisely in the fight against the worst enemy, the often very detailed rules of IHL for different problems appearing in armed conflicts will never be respected. Protocol Additional II to the Geneva Conventions (Protocol II) therefore prescribes that it must be "disseminated as widely as possible",[17] *i.e.* including to armed groups. To be successful, such dissemination must start already in peacetime. When an armed conflict with all the hate, upon which it is based and which it creates, has broken out, it is often too late to learn the message and to decide to behave accordingly. All this is even more difficult for non-international armed conflicts and concerning armed groups. While a proper training of governmental forces in view of a possible international armed conflict has its beneficial effect also if they are involved in a non-international armed conflict, it is politically delicate to reach future armed groups before they are actually involved in an armed conflict. Once the conflict has started, it is partly too late and it may be difficult to reach them. Sometimes it is unrealistic to apply the normal maxims of passing through the hierarchy and of training the trainers. Many armed groups not only do not have a formal training structure, but their hierarchy is for reasons of secrecy also much less in direct contact with the actual fighters than in regular armed forces. It will leave the choice of means and methods to achieve a goal more often than regular commanders to those actually fighting in the field. For certain, humanitarian organizations must continue their dissemination efforts to those actually involved in fighting and everyone must remind armed groups of their responsibility and public relations interest to disseminate humanitarian and Human Rights rules. However, the most promising preventive action in my view is to ensure that before any armed conflict breaks out, the whole population has a basic understanding of IHL and Human Rights in order to realize that even in armed conflict, certain rules apply independently of who is right and who is wrong, protecting even the worst enemy. Thus, political or social activists, journalists, students, schoolchildren, all of whom may one day become members or supporters of an armed group, and the public at large who generates public opinion, must know the obligations to which everyone's actions are subject, and the rights each may claim, in armed conflicts.[18]

### 2. Increase their sense of ownership

[17] *Protocol [No. II] Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts*, 8 June 1977, 1125 U.N.T.S. 609 – 699, Art. 19.

[18] This obligation to disseminate IHL already in peacetime is prescribed in Arts. 47, 48, 127, 144, respectively, of the four Conventions, and Art. 83 of *Protocol [No. I] Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts*, 8 June 1977, 1125 U.N.T.S. 3 – 434.

Formally, States are the legislators of international law and it is this law that also binds armed groups. In theory, armed groups are bound by international rules not because they accepted them, but because States accepted them, because the relevant territorial State legislated so or because customary law so determines.[19] In practice however, all law has to take into account, as closely as possible, the social reality it wants to govern. Non-international armed conflicts are by definition fought at least as much by armed groups as by governmental armed forces. If only the needs, difficulties and aspirations of the latter are taken into account by the law, it will be less realistic and effective. Moreover, independently of the realism of the rules, it is psychologically easier to have them accepted and respected by persons who were involved – or represented – in their development. It is always easier to obtain respect of a rule invoking the acceptance of that rule by the addressee than by arguing even the most sophisticated legal construction. In the 1970s, several guerrilla movements declared that they would not feel bound by developments of IHL in the elaboration of which they could not participate and which they would not explicitly accept.[20] Finally and most importantly, those elites, representatives, activists or sympathizers of a given armed group who were involved in discussions about how the law should be or what it means for armed groups will be more familiar with that law, will view its respect as important for their credibility, and will plead the respect and realism of the law with other circles within the group which are less inclined to respect it. Informal networks of IHL and Human Rights "advocates" within armed groups can be thus created.

a. Involve them into the development of the law

A first step for creating a sense of ownership among armed groups is to involve them into the development and reaffirmation of the law. In my view, as far as customary IHL of non-international armed conflicts and customary Human Rights norms applicable to armed groups are concerned, this already is the case.[21] Customary law is based on the behaviour of the subjects of a rule, in the form of acts and omissions or (whether qualified as practice *lato sensu* or evidence for *opinio juris*) in the form of statements, mutual accusations and justifications for their own behaviour. The subjects of the rules relevant to non-State actors are also those actors. IHL implicitly confers a limited international legal personality to armed groups involved in armed conflicts, *i.e.* providing them the functional international legal personality necessary to have the rights and obligations foreseen by it.[22] The same must be true for International Human Rights Law, if it applies at all to armed groups.

To involve armed groups into the development of treaty rules is more difficult. It would be almost impossible to reach agreement over which groups should be invited.[23] In the least, they should exist for a certain time before being able to make useful contributions. Even then, their participation will make the treaty-making process even more cumbersome and politicised than it

[19] See Zegveld, *supra* note 3, at 14-18 and *infra* notes 39-41.
[20] Veuthey, *supra* note 2 at 61.
[21] Thus *de lege ferenda* Jean-Marie Heckaerts, "Binding Armed Opposition Groups through Humanitarian Treaty Law and Customary Law" in *Proceedings of the Bruges Colloquium, Relevance of International Humanitarian Law to Non-State Actors, 25th-26th October 2002*, (Spring 2003) 27 Collegium 123 at 128.
[22] See already Paul Guggenheim, *Traité de droit international public*, vol. 2, 1st ed. (Genève: Georg, 1954) at 314; Charles Zorgbibe, *La guerre civile*, (Paris: PUF, 1975) at 187-189; the Constitutional Court of Colombia in Case No. C-225/95, partly reproduced in Sassòli & Bouvier, *supra* note 2 at 1361, para. 14
[23] Henckaerts, *supra* note 21 at 128.

already is. In addition, armed groups involved in ongoing conflicts are by definition illegal under the law of the State where they fight and often also under the law of third States. It may therefore be practically difficult and politically delicate to involve their representatives in any formal meetings. A solution may be to invite only groups that participated in past armed conflicts. However, this will in turn increase the time gap between the needs of practice and the response of the law. Moreover, for practical reasons those participants of past conflicts that can still be reached consist of groups which have succeeded in becoming the new government of a State, in participating in it or in establishing a new State. Experience shows that their perspective may change very quickly into a governmental perspective.

Once the problem of the groups to be involved is solved, the way in which they could be involved has to be determined. The groups' views could and should certainly be collected as part of the factual research preceding any codification or the adoption of "new interpretations".[24] This is certainly easier for – and has been done in the past by[25] - an independent organization such as the ICRC, when it prepares new developments of IHL, or for NGOs promoting new Human Rights norms, than it is for bodies of intergovernmental organizations such as the UN High Commissioner for Human Rights. It would be even more difficult to invite armed groups to formal (preferably separate) preparatory meetings or even to diplomatic conferences adopting new instruments. It may be remembered that from 1974-1977, eleven national liberation movements participated, as observers, in the deliberations of the *Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts* convened by Switzerland, which adopted the 1977 Protocols.[26] This participation led however to very arduous and political discussions at the conference. Furthermore, from the point of view of international law, those regionally recognized national liberation movements are not simple armed groups. It is therefore doubtful whether such an experience could be repeated. Anyway, it can be expected that not many diplomatic conferences will be held in the future because the codification of IHL is largely over.[27]

By analogy to other fields of international reality dominated by non-State actors, one could imagine that armed groups develop between them a new trans-national law of armed groups, just as sports clubs and their organizations have developed international sports law,[28] internet users and providers the cyber law[29] and merchants the *lex mercatoria*.[30] The relationship between such new *lex armatorum* and the IHL and Human Rights law adopted by States would have to be

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[24] *Infra* note 33.
[25] Veuthey, *supra* note 2 at 61.
[26] Yves Sandoz, Christophe Swinarski & Bruno Zimmermann, ed., *Commentary on the Additional Protocols* (Geneva: ICRC & Nijhoff, 1987) at xxxiii.
[27] Henckaerts, *supra* note 21 at 128.
[28] James R. Nafziger, *International Sports Law* (Dobbs Ferry: Transnational Publishers, 1988), at 32-38; James R. Nafziger, "International Sports Law Search Term End: A Replay of Characteristics and Trends" (1992) 86 Am. J. Int'l L. 489.
[29] David R. Johnson and David Post, "Law and Borders - The Rise of Law in Cyberspace" 48 Stan. L. Review 1367; Marcus Franda, *Governing the Internet, the Emergence of an International Regime* (Boulder: Lynne Rienner Publishers, 2001).
[30] Michel Virally, "Un tiers droit? Réflexions théoriques" in *Le droit des relations internationales économiques : études offertes à Berthold Goldman* (Paris : Librairies techniques, 1982) 373 ; Gunther Teubner, " The King's many bodies: the self-deconstruction of Law's hierarchy " (1997) 31 Law. & Soc'y Rev. 763; Filali Osman, *Les principes généraux de la Lex Mercatoria - contribution à l'étude d'un ordre juridique anational* (Paris : LGDJ, 1992).

clarified, but this was also necessary for the relationship between the *lex mercatoria* and the instruments of international trade law. The greater difficulty is that armed groups, unlike sports clubs, merchants and Internet users are illegal under their domestic legislation. Furthermore, while those other non-State actors mainly interact between each other and the trans-national law they create governs such interaction, armed groups do not fight worldwide against each other. They either fight against governments, which it would be difficult to subject to the new *lex armatorum*, or against specific other armed groups in their geographic vicinity.

Another option for States is to adopt in existing or in new international *fora* new soft law standards in the fields of IHL and Human Rights to be respected by armed groups, similarly to those adopted or suggested in UN and OECD *fora* for trans-national corporations.[31] When such rules for armed groups are elaborated, the views of those groups should be fully taken into account. In practice, this is difficult even for soft law. It is hardly surprising that the UN did not involve armed groups in the preparations of *Minimum Humanitarian Standards.*[32] It is more remarkable that armed groups are completely excluded from the recent post-modern process of reaffirmation and development of IHL started by Switzerland and the Harvard Program on Humanitarian Policy and Conflict Research, although this process does not aim at new treaty rules, but at action-oriented research, informal discussions with governments and possibly "new interpretations" of IHL.[33]

Admittedly, two particular problems will arise. First, at least as far as IHL is concerned, the relationship between the new soft law and the hard law obligations of armed groups under the law of non-international armed conflicts, customary or conventional, has to be clarified. Second, the soft law rules to be adopted will not – and as far as Human Rights rules are concerned, they should realistically not – be the same as the hard law rules for States. As the rules will apply frequently to conflicts between armed groups and States, this would lead to a situation in which both sides are not bound by the same rules. This would be contrary to the principle of the equality of the belligerents before IHL, a principle resulting from the fundamental distinction between *ius ad bellum* and *ius in bello*.[34]

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[31] See *e.g. OECD Guidelines for Multinational Enterprises*: *Text, Commentary and Clarifications of October 2001*, online: OECD <http://www.oecd.org/document/28/0,2340,en_2649_34889_2397532_1_1_1_1,00.html> and the *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights* adopted on 13 August 2003 by the UN Sub-Commission on the Promotion and Protection of Human Rights, UN ESCOR, 55th. Sess., UN Document E/CN.4/Sub.2/2003/12/Rev.1 (26 August 2003).

[32] See *supra* note 14 and *infra* note 36.

[33] See Harvard Program on Humanitarian Policy and Conflict Research, *Informal High-Level Expert Meeting on the Reaffirmation and Development of International Humanitarian Law (IHL) and its follow-up* (date), online: Harvard Program on Humanitarian Policy and Conflict Research <http://www.hsph.harvard.edu/hpcr/ihl_research_meeting.htm>.

[34] See on this fundamental principle of the equality of the belligerents before IHL, Protocol I, preambular para. 5; the US Military Tribunal at Nuremberg in the case of *Wilhelm List et al.* (8 July 1947- 19 February 1948), The United Nations War Crimes Commission, *Law Reports of Trials of War Criminals*, vol. VIII, at 34-76 (see for this case and other references Sassòli & Bouvier, supra *note* 2 at 83-87, 665, 681, 682); Christopher Greenwood, "The Relationship Between *jus ad bellum* and *jus in bello*" (1983) 9 Review of International Studies at 221-234; François Bugnion, « Guerre juste, guerre d'agression et droit international humanitaire », (2002) 847 Int'l Rev. Red Cross 523; Henri Meyrowitz, *Le principe de l'égalité des belligérants devant le droit de la guerre* (Paris: Pedone, 1970).

In view of the aforementioned difficulties, to achieve the greatest possible sense of ownership by a given armed group and to obtain rules as adapted as possible to the concrete situation the group is involved in and the humanitarian problems it raises, it may be preferable to negotiate with individual armed groups specific codes of conduct they should adopt and which interpret and adapt existing IHL and Human Rights rules to their specific situation. The prohibition of trials without judicial guarantees may, *e.g.*, represent for a group holding a stable territorial control something very different than for a group without such control. For the first, the principle that courts must be established by law may raise problems,[35] while for the second, the prohibition may mean that it is barred from sentencing anyone. Such codes of conduct should obviously contain provisions on their dissemination and enforcement within the armed group and designate, if possible, an outside monitoring mechanism. The suggested UN Declaration of Minimum Humanitarian Standards could be a good starting point, as it merges relevant rules of IHL and International Human Rights Law.[36] Here again a certain analogy can be made with codes of conduct and social labelling mechanisms adopted by trans-national enterprises,[37] which can be efficient only if they translate, reformulate and reconceptualize the general Human Rights norms into something meaningful for the given enterprise and its field of activities.[38] The mere discussion and drafting of such codes within an armed group would certainly have a considerable impact in terms of sensibilization and hopefully of behaviour of that group. Armed groups might also relish the opportunity to manifest their acceptance of IHL and Human Rights in order to sway local and/or international public opinion.

Several such codes from different armed groups would then offer a sound basis for future developments of IHL and Human Rights norms. In any case they will influence the development of customary international law. Another outgrowth of the process of drafting such codes or collecting armed groups' declarations of acceptance is that States may realize that several groups refuse to accept certain provisions of International Human Rights Law and IHL. They may wish to react to this refusal by adopting new rules, which reflect the reality of armed groups' practice during conflict.

b. Allow or encourage armed groups to commit themselves to the law

Different legal constructions exist to explain why armed groups are bound by IHL. They may also explain their obligation to respect Human Rights norms. Either there is a rule of customary international law according to which they are bound by obligations accepted by the government of the State where they fight,[39] or the principle of effectiveness implies that any effective power

[35] See *infra* note 58.
[36] See *supra* note 14, *infra* note 44 and Jean-Daniel Vigny and Cecilia Thompson, "What future for fundamental standards of humanity?" (2000) 840 Int'l Rev. Red Cross 917.
[37] Laurence Dubin, "The direct application of Human Rights Standards to and by Transnational Corporations" (1999) 61 Review of International Commission of Jurists 35 at 62-65. For an overview of the different codes of conduct suggested by intergovernmental and non-governmental organisations to corporations see online: État de Genève http://www.geneve.ch/agenda21/pme/fiche09.asp. See also *infra* note 94.
[38] See *e.g.* Amnesty International, *Human Rights Principles for Companies*, Document ACT 70/01/98 and *Multinational enterprises and Human Rights, A report by the Dutch Sections of Amnesty International and Pax Christi International* (Utrecht, 1998).
[39] Michael Bothe, "Conflits armés internes et droit international humanitaire" (1978) 82 R.G.D.I.P. at 91-93.

on the territory of a State is bound by its obligations[40] or they are bound via the implementation or transformation of international rules into national legislation or by the direct applicability of self-executing international rules.[41] All these constructions have the disadvantage of making the obligation of the armed group dependent on the government against which they often fight. It is therefore psychologically and diplomatically preferable to have a commitment by the group itself.[42]

One way foreseeing such a commitment is explicitly mentioned in IHL. Article 3 common to the Geneva Conventions encourages the parties to a conflict not of an international character "to bring into force, by means of special agreements, all or part of the other provisions" of the Conventions. Such agreements were in particular concluded, under the auspices of the ICRC, in the different conflicts in the former Yugoslavia.[43] Under the auspices of the UN, similar less formal agreements, sometimes referred to as codes of conduct, were concluded in Sudan, Congo and Sierra Leone.[44] They have the particular advantage of clarifying the law for all parties to a conflict and of increasing the obligations compared to those that would anyway apply under the law of non-international armed conflicts. In the future, such agreements should be extended, whenever possible, to cover Human Rights not adequately covered by IHL.

National liberation movements may make a unilateral declaration of accession to certain IHL treaties, which brings them into force between them and the States parties.[45] Other armed groups have also made declarations of intention to respect either the law of non-international armed conflicts that they anyway have to respect, or, in addition, some rules of the law of international armed conflicts they are normally not bound to respect.[46] In the latter case it is important that such groups realize that their declaration does not imply that their (governmental) enemies are equally bound to such additional rules. Such declarations are often motivated by propaganda and status motives, which do not matter as long as the declaring group can be brought to implement

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[40] Roger Pinto, "Les règles du droit international concernant la guerre civile" (1965 I) 114 Collected Courses 528.
[41] *Commentary Protocols*, *supra* note 24 at para. 4444 and Georges Abi-Saab, "Non-international armed conflicts" in *International Dimensions of Humanitarian Law* (Geneva & Paris: Henry Dunant Institute & Unesco, 1988) 217 at 230.
[42] Zegveld, *supra* note 3 at 17, provides the example of the FMLN in El Salvador, which would not let the ICRC evacuate wounded enemies because it "did not consider itself bound by Protocol II, unless it had concluded an agreement to this effect."
[43] See for their text Sassòli & Bouvier, *supra* note 2 at 1109-1118; Bosko Jakovljevic, "Memorandum of Understanding of 27 November 1991: International Humanitarian Law in the Armed Conflict in Yugoslavia in 1991" (1991) 3 Yugoslav Review of International Law at 301-312; Bosko Jakovljevic, "The Agreement of May 22, 1992, on the Implementation of International Humanitarian Law in the Armed Conflict in Bosnia-Herzegovina" (1992) 2-3 Yugoslovenska Revija za Medunarodno Pravo at 212-221; Yves Sandoz, "Réflexions sur la mise en œuvre du droit international humanitaire et sur le rôle du Comité international de la Croix-Rouge en ex-Yougoslavie" (1993) 4 .S.Z.I.E.R. at 461-490.
[44] See Commission on Human Rights, *Fundamental standards of Humanity, Report of the Secretary-General submitted pursuant to Commission resolution 2000/69*, UN ESCOR, UN Doc. E/CN.4/2001/91 (12 January 2001) at paras. 42-45.
[45] Arts. 96 (3) and 1 (4) of *Protocol I* and Art. 7 (4) of the *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects*, 10 October 1980, 1342 UNTS 142.
[46] Denise Plattner, "La portée juridique des déclarations de respect du droit international humanitaire qui émanent de mouvements en lutte dans un conflit armé" (1984-1985) 18 (1) Rev. B.D.I. at 298-320 ; Veuthey, *supra* note 2 at 50.

them. Legally, the application of parts or all of IHL does never confer any legal status upon an armed group.[47]

In the non-governmental International Campaign to Ban Landmines (ICBL), the Non State Actors Working Group and the Geneva Call have succeeded to obtain adherence to a **"**Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action" by armed groups such as the Sudan People's Liberation Movement/Army (SPLM/A), the Moro Islamic Liberation Front (MILF), the Revolutionary Proletarian Army/Alex Boncayao Brigade (RPA-ABB) in the Philippines, the Patriotic Union of Kurdistan (PUK)-led Kurdistan Regional Government (Suleimania), the Kurdistan Democratic Party (KDP)-led Kurdistan Regional Government (Erbil), and fifteen Somali factions.[48] The Geneva call succeeds to draw such groups into the political arena for a dialogue, and hopes to get them to adhere to a wider basic humanitarian code of conduct through the landmine issue. It is interesting to note that although the Ottawa Mine Ban Treaty [49] does not address armed groups, States parties acknowledged the importance of engaging armed groups to a total antipersonnel mine ban.[50]

c. Encourage and assist them to implement the law

States must take national measures of implementation for their obligation under IHL and Human Rights treaties.[51] Non-state armed groups could equally be encouraged and assisted to give proper instructions to their members, and to establish internal monitoring systems to ensure that IHL and Human Rights are respected in the activities of the group.[52] The "Geneva Call" requires each armed group signatory of a deed of commitment to establish self-regulation mechanisms (orders and directives, measures of information, dissemination and training, disciplinary sanctions in case of non-compliance, etc) to ensure that its commanders and rank-and-file are aware and abide by the Deed of Commitment requirements.[53]

An additional, more innovative, proposal is to encourage and assist armed groups that have *de facto*, in particular territorial, control over persons who are not their members, to determine the rights and obligations of such persons by a sort of "legislation". This could guarantee a minimum of rule of law, with all its inherent benefits, for such persons. There are however considerable obstacles. Not only will States strongly object to any kind of "legislation" by armed groups on their territory. It is also difficult to construct the legitimacy of such "legislation", taking into

[47] Art. 3 (4) common to the four Geneva Conventions.
[48] See for the Geneva Call online: Geneva Call <http://www.genevacall.org/home.htm> and for the Working group on non state actors on line: Working group on non sate actors <http://www.icbl.org/wg/nsa/>.
[49] *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction*, 18 September 1997.
[50] See the *Managua Declaration* adopted by the Third Annual Meeting of States Parties to the Convention, 21 September 2001, online: Geneva Call <http://www.genevacall.org/resource/references/offdocuments/managua.pdf.>
[51] See for Human Rights treaties, Art. 2 (2) of the *International Covenant on Civil and Political Rights*; Art. 2 of the *American Convention on Human Rights*; Art. 1 of the *African Charter on Human and Peoples' Rights* and for IHL, Art. 80 (1) of *Protocol I* and for criminal legislation Arts. 49 (1), 50 (1), 129 (1), and 146 (1), respectively, of the four Conventions. On the ICRC efforts to encourage such national measures of implementation see Paul Berman, "The ICRC's Advisory Service on International Humanitarian Law: The Challenge of National Implementation" (1996) 312 Int'l Rev. Red Cross 338.
[52] *Ends & means, supra* note 14 at 49-51.
[53] *Supra* note 48.

account that Human Rights law demands that "[t]he will of the people shall be the basis of the authority of government".[54]

IHL and International Human Rights Law prohibit that anyone be held guilty on account of any act or omission, which did not constitute a criminal offence, under the *law*, at the time when it was committed.[55] It is interesting that Human Rights instruments, contrary to IHL of non-international armed conflicts, specify that such law must be national or international. In both cases the question arises whether armed groups may legislate. They certainly have to respect the inderogable prohibition of retroactive criminal legislation.[56] However, is it realistic to expect them to respect it if they cannot legislate? From a humanitarian point of view, one may wish that they could not. It is sufficient that the group may enforce the criminal law of the country. *Ad hoc* criminal legislation is not desirable. The government may, however, introduce new legislation during the conflict, including outlawing support for armed rebels. Is it realistic to expect rebels not to prohibit support for their enemy? Such differential treatment would, here again, be contrary to the IHL principle of the equality of the belligerents.

A parallel question is whether armed groups may establish a regularly constituted court. Only such a court may pass criminal sentences.[57] To be regularly constituted, a court must be established by law,[58] which again raises the question discussed above. Beyond that, it is difficult for a lawyer to imagine a criminal court constituted by anyone else than by the State. In addition, hastily set up "popular" or "revolutionary" courts rarely conduct fair trials. However, to deny armed groups to set up courts means to prohibit them to punish whomever for whatever action. It is difficult to deny an armed group the possibility to punish an enemy for war crimes. Moreover, to allow them to punish their own members for war crimes is even desirable from the perspective of increasing respect for IHL. Such punishment may even be required from a superior to avoid command responsibility,[59] as the latter applies also in non-international armed conflicts according to the ICTY.[60] The solution of Protocol II, simply requiring "a court offering the essential guarantees of independence and impartiality",[61] which implies that even insurgents may set up such court,[62] is therefore preferable.

Both issues, whether armed groups may legislate and whether they may set up courts, touch upon the fundamental principle of the equality of the belligerents before IHL. How can an armed group be expected to respect IHL if it discriminates against it? In addition, it is often a point of dispute between the parties of a conflict as to which of them is the government of a State. From a pragmatic and humanitarian point of view, is it not preferable to give armed groups the

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[54] Art. 23 (3) of the *Universal Declaration of Human Rights*, GA Res. 217 (III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71.
[55] Art. 15 of the *International Covenant on Civil and Political Rights* and Art. 6 (2) (c) of *Protocol II*.
[56] *Ibid*. and Art. 4 (2) of the *International Covenant on Civil and Political Rights*.
[57] *Ibid*., Art. 14 (1) and Art. 3 (1) (d) common to the Conventions.
[58] Art. 14 (1) of the the *International Covenant on Civil and Political Rights*.
[59] See Arts. 86 (2), 87 (3) of *Protocol I* and Art. 28 (1) (b) of the *Rome Statute*, *supra* note 9.
[60] See ICTY Appeals Chamber, *Prosecutor v. Hadzihasanovic et al.*, Decision On Interlocutory Appeal Challenging Jurisdiction In Relation To Command Responsibility (2003), Case No. IT-01-47 (International Criminal Tribunal for the Former Yugoslavia, Appeals Chamber), online: United Nations <http://www.un.org/icty/ind-e.htm>.
[61] Art. 6 (2) of *Protocol II*.
[62] *Commentary Protocols*, *supra* note 26 at para. 4600.

possibility to respect IHL and Human Rights, rather than exclude them from the outset? Who believes that the latter principled approach will lead armed groups not to punish anyone and not to give orders to persons under their control? Will they not rather do it anyway, but simply without any legal guarantees and protection for those affected? Does anyone believe that the monopoly of violence exercised by the State, which is a great achievement of the modern State, including from a humanitarian and Human Rights point of view, will be more easily re-established if armed groups are denied the right to legislate and to try?

3. Reward the respect of the law

In international armed conflicts, combatants enjoy combatant status and will be prisoners of war once fallen into the power of the enemy. As such, they may not be punished for the mere fact of having directly participated in hostilities (including for having killed enemy combatants). They may and must however be punished if they violate IHL. They have therefore a direct interest to comply with IHL, in order to retain immunity from punishment. In non-international armed conflicts, a member of a rebel armed group who falls into the power of the enemy may be punished for the simple fact of having fought, independently of whether or not he complied with IHL or Human Rights. Most national criminal laws will qualify the killing of a government soldier during an armed rebellion and the killing of a peaceful civilian in the same way: as murder. As the punishment for this crime is always harsh, any additional violations of IHL or Human Rights will not increase considerably the punishment. It is therefore difficult to motivate a member of an armed group to comply with IHL or Human Rights norms if his treatment by the government will not be improved due to such compliance. Understanding this difficulty, the ICRC suggested to the Diplomatic Conference which adopted Protocol II a provision which would have required a tribunal sentencing someone for having participated in a non-international armed conflict to take into account, to the largest extent possible, whether the accused complied with Protocol II.[63] This proposal was unfortunately rejected. In State practice, as soon as a non-international armed conflict intensifies to a certain level, governments often do not punish every individual "rebel" captured while carrying his weapon openly, except for acts of terrorism, but rather simply intern him or her.[64] However, States refused to translate this practice into an obligation under IHL. They even refused the ICRC proposal to prohibit the carrying out of death sentences during the conflict.[65] All that survived is an appeal to extend, at the end of hostilities, the broadest possible amnesty to persons having participated in the conflict[66] – but not for war crimes.[67] Any of the aforementioned ICRC proposals that give some form of legal incentive to those who respect IHL deserves to be revived. Another idea might be to delay any criminal prosecution for acts of hostilities other than violations of IHL and Human Rights until the end of hostilities, when the atmosphere is less passionate and reconciliation has to be achieved.

Third States could reward members of armed groups fighting abroad while respecting IHL in two ways. First, they could consider prosecution for the mere fact of having participated in hostilities

[63] Art. 10 (5) of Draft Protocol II, *Draft Additional Protocols to the Geneva Conventions of August 12, 1949, ICRC*, June 1973.
[64] See for State practice, Veuthey, *supra* note 2 at 216-240, and Bugnion, *supra* note 16 at 739.
[65] See *Draft Protocol II*, *supra* note 63, Art. 10 (3).
[66] Art. 6 (5) of *Protocol II*.
[67] See Constitutional Court of Colombia, *supra* note 22, at paras 41, 42.

as a persecution leading to eligibility as a refugee, while denying refugee status to members of armed groups who violated IHL.[68] Similarly, third States could apply the exemption from extradition for political offenders in extradition treaties to members of armed groups involved in an armed conflict, except for acts contrary to IHL.[69] The same attitude could be adopted in providing mutual judicial assistance in criminal matters.

## III. MONITOR THE RESPECT BY ARMED GROUPS

### 1. Reporting by armed groups on their compliance

The most traditional and less intrusive mechanism to monitor the respect of international obligations, including under International Human Rights Law, consists of requiring States Parties to report periodically to an international monitoring body on their respect and implementation of their obligations.[70] Such reporting obligations were sometimes envisaged for IHL, *e.g.* concerning national measures of implementation, but States never accepted them.[71] If armed groups have obligations under those branches of international law, they could also be formally or informally encouraged to report on their compliance. Similarly, the UN Sub-Commission on the Promotion and Protection of Human Rights suggests that trans-national enterprises periodically report on their compliance with Human Rights obligations to UN or other international or national bodies.[72] The "Geneva Call" periodically requests armed groups that signed a deed of commitment to report on their compliance and on the measures taken to implement the deed.[73] If armed groups seriously report on their compliance, they may even be allowed to report on the compliance of their governmental or non-governmental opponents. Such reports might either be due periodically or on complaints by individuals[74] or opposing groups affected by violations. The mere responsibility for writing such reports and to collect the necessary data will increase the sensibility of some segments of the group for IHL and Human Rights and add to their sense of ownership of those laws.

Several options exist for the addressee of such reports. If we genuinely believe that Human Rights treaty obligations bind them, armed groups should be allowed to report on their compliance to the treaty bodies when the report of the government of the State where they act is discussed. Realistically, the treaty bodies could receive such reports in the same informal way, in which they receive NGO reports. It will be more delicate for them to make recommendations to

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[68] An example for the latter is the case *Sivakumar v. Canada (Minister of Employment and Immigration)* [1994] 1 F.C. 433 (C.A.), in which a LTTE member was denied refugee status although he had to fear persecution in Sri Lanka, because he had violated IHL.

[69] See *Mahmoud el-Abed Ahmad, v. George Wigen et al*., 726 F. Supp. 389 (United States District Court for The Eastern District of New York, 26 September 1989).

[70] See for an overview Elisabeth Kornblum, "A comparison of self-evaluating state reporting mechanisms" (1995) 304 Int'l Rev. Red Cross 39.

[71] *Ibid*. at 43 and ICRC, *Report to the International Conference on the Protection of War Victims* (Geneva, June 1993), partly reproduced in Sassòli & Bouvier, *supra* note 2, 444 at 445.

[72] See *Norms on the Responsibilities of Transnational Corporations*, *supra* note 31 at para. 16.

[73] *Supra* note 48.

[74] Such individual complaints procedures against armed groups are suggested by Jann Kleffner, "Improving compliance with international humanitarian law through the establishment of an individual complaints procedure" (2002) 15 Leiden J. Int'l L. 237 at 247.

armed groups. States will certainly object. Although their procedure is less formalized, Charter-based institutions such as the UN Human Rights Commission, its Sub-Commission or an *ad hoc* body they could establish may face the same difficulty. States would certainly object less to the ICRC receiving such reports, as they are accustomed to see the ICRC interacting with armed groups and because IHL provides an explicit legal basis for such interaction, allowing the ICRC to "offer its services to the Parties [i.e. including the non-governmental one] to the [non-international] conflict."[75] However, the ICRC is an institution focused on its fieldwork, which it might not be willing to put into jeopardy by dealing with reports it has to comment upon. Furthermore, an important part of the impact of any reporting system is due to the publicity given to the reports received and comments by the supervisory body. It is not certain that the ICRC is willing to be involved in such a public mechanism, contrary to its traditionally confidential approach.[76] Third, the ICRC is not necessarily qualified and willing to comment upon the pure Human Rights aspects of such reports. Finally, the existence of a distinct body providing comments with regard to the IHL and Human Rights performance of an armed group and publishing the group's allegations about its performance may facilitate confidential ICRC representations in the field to narrow the gap between such reports and comments, on the one hand, and the reality in the field, on the other hand. Such a distinct, independent, expert body receiving reports by armed groups and commenting thereupon might be established in the framework of the UN, by the periodical International Conferences of the Red Cross and the Red Crescent or by a periodical meeting of the High Contracting Parties to the Geneva Conventions, the first of which has been convened by Switzerland, the depositary of the Conventions, in 1998.[77]

2. Monitoring

a. By UN Charter-based mechanisms

The UN Charter-based mechanisms, in particular the Security Council and the UN Human Rights Commission, have condemned violations of IHL by armed groups,[78] which presupposes that they considered themselves competent to monitor the respect of that law by such groups. The UN Human Rights Commission rejected, however, a proposal to set up a special mechanism for violations by such groups.[79] UN mechanisms based upon peace agreements explicitly monitored the behaviour of armed groups. Thus, pursuant to the San José Agreement of 1990, ONUSAL produced reports detailing violations by the Government as well as violations by the FMLN and addressed recommendations to the FMLN pursuant to its observations.[80]

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[75] Art. 3 (2) common to the four Conventions.
[76] *Infra* note 91.
[77] See "First Periodical Meeting on International Humanitarian Law" (1998) 323 Int'l Rev. Red Cross 366. The next meeting is planned in 2005.
[78] See *e.g.* Security Council resolutions 1193 (1998) (concerning Afghanistan), 764 (1992), 771(1992), 780 (1992), 787 (1992), 827 (1993), 913 (1994), 941 (1994), and 1010 (1995) (concerning the former Yugoslavia), 814 (1993) (concerning Somalia), online: United Nations <www.un.org> and Pieter H. Kooijmans, "The Security Council and Non-state Entities as Parties to Conflicts" in Karel Wellens, ed., *International Law:Theory and Practice: Essays in Honour of Eric Suy* (The Hague, Boston Mass. and Cambridge MA: M. Nijhoff Publishers, 1998) 339. For the UN Human Rights Commission see references in Zegveld, *supra* note 3 at 32, 33, 46, 65-67, 145.
[79] Matas, *supra* note 14 at 621.
[80] Clapham, *supra* note 14 at 116.

b. By treaty-based Human-Rights mechanisms

The treaty monitoring mechanisms of International Human Rights Law are very reticent to monitor the compliance by armed groups. The Inter-American Commission on Human Rights, which considers itself competent to apply IHL,[81] has probably gone farthest. It has decided that when receiving and reviewing reports by States on their compliance with Human Rights, it may monitor the behaviour of armed opposition groups, including based on IHL.[82] However, its procedures do not permit a dialogue with armed groups similar to that with States and it has no means to enforce its findings about armed groups.[83] In any case some Human Rights defenders express the concern that trying to monitor armed groups would simply stretch "resources towards an area where reporting can have little effect", place the safety of Human Rights workers "more at risk than ever", as well as never truly satisfy States.[84] In the individual complaints procedure, even the Inter-American Commission considers that it could not evaluate the behaviour of armed groups under IHL or Human Rights Law.[85] Such evaluation would indeed raise delicate procedural problems.

Some suggest that a specific individual complaints procedure be instituted for violations of IHL, including against armed groups, and they point out that the procedural difficulties of communicating with armed groups can be overcome.[86] Nevertheless, such a procedure may not be very well suited to the specificities of violations of IHL or of gross violations of Human Rights by armed groups. They typically occur on the battlefield. They can only be addressed by immediate reaction. They consist only rarely of judicial, administrative, and legislative decisions or inaction against which appeal and review procedures prove appropriate and meaningful. Implementation through permanent, preventive, and corrective scrutiny in the field is much more appropriate than *a posteriori* control, on demand, in a quasi-judicial procedure. In armed conflicts, *redress* to the victims is central, and therefore a confidential, co-operative, and pragmatic approach is often more appropriate.

c. By the International Committee of the Red Cross (ICRC)

As mentioned above, IHL of non international armed conflicts foresees a specific monitoring mechanism, which is equally addressed to armed groups: the right of the ICRC to offer its

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[81] See in particular the cases *Abella v. Argentina (Tablada)* (1997), Report No. 55/97 in *Annual Report of Inter-American Commission of Human Rights: 1997*, OEA/Ser/L/V/II.98/doc.6 rev (13 April 1998), online: CIDH <http://www.cidh.org>, *Coard et al. v. United States*, Case 10.951, Report Nº 109/99, Inter-American Commission of Human Rights (29 September 29 1999), online: CIDH <http://www.cidh.org/annualrep/99eng/merits/unitedstates10.951.htm#1>. See however the reservations expressed by the Inter-American Court of Human Rights in its Judgment of 4 February 2000, in the *Las Palmeras case* (2000), Preliminary objections, at para. 34, online: OAS <http://www.oas.org>.

[82] Inter-American Commission on Human Rights, *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser/L/V/II.102, Doc. 9 rev.1, at 72, para. 6, based on AG/RES. 1043 (XX-0/90) of 1990.

[83] Zegveld, *supra* note 3 at 158-160.

[84] Clapham, *supra* note 14 at 123; Organización de los Estados Americanos, *Informe annual de la Comisión interamericana de los derechos humanos, 1990-1991*, OEA/Ser.L/V/II.79.rev.1 Doc.12 (22 February 1991).

[85] Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights in the Republic of Colombia*, OEA/Ser/L/V/II.53, Doc. 22 rev.1, at 16, and *Third Report*, *supra* note 82 at 72, para. 5.

[86] Kleffner, *supra* note 74 at 247.

services.[87] It means that in such conflicts the ICRC has no *right* to undertake its usual activities in the fields of scrutiny, protection, and assistance; it may only *offer these services* to an armed group and then initiate the services with the group that has accepted such an offer. This right of initiative clearly implies that such an offer is never interference into the internal affairs of the State concerned, nor is the undertaking of ICRC activities with a party accepting such an offer an unlawful intervention. Furthermore, such an offer - as any other measure of implementation of IHL of non-international armed conflicts - cannot grant any legal status to any party to a conflict.[88] If its offer is accepted, the ICRC deploys the same monitoring activities and makes the same kind of interventions with an armed group as it does under the Geneva Conventions with a State involved in an international armed conflict.[89]

d. By a new specific expert body established by States

As for the receiving of and commenting upon reports by armed groups on their compliance, it may be necessary to create, in the framework of the UN, by the periodical International Conferences of the Red Cross and the Red Crescent or by a periodical meeting of the High Contracting Parties, a distinct expert body to write a periodic and public world-wide report on the compliance of IHL and Human Rights in armed conflicts, including by armed groups. Because of its normally confidential, field-work-oriented approach, the ICRC might not be suited for that task.[90]

To have a distinct body writing such reports could facilitate the ICRC's confidential steps in the field. The reports could be based upon periodic or *ad hoc* reports received from the armed groups themselves, complaints by individual victims and opponent groups, governments and NGOs. In some cases, the ICRC may also chose to provide information, when it abandons its confidential approach because such would be in the interest of the victims of the conflict and confidential bilateral steps have not shown sufficient results.[91] In particular if created by a periodical meeting of the High Contracting Parties, such an expert body could submit its report to this meeting. This would leave the decision about the general measures to be taken to increase the respect of IHL[92] to the deliberation of States, but make sure that their deliberations are based upon a sound, impartial and non-selective factual basis. In addition, as evidenced by the experience of Truth Commissions, the simple existence of an official report on violations provides victims some relief and constitutes a basis for future reconciliation.[93]

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[87] Art. 3 (2) common to the four Conventions. See on ICRC practice, Bugnion, *supra* note 16 at 517-530, and Veuthey, *supra* note 2 at 52-61.
[88] Art. 3 (4) common to the four Conventions.
[89] Bugnion, *supra* note 16 at 457-983
[90] Zegveld, *supra* note 3 at 162.
[91] See for the conditions in which the ICRC goes public, "Action by the ICRC in the event of breaches of international humanitarian law" (1981) 221 Int'l Rev. Red Cross 76 at 80, 83.
[92] It should be noticed that under Art. 7 of *Protocol I*, Switzerland "shall convene a meeting of the High Contracting Parties, at the request of one or more of the said Parties and upon the approval of the majority of the said Parties, to consider general problems concerning the Application of the Conventions and of the Protocol."
[93] See in particular Priscilla B. Hayner, *Unspeakable truths: confronting state terror and atrocity* (New York/London: Routledge, 2001); Priscilla B. Hayner, "Fifteen truth commissions-1974-1994: A comparative study" (1994) 16 Hum. Rts. Q. 597; Alex Boraine, *A Country Unmasked* (Oxford: OUP, 2000); United States Institute of Peace Library, *Truth commissions*, 2003, online: United States Institute of Peace Library <http://www.usip.org/library/truth.html>.

e. By an auditing mechanism established by armed groups

Going beyond the constraints of the Inter-State system and by analogy to ideas and initiatives circulating concerning the respect of Human Rights by trans-national enterprises,[94] the monitoring body could also be established by the armed groups themselves, either in their individual codes of conduct, in their unilateral declarations of intention, in special agreements concluded with their enemies, or through soft law they establish between them. They could wish to establish an *ad hoc* monitoring body or choose an existing NGO. Similarly to those promoting Human Rights for economic actors, all those encouraging armed groups to commit themselves to Human Rights and IHL norms should also always promote the introduction of a monitoring mechanism. Many trans-national corporations which adopted codes of conduct on the respect of social and economic rights by their foreign providers or branches have indeed charged audit firms to monitor the respect of those codes.[95] The "Geneva Call" monitors the respect of deeds of commitment through a network of NGOs and sporadic field verification missions.[96]

## IV. RESPONSIBILITY OF ARMED GROUPS FOR VIOLATIONS

1. Criminal responsibility

In particular in the roman-german legal tradition, it used to be said that *societas delinquere non potest*, but forms of corporate criminal responsibility are developing at the national level, *e.g.* in common law countries and in France, and are proving to perform a useful function.[97] Extending criminal responsibility for serious violations of IHL and Human Rights to armed groups poses no conceptual challenge. Interestingly enough, such a proposal was however rejected in the ICC Statute.[98] By its nature, the group itself could only be subject to pecuniary punishment. Unlike corporations, armed groups will only rarely have easily sizeable funds to pay fines, and if they have, civil responsibility can lead to the same result.

More effective from a repressive point of view would be the idea that once a group as such is held responsible for a violation, all its members could be held criminally responsible. In the anglo-saxon legal tradition such responsibility exists to a large extent through the concept of conspiracy,[99] while roman-german legal systems adopt more and more specific crimes of

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[94] Elisa Westfield, "Globalization, Governance, and Multinational Enterprise Responsibility: Corporate Codes of Conduct in the 21st Century" (2001-2002) 42 Va. J. Int'l L. 1075. For the UN Global Compact initiative see online: UN Global Compact <http://www.unglobalcompact.org/irj/servlet/prt/portal/prtroot/com.sapportals.km.docs/documents/Public_Documents/mission_actors.pdf>. For ILO initiatives see online: ILO <http://www.itcilo.it/english/actrav/telearn/global/ilo/guide/main.htm#>

[95] "Les audits sociaux se multiplient dans les pays émergents" *Le Monde* (25 September 2003).

[96] See *supra* note 48.

[97] See *e.g.* Brent Fisse and John Braithwaite, *Corporations, Crime and Accountability* (Cambridge: Cambridge University Press, 1993); Jean Pradel, *Droit pénal comparé* (Paris: Dalloz, 1995) at 306-311.

[98] Art. 25 (1) of the *Rome Statute*, *supra* note 9, and Kai Ambos, "Article 25", in: Otto Trifferer (ed.), *Commentary on the Rome Statute of the International Criminal Court* (Baden-Baden: Nomos, 1999) 475 at 477.

[99] See *e.g.* Canadian *Criminal Code*, R.S.C. 1985, c. C-46, s. 465.

membership in criminal organizations.[100] International criminal law has up to now not yet adopted such a concept, but the common purpose theory of the ICTY[101] and, to a lesser extent, the provisions of the ICC Statute on individual criminal responsibility for crimes committed within a group context,[102] lead sometimes to similar results. However, there are inherent risks in extending in such ways individual criminal responsibility.[103] First, if the crucial distinction between *ius ad bellum* and *ius in bello* is to be preserved,[104] the mere fact of participating in an armed conflict should not suffice as criminal enterprise giving rise to criminal responsibility for IHL violations committed. Second, it should not be forgotten that contrary to criminal gangs in peacetime, the membership in armed groups is often not optional and often not driven by criminal motivations even if it is foreseeable that crimes will be committed. Under the standard adopted by the ICTY, every member of the unfortunately numerous armed groups in countries where State structures have collapsed and one of the purposes of which is simple looting, would be responsible for any killings that will forseeably be committed when some of those looted resist. Third, even the systematic and large-scale crimes committed in contemporary conflicts should not be seen as evidence that those conflicts are criminal enterprises in the sense of the common purpose rule. Under some national legislation, those who join a criminal group are responsible for foreseeable crimes outside the common purpose committed by other members of the "gang". In wartime, there is a very specific category of gangs: armed groups. The necessity to reward those members of the group who individually complied with IHL and Human Rights was mentioned above. A guerrilla fighter should not be considered as a rapist because some of his comrades in the same force rape, even if this is sadly foreseeable in some armed groups. Indeed, the very basis of international criminal law and its civilizing contribution to the enforcement of international law is that criminal responsibility is individual. As long as the responsibility remains with the group, there is the germ for future wars. It is therefore in my view crucial that certain concepts of group responsibility do not lead to a re-collectivisation of responsibility. One may certainly consider that all those who fight unjust or genocidial wars or support inhumane regimes are morally and politically co-responsible for the violations committed in such contexts. However, in my view, this should not lead to criminal responsibility based on simple membership of the group and knowledge of the policy of that group. Such a concept would indeed water down the criminal responsibility of the actual perpetrators and their leaders and create a net of solidarity around the leaders and perpetrators. This in turn would not increase protection for the victims, nor facilitate the actual implementation of international criminal responsibility.

2. Private law responsibility

During the last ten years, international attention was focused on establishing and operationalizing criminal responsibility for serious violations of IHL and Human Rights. However, the virtues of private law responsibility for such acts should not be underestimated. The degree of evidence for a tort claim is lower than for criminal conviction, the victims of a violation can directly set it in

[100] See *e.g.* Swiss Criminal Code, R.S. 311.0, Art. 260 ter.
[101] *Prosecutor v. Tadic*, *supra* note 5 at paras. 185-233.
[102] Art. 25 (3) (d) of the *Rome Statute*, *supra* note 9.
[103] Marco Sassòli & Laura Olson, "The decision of the ICTY Appeals Chamber in the Tadic Case: New Horizons for International Humanitarian and Criminal Law?" (2000) 839 Int'l Rev. Red Cross 733 at 747-756.
[104] See *supra* note 34.

motion, and the results of the process will benefit them (and, in the anglo-saxon legal system, to their lawyers). It may be that armed groups are more afraid that their funds will be blocked in a third country than that their leaders will be held criminally responsible (in the event they lose the conflict). The U.S. may be considered a pioneer in this field,[105] thanks to a 200 year-old Statute, the Alien Tort Statute, providing for original jurisdiction of U.S. "district courts of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."[106] This has been construed as permitting a tort claim for war crimes and crimes against humanity, even if they were committed abroad by foreigners against foreigners.[107] This Statute has also been applied to leaders or members of non-State armed groups.[108] While there is a trend in decisions outside the U.S. to recognize that private persons, groups and in particular corporations have Human Rights responsibilities,[109] this is generally not construed as implying civil liability without statutory basis and even less as providing universal jurisdiction over violations of such responsibilities. However, one may argue that the obligation to prosecute certain IHL and Human Rights violations as crimes implies their recognition as torts. Moreover, universal criminal jurisdiction for war crimes and crimes against humanity should also lead States to establish universal civil jurisdiction over the corresponding torts. In roman-german legal systems, the implementation of such jurisdiction may be facilitated by the possibility for crime victims to get their torts claim adjudicated in the criminal trial as "*partie civile*".

On the international level, promoters of IHL and Human Rights suggest the adoption of international rules requiring States to offer a forum to victims of IHL and Human Rights violations for tort claims[110] and to establish universal jurisdiction over such claims.[111] Such forum and jurisdiction would obviously be particularly useful against armed groups, as they do not benefit, like States, from immunity against civil claims before foreign courts.

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[105] Beth Stephens and Michael Ratner, *International Human Rights Litigation in U.S. Courts*, (New York: Transnational Publishers Inc., 1996); Jordan J. Paust, "Human Rights Responsibilities of Private Corporations" (2002) 35 Vand. J. Transnat'l L. 801

[106] 28 U.S.C. § 1350.

[107] *Filartiga v. Pena-Irala* 630 F.2d 876 (2d Cir. 1980).

[108] *Kadic et al. v. Karadzic*, 70 F. 3d 232 (2d Cir. 1995); *Klinghoffer v. S.N.C. Achille Lauro*, 937 F.2d 44 (2d Cir. 1991) at 48.

[109] Paust, *supra* note 105 at 810.

[110] Art. 19 of the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, adopted by UN General Assembly resolution A/RES/40/34, 40th Sess. (11 December 1985), already states that States should provide remedies to victims of substantial Human Rights violations, including reparation and/or restitution, and Art. 20 encourages the conclusion of international treaties on that matter. See also Principle 17 of the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law* as suggested by Cherif Bassiouni in his final report as a special rapporteur on the matter, *The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms*, UN ESCOR, 56th Sess., UN Doc. E/CN.4/2000/62 (18 January 2000).

[111] In his *Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of Human Rights and humanitarian law*, UN ESCOR, 48th Sess., UN Doc. E/CN.4/Sub.2/1996/17 (24 May 1996), Principle 5, Theo van Boven seems to suggest such universal jurisdiction, including for civil procedures, while in the *Report of the independent expert on the right to restitution, compensation and rehabilitation for victims of grave violations of Human Rights and fundamental freedoms*, UN ESCOR, 55th Sess., UN Doc. E/CN.4/1999/65 (8 February 1999) at para. 55, Cherif Bassiouni seriously questions that universal jurisdiction over all serious Human Rights violations already exists and adds that "this raises the question whether modalities for redress should be deemed part of universal jurisdiction or part of another normative regime".

3. International law responsibility

The International Law Commission (ILC) recalls in its Commentary to its recently adopted *Draft Articles on State responsibility* that, while it was not concerned with the responsibility of subjects of international law other than States, "[a] further possibility is that the insurrectional movement may itself be held responsible for its own conduct under international law, for example for a breach of international humanitarian law committed by its forces".[112] Indeed, IHL implicitly confers upon parties to non-international armed conflicts – whether they end up succeeding or not - the functional international legal personality necessary to have the rights and obligations foreseen by it.[113] It is useful to recall that violations of IHL by such parties entail their international legal responsibility, which is of particular importance concerning the corresponding rights and duties of third States in case of such violations.

a. Rules on attribution and reparation

Before the international responsibility of a group can be engaged, an individual violation of IHL or Human Rights must be attributable to that group. While specific practice on the attribution of unlawful acts to armed groups is largely lacking,[114] the starting point for such attribution are the rules on State responsibility,[115] which must be modified to respond to the specificities of armed groups. Unlike States, armed groups have obviously no "organs" the status of whom could be determined "according to internal law". However, they have members and other persons exercising elements of their authority and who act in that capacity and they have direction or control over some persons. A group is responsible for such persons. It is true that the smaller a group is and the less State-like organization and territorial control it has, the more important attribution based on effective control over persons will be in practice.[116] If there is responsibility, the group has obligations to cease a violation and to provide reparations for the injury, similarly to those of a State.[117]

b. Implementation of the responsibility

State responsibility is implemented at an inter-State level through invocation and, if necessary, countermeasures, or, in a more institutionalized way, through the decisions of the appropriate organs of the United Nations and of regional organizations. Because of its obligation to "ensure respect" for IHL,[118] every State may invoke the responsibility of an armed group for violations of IHL. The same is true in case of violations of International Human Rights Law.[119]

Countermeasures consisting of violations of fundamental Human Rights are prohibited by the law of State responsibility.[120] In the field of IHL, countermeasures in kind are belligerent

[112] *Report, supra* note 4 at 118 (paragraph 16 to Article 10).
[113] See *supra* note 22.
[114] Zegveld, *supra* note 3 at 155.
[115] *Draft Articles, supra* note 4, Arts. 4-11.
[116] Zegveld, *supra* note 3 at 154
[117] See *Draft Articles, supra* note 4, Arts. 28-39.
[118] *Supra* note 7.
[119] See *Draft Articles, supra* note 4, Art. 48 (1) (b).
[120] *Ibid.*, Art. 50 (1) (b).

reprisals and are largely outlawed by the pertinent instruments of IHL of international armed conflicts.[121] IHL of non-international armed conflicts contains no prohibition of reprisals. Nevertheless, many scholars and the ICTY consider them to be outlawed.[122] It may be argued that reprisals are a typically inter-State institution of international law, which cannot be extended, as a circumstance precluding the wrongfulness of an act, to the fundamentally different relations between States and armed groups or between armed groups. Any reprisal against an entity other than a State would consist of a collective punishment of the individuals affected, which is prohibited by the law of non-international armed conflicts.[123] One may object to this line of argument that I may not claim on the one hand international legal personality for an armed group as far as IHL is concerned and at the same time deny it the passive personality as an object of reprisals. In any case, without violating fundamental Human Rights, the territorial State will only have limited possibilities to take additional measures against an armed group, against which it is already fighting an armed conflict. As for third States, their entitlement to take countermeasures in the collective interest against a State responsible for IHL and Human Rights violations is controversial.[124] In my view, the question does not arise against armed groups, because third States have no legal obligations towards armed groups and they therefore do not need the circumstance of a countermeasure to preclude the unlawfulness of any measure they may take to induce an armed group to comply with its IHL or Human Rights obligations, as they must under IHL.[125] Such a measure must however comply with their international obligations, including in the field of IHL and Human Rights, towards other States and human beings, as the latter did not violate any obligation and may therefore not be the object of countermeasures.

Most often, measures to enforce IHL and Human Rights are taken as institutional reactions in the framework of international organizations, in the form of sanctions. In practice, the UN Security Council has repeatedly decided sanctions against armed groups.[126] The UN Committee on Economic, Social and Cultural Rights reminds us that such sanctions should always take full account of economic, social and cultural rights and that "it is essential to distinguish between the basic objective of applying political and economic pressure upon the governing elite of a country to persuade them to conform to international law, and the collateral infliction of suffering upon

[121] Arts. 46/47/13 (3)/33 (3), respectively of the four *Conventions* and Arts. 20, 51 (6), 52 (1), 53 (c), 54 (4), 55 (2), 56 (4) of *Protocol I*. These prohibitions are confirmed by *Draft Articles*, *supra* note 4, Art. 50 (1) (c) prohibiting countermeasures that affect "obligations of a humanitarian character prohibiting reprisals." In *The Prosecutor v. Zoran Kupreskic and others*, Judgment, (2000), Case No. IT-95-16-T (International Criminal Tribunal for the Former Yugoslavia, Trial Chamber), at paras. 517-520, the ICTY considers reprisals as generally prohibited in IHL.
[122] See *Commentary Protocols*, *supra* note 26 at paras 4530, 4531, 4536; Lindsay Moir, *The Law of Internal Armed Conflict* (Cambridge: Cambridge University Press, 2002) at 237-243; and the ICTY in *The Prosecutor v. Milan Martic*, Rule 61 Decision, (1996), Case IT-95-11I (International Criminal Tribunal for the Former Yugoslavia, Trial Chamber) at paras. 15-18.
[123] Art. 4 (2) (b) of *Protocol II*.
[124] The ILC "leaves the resolution of the matter to the further development of international law" *Report*, *supra* note 4 at 355 (paragraph 6 to Article 54).
[125] *Supra* note 7.
[126] See Security Council resolutions 1127 (1997), 1173 (1998), and 1221 (1999) (concerning UNITA), 942 (1994) (concerning the "Republika Srpska"), 1171 (1998) (concerning rebels in Sierra Leone), and to a certain extent resolution 792 (1992) (concerning the Red Khmer), online: United Nations <www.un.org> and Kooijmans, *supra* note 78 at 340.

the most vulnerable groups within the targeted country."[127] This consideration is all the more applicable to measures a humanitarian organisation may wish to take in responding to violations of IHL and Human Rights by an armed group.

The possibility for humanitarian organizations to take measures against an armed group is anyway seriously limited by the necessity for humanitarian organizations working in the field to benefit from the co-operation of the armed group, if it wants to have access to the victims under control of the group and if it wants to safeguard the security of its staff. However, in my view, humanitarian organizations should explore the possibility of adopting common guidelines on how they could react to violations of IHL and Human Rights by armed groups with whom they work, without negatively affecting their humanitarian tasks. If a group knows that in case of certain behaviour all humanitarian organizations will react in the same way, this may inhibit them from some violations, because for many of them, humanitarian organizations are important. Finally, "sanctions" against armed groups violating IHL and Human Rights should also be envisaged by other non-State actors whose cooperation is needed by such groups. Some economic actors have a considerable influence on an armed group. Every armed group needs the media to get its message through to its supporters and to world public opinion. Without encroaching upon the freedom of press, and while fulfilling their important task to inform, including about violations of IHL and Human Rights, could the media not agree upon a code of conduct in case of reporting on such violations? They could, *e.g*, agree that when they report about violations, they always qualify them as such. They could furthermore agree never to provide an armed group a forum for explaining its aims and values in connection with a violation of IHL or Human Rights. I fully understand, *e.g*., that the media must report the opinions and demands of Palestinian armed groups, including those deliberately and indiscriminately killing civilians through "suicide bombers". However, could it not be agreed among the media never to mention such opinions and demands, nor to provide a forum to the leaders of such groups, when they report about such deliberate attacks?

## V. CONCLUDING REMARKS

The reader may qualify all the abovementioned mechanisms that do not already correspond to current practice as either unrealistic because States will never accept them, or as dangerous because they raise political status and international acceptability of armed groups. For sure, a world without armed groups would be preferable, as would a world without war. However, should States not abandon their ostrich-like behaviour towards armed groups and accept the lessons of history? Has there ever been an armed group that was overcome, that lost its supporters and its cause, simply because it was ignored by States and by international law? Has the acceptance of armed groups as addressees of legal rules and mechanisms ever allowed an armed group to win? Has not every armed group, which won its cause, done so either by military victory, despite stiff resistance and legal quarantine by its opponents, or by the acceptance of the territorial State to negotiate with the group? As the traditional Westphalian approach of enforcement mechanisms largely ignoring armed groups has not lead to an acceptable level of

[127] Committee on Economic, Social and Cultural Rights on the effect of economic sanctions on civilian populations and especially on children, *General Comment 8*, UN ESCOR, UN Doc. E/C.12/1997/8 (5 December 1997) at para. 4.

respect for war victims in most of the contemporary conflicts in which armed groups are involved, should we not try a more inclusive approach, by implementing at least some of the ideas brought forward in this article? No “new” proposal listed is based on the creative thinking of the author of these lines. All “new” ideas are simply applying, to armed groups and IHL and Human Rights, mechanisms that exist either for States or for other kinds of non-State actors, in these or other fields of international law. Those who have accepted those mechanisms apparently thought that the latter could influence the human beings who take the decision whether an abstract entity respects or violates the law. Armed groups like States and trans-national enterprises or sports clubs are made up of human beings. Why should those human beings react in fundamentally different ways when they act for armed groups than when they act for such other corporate entities? For sure, many armed groups will themselves not accept the mechanisms suggested. Others will not improve their behaviour. However, are we sure that such mechanisms will not affect the behaviour of some groups and therefore improve the cruel destiny of thousands if not of hundreds of thousands of people affected by armed conflicts?