

Regulating Non-State Armed Groups Under International Humanitarian Law - Challenges and Prospects for Accountability In Africa

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ABSTRACT:

Non-State Armed Groups are common participants in contemporary and typical African armed conflicts, yet the legal basis for holding them accountable, does not match the scale of their participation in hostilities, and violations of IHL. Although International Humanitarian Law regulates the conduct of parties to armed conflicts, including NSAGs, enforcement constitutes a serious challenge. The aim of this paper is to examine the legal basis of NSAGs' obligations under IHL and the challenges for accountability with particular reference to African conflicts. The paper argues that IHL has adequate framework for the regulation of NSAGs, but enforcement remains a serious constraint. Adopting doctrinal methodology, which entails the analysis of treaty law, customary international law, and jurisprudence, the paper analyses the legal basis of NSAGs obligations under IHL and proposes a framework that best suits the context of African conflicts, in order to strengthen accountability. The paper proffers accountability model that combines domestic legal reform, regional institutional engagement, and direct interaction with NSAGs. The paper concludes by reiterating that effective accountability of NSAGs requires bridging the lacuna between

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normative framework and practical realities in contemporary African conflicts.

Keywords: Non-state armed groups (NSAGs), International Humanitarian Law, Non-international armed conflicts, Accountability, Africa, Common Article 3

INTRODUCTION

Contemporary armed conflicts have moved to another level, with non-state armed groups as major participants.⁸ The situation is even truer of Africa, where NSAGs now dominate the battlefield and play a significant role,⁹ with serious legal implications for IHL. NSAGs' activities are often characterized by control of part of states' territories, administration of skeletal governance systems, and engagement in sustained military operations against state forces and rival groups.¹⁰ These activities bring them within the regulation of IHL, particularly the Additional Protocol II to the Geneva Conventions.

Records from the Armed Conflict Location and Event Data Project show that non-state actors are now responsible for the majority of civilian harm relating armed conflicts, across the continent, with Sudan's Rapid Support Forces alone implicated in thousands of civilian deaths in 2025.¹¹ This is also true of the eastern Democratic Republic of the Congo, where armed groups such as the M23 and the Allied Democratic Forces have operated with similar disrespect for IHL norms.¹² These developments confirm the fact that NSAGs play central role in African conflict, yet they are formally excluded from the system of

international legal accountability applicable to states.¹³

Despite the key role NSAGs play in contemporary armed conflict, their legal regulation does not match the scale of IHL violations occasioned by their hostilities.¹⁴ The traditional notion is that international law regulates the conduct of states.¹⁵ From the outset, the international community did not envisage a situation where citizens will bear arms against their governments. IHL, a subset of Public International Law, draws from this traditional idea. Thus, International Humanitarian Law (IHL), was traditionally designed to regulate the conduct of states. Little wonder then, that over 400 provisions of Geneva Conventions of 1949 apply to the regulation of state conduct under IHL. Nonetheless, IHL has now been extended to govern the conduct of non-state armed groups,¹⁶ through the instrumentality of the common article 3 to the Geneva Conventions. The adaption of the common Article 3, 1949 and subsequently the Additional Protocol II, changed the trajectory, particularly given that non-international armed conflicts constitutes the most predominant class of armed conflicts. However, this regulation did not establish strong legal basis for NSAGs obligation under IHL.¹⁷ This gap is most evident in African contexts, where weak state institutions, protracted

⁸ S Sivakumaran *The Law of Non-International Armed Conflict* (2012, OUP) at 1–3.

⁹ AJ Bellamy and PD Williams *Understanding Peacekeeping* (3rd ed, 2021, Polity) at 210–13.

¹⁰ International Committee of the Red Cross *Non State Armed Groups and the Challenge of Compliance with International Humanitarian Law* (2019, ICRC) at 6–8.

¹¹ Armed Conflict Location and Event Data Project (ACLED) *Conflict Index & 2026 Watchlist* (ACLED, 11 December 2025), available at: <https://acleddata.com/conflict-index-2026-watchlist> (last accessed 10 July 2026); ACLED *Fighting Moves to Kordofan as Sudan's East-West Divide Solidifies* (ACLED, 11 December 2025), available at: <https://acleddata.com/report/fighting-moves-kordofan-sudans-east-west-divide-solidifies> (last accessed 10 July 2026).

¹² International Institute for Strategic Studies *The Armed Conflict Survey 2025: Sub-Saharan Africa* (2025, IISS) at regional section.

¹³ Sivakumaran *The Law of Non-International Armed Conflict*, above at note 1 at 1–3; ICRC, *Non State Armed Groups and the Challenge of Compliance*, above at note 3 at 6–8.

¹⁴ M Sassòli *International Humanitarian Law: Rules, Controversies, and Solutions* (2019, Edward Elgar) at 30–32.

¹⁵ Malcolm N Shaw, *International Law* (8th edn, 2017 CUP) at 97.

¹⁶ Geneva Conventions 1949, common art 3; Sassòli *International Humanitarian Law*, above at note 7 at 33–35.

¹⁷ Sivakumaran *The Law of Non-International Armed Conflict*, above at note 1 at 45–48.

conflicts, and political sensitivities further complicate enforcement.¹⁸

This difficulty is further worsened by a long-standing fundamental problem in international law, the basis on which entities that are not states, and that often actively reject the authority of the state whose territory they occupy, can nonetheless be bound by obligations created through inter-state treaty processes to which they were never party.¹⁹ This notwithstanding, scholars have variously based NSAG obligations under IHL on the territorial sovereignty of the state on whose behalf treaties were concluded; on customary international law binding all parties to a conflict regardless of consent; and on the practical necessity of extending humanitarian protection to civilian population under the control of armed groups.²⁰ Each of these bases has different implications for how obligations should be enforced, and the lack of agreement on the question contributes, in turn, to the enforcement difficulties this paper investigates. The difficulty is not merely abstract, for protracted conflicts such as those in Somalia, the Sahel, and the eastern DRC, the question of why and how an armed group is bound by IHL determines whether humanitarian actors are able to negotiate access; whether violations can be documented and attributed; and whether any eventual accountability process can claim legitimacy in the eyes of affected communities.²¹

This paper argues that while IHL provides a legally adequate framework applicable to NSAGs, its effectiveness in Africa is nevertheless seriously undermined by political and institutional factors.²² It contends that the primary obstacle to accountability is not the

absence of legal rules but the inadequacy of enforcement mechanisms.²³ Accordingly, the paper adopts a doctrinal methodology and analytical approach, tested against the realities of African conflicts, to explore both the legal foundations and practical limitations of regulating NSAGs.²⁴

This paper is divided into five parts. Flowing from Part 1 (introduction), Part 2 sets out the conceptual and legal framework applicable to NSAGs, defining the category and establishing the threshold conditions for the application of IHL to a given class of armed conflict. Part 3 examines the substantive legal obligations binding NSAGs under treaty and customary law, together with the theoretical justifications most commonly advanced for their application to non-state actors. Part 4 addresses the challenges to accountability that arise specifically within African conflict settings, including weak domestic judicial capacity, the political sensitivities surrounding the prosecution of armed actors, and the practical challenges of evidence-gathering in active conflict zones. Part 5 considers the strategic question of engagement with NSAGs as a means of improving compliance, weighing the benefits of direct negotiation against the risk that engagement may be perceived as conferring legitimacy on groups responsible for serious violations. Part 6 sets out the paper's accountability framework, and the conclusion addresses the implications of the analysis for scholars, practitioners, and policymakers engaged in the regulation of armed conflict in Africa.

1.1 Literature Review and Research Gap

Existing scholarship on the regulation of non-state armed groups under IHL falls broadly into three lines of inquiry. The first line of inquiry, associated with scholars such as Sivakumaran and Sassòli, focuses on the doctrinal basis for extending IHL obligations to NSAGs, tracing this development through Common Article 3,

¹⁸ African Union, Policy on Post-Conflict Reconstruction and Development (AU, 2006), available at: <<https://au.int/en/documents/20200901/african-union-policy-post-conflict-reconstruction-and-development>> (last accessed 11 July 2026).

¹⁹ A Clapham "Focusing on armed non-state actors" in A Clapham and P Gaeta (eds) *The Oxford Handbook of International Law in Armed Conflict* (2014, OUP) at 766–70.

²⁰ Sassòli *International Humanitarian Law*, above at note 7 at 30–32; Sivakumaran *The Law of Non-International Armed Conflict*, above at note 1 at 45–48.

²¹ ICRC *Non State Armed Groups and the Challenge of Compliance*, above at note 3 at 6–8.

²² Sassòli *International Humanitarian Law*, above at note 7 at 36–38.

²³ Sivakumaran *The Law of Non-International Armed Conflict*, above at note 1 at 250–52.

²⁴ R Cryer and Others *An Introduction to International Criminal Law and Procedure* (4th ed, 2019, Cambridge University Press) at 15–18.

Additional Protocol II, and customary international law. The second line of inquiry examines the theoretical justifications for binding non-consenting non-state actors, exploring rationales such as functional necessity, responsibility by participation, and the universality of customary norms. The third line of inquiry, drawing on reports from the ICRC, Human Rights Watch, and regional bodies such as the African Union, documents the practical realities of NSAG conduct in specific African conflicts, including Nigeria, Sudan, the Sahel, and the eastern Democratic Republic of Congo.

While each of these lines of inquiry offers valuable insight, existing literature rarely brings them together within a single analytical framework that fits the African conflict conditions. Doctrinal treatments of NSAG obligations tend to be general in scope, addressing the legal basis for accountability without engaging deeply with the structural conditions, such as organizational disintegration, weak domestic judicial capacity, and political sensitivities, that shape enforcement outcomes in African settings specifically. Conversely, empirical and policy-oriented literature on African conflicts often addresses humanitarian and security dimensions without systematic legal analysis of the underlying accountability framework. This paper addresses this gap by combining doctrinal analysis of NSAG obligations under IHL with a context-specific examination of the structural and political barriers to accountability in Africa, and by proposing a multi-dimensional framework that integrates domestic, regional, international, and engagement-based strategies.

1.2 Methodology

This paper adopts a doctrinal legal research methodology, supplemented by illustrative case analysis. The doctrinal approach involves the systematic analysis of primary legal sources, including the four Geneva Conventions of 1949, the 1977 Additional Protocols, the Rome Statute of the International Criminal Court, relevant African Union instruments, and the jurisprudence of international and hybrid

tribunals such as the International Criminal Tribunal for the former Yugoslavia, the International Criminal Court, and the Special Court for Sierra Leone. These primary sources are read alongside secondary sources, including the ICRC's Customary International Humanitarian Law study, scholarly monographs and journal articles, and reports produced by humanitarian and human rights organizations.

To ground the doctrinal analysis in the operational realities of African conflicts, the paper draws on illustrative case material from conflicts in Nigeria (Boko Haram), the Democratic Republic of Congo (M23 and the Allied Democratic Forces), Sudan (the Rapid Support Forces), and the wider Sahel region. These cases were selected because they represent geographically and organizationally diverse examples of NSAG activity, spanning insurgent, secessionist, and territorially entrenched armed groups, and because they are well documented in recent reporting by organizations such as the Armed Conflict Location and Event Data Project and Human Rights Watch. The paper does not undertake primary empirical fieldwork; rather, case material is used analytically, to test the practical adequacy of the doctrinal framework identified through treaty and customary law analysis, and to illustrate the structural and political challenges examined in Parts 4 and 5.

2. CONCEPTUAL AND LEGAL FRAMEWORK

2.1 Defining non-state armed groups

No universally acceptable definition of 'non-state armed groups (NSAGs)' exists both under treaty law and academic literature. This is because the term 'NSAGs' applies to different category of actors.²⁵ To that effect, scholars have variously defined NSAGs based on their organizational characteristics, their capacity for violence, their relationship to state authority, and the objectives they tend to pursue. In simple terms, NSAGs refer to organized entities that engage in hostilities outside the formal

²⁵Sivakumaran *The Law of Non-International Armed Conflict*, above at note 1 at 45–48.

institutional structure of the state.²⁶ This definition captures a wide range of actors such as insurgent movements, with the ideological mindset to overthrow or secede from established governments; ethnic or communal militias formed to defend particular identity groups; criminal armed networks that exercise coercive territorial control; and transnational jihadist formations operating transnationally.

The distinguishing mark of NSAGs is not merely their non-state character, but their capacity for sustained and coordinated violence within a conflict setting.²⁷ This capacity presupposes a minimum level of internal organization (that is, the ability to recruit, train, and deploy fighters; to maintain command structures capable of directing operations; and to exercise sufficient discipline to sustain a military campaign over time). What is important is what the group does, not what it is called. An NSAG need not possess a written constitution, a formal chain of command, or permanent territorial headquarters. What matters is whether, in practice, the group meets the requirements to be accorded belligerent status.

NSAGs possess certain characteristics that distinguishes them from other violent groups, including criminal gangs, organized crime syndicates, and sporadic rioters.²⁸ This distinction has some legal implications since IHL applies only to situations that meet the threshold of armed conflict, and not to all forms of collective violence. For instance, a drug cartel that exercises lethal force to protect its trafficking routes does not ipso facto become a party to an armed conflict; nor does a mob engaged in inter-communal violence, however deadly. The law draws a line between ordinary violence, however serious, and the kind of organized, sustained, and politically or militarily motivated violence that triggers IHL application.

Scholars have identified several criteria for assessing whether a group qualifies as an NSAG

for the purposes of IHL. These include organizational structure and command hierarchy, the existence of internal disciplinary mechanisms, territorial presence and de facto control, operational capacity to carry out sustained military activities, and the ability to speak with one voice in negotiations or engagements with other parties.²⁹ These indicators, are however not cast in stone. They serve only as the indices for assessing whether a group has sufficient organization to be treated as a party to the conflict.

In African contexts, the constantly shifting dynamics of armed groups frequently distorts this assessment.³⁰ Groups may transform rapidly in response to shifting political conditions, military pressures, or changing resource flows. A faction that appears to exercise effective territorial control in one phase of a conflict may fragment, merge with rival groups, or effectively dissolve in another. This organizational instability challenges the application of fixed definitional criteria and demands a dynamic and context-sensitive approach to identifying NSAGs as subjects of IHL obligations.

2.2 Threshold of non-international armed conflict

IHL recognizes two classes of armed conflict – international and non-international armed conflicts.³¹ While IHL primarily applies to states where international armed conflict is established, IHL applies to NSAGs only where a non-international armed conflict (NIAC) exists.³² This threshold requirement is fundamental because it serves both to restrict the scope of humanitarian law and prevents the overstretching of IHL's application to ordinary internal security situations. The question of what constitutes a NIAC therefore has serious

²⁶Sassòli International Humanitarian Law, above at note 7 at 15–18.

²⁷Sivakumaran The Law of Non-International Armed Conflict, above at note 1 at 49–51.

²⁸Id at 52–54.

²⁹Sassòli International Humanitarian Law, above at note 7 at 20–23.

³⁰Sivakumaran The Law of Non-International Armed Conflict, above at note 1 at 55–58.

³¹ Geneva Conventions of 1949, common Articles 2 & 3

³²N Quinivet “Applicability test of Additional Protocol II and Common Article 3 for crimes in internal armed conflicts” in D Jinks, S Solomon and J Maogoto (eds) Application of International Humanitarian Law in Judicial and Quasi-Judicial Bodies (2014, TMC Asser Press) 31 at 32–34.

consequences for both legal analysis and operational practice.

The authoritative framework for determining NIAC status under customary international law derives primarily from the jurisprudence of the International Criminal Tribunal for the former Yugoslavia (ICTY), and in particular from the landmark decision in *Prosecutor v Tadić*.³³ The Tadić Appeals Chamber articulated a two-part cumulative test that has since been consistently applied by international tribunals, that is, the violence must satisfy a minimum threshold of intensity, and the parties to the conflict must exhibit a sufficient degree of organization.

The intensity criterion excludes lower-grade violence, such as riots, sporadic clashes, or one-off incidents, however serious, that does not escalate into sustained armed hostilities. Indicators relevant to assessing intensity include the frequency and severity of attacks, the use of heavy weaponry, the involvement of governmental armed forces, the scale of displacement of civilians, the humanitarian impact of the violence, and the activation of international humanitarian responses.³⁴ These indicators are readily observable in conflicts across the Sahel, the Lake Chad Basin, and the Horn of Africa, where sustained violence has affected large numbers of civilians over many years.³⁵

The organization criterion focuses on the internal structure of the non-state party. It requires that the group demonstrate a command hierarchy capable of directing operations, disciplinary mechanisms sufficient to enforce some degree of internal compliance with rules of conduct, and the ability to plan and execute coordinated military activities.³⁶ The standard

does not require the organizational sophistication of a conventional armed force. In short, the group must be sufficiently organized to conduct military operations and observe IHL in practice.³⁷ This framework constitutes a functional test in that it emphasizes the realities of violence rather than formal legal status, ensuring that IHL remains responsive to the disintegration and often contested authority structures that characterize contemporary African conflicts. The Tadić threshold has been affirmed and refined in subsequent jurisprudence, including decisions of the International Criminal Court, the Special Court for Sierra Leone, and the Extraordinary Chambers in the Courts of Cambodia, giving it a status of near-universal acceptance as the governing standard for NIAC determination.

2.3 The basis of IHL obligations for NSAGs

The application of IHL to NSAGs under IHL is hinged on the fact that the law regulates the conduct of parties during armed conflict, rather than their legal classification or international personality. This reflects the development of international law from a predominantly state-centred system, in which rights and obligation were associated primarily with sovereign states, to a humanitarian framework that regulates the conduct of all parties to an armed conflict based on the effects of their actions on protected persons.

There are three core principles of IHL that govern NSAG conduct, and each of these principles has firm root in treaty law and customary international law. First, the principle of distinction requires that all parties to a conflict, whether state or non-state, distinguish at all times between civilians and combatants, and between civilian objects and military objectives. Directing attacks against civilians or civilian objects are absolutely prohibited.³⁸

³³*Prosecutor v Tadić* (ICTY, Case No IT-94-I-AR72, 2 October 1995) para 70.

³⁴Sivakumaran *The Law of Non-International Armed Conflict*, above at note 1 at 63–65.

³⁵Human Rights Watch “None Can Run Away”: War Crimes and Crimes Against Humanity in Burkina Faso by All Sides (HRW, 2 April 2026), available at: <<https://www.hrw.org/report/2026/04/02/none-can-run-away/war-crimes-and-crimes-against-humanity-in-burkina-faso-by-all>> (last accessed 10 July 2026).

³⁶Sassòli *International Humanitarian Law*, above at note 7 at 25–27.

³⁷Sivakumaran *The Law of Non-International Armed Conflict*, above at note 1 at 66–68.

³⁸Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, art 48.

Secondly, the principle of proportionality prohibits attacks that may be expected to cause incidental civilian casualties or damage to civilian objects that would be excessive in relation to the concrete and direct military advantage anticipated.³⁹

Thirdly, the principle of precaution in attack imposes a positive duty on all parties to take all feasible measures to minimize harm to civilian persons and objects in the conduct of hostilities.⁴⁰ These three principles are not merely treaty obligations binding on states parties to the Geneva Conventions and their Additional Protocols. They have attained the status of customary international law, binding on all parties to an armed conflict, including NSAGs, regardless of whether the NSAG in question has formally consented to any treaty instrument.⁴¹ The customary status of these principles is particularly significant in African contexts, where some NSAGs may operate under the authority of states that have not ratified Additional Protocol II, or in territories where formal treaty application is contested.⁴²

Scholars have advanced several legal justification for the application of IHL to NSAGs. The humanitarian imperative argument holds that minimum standards of humanity must apply to all actors in armed conflict, since the victims of violence have an equal claim to protection regardless of whether their attacker is a state soldier or a non-state fighter.⁴³

The reciprocity argument suggests that compliance by one party creates incentives for the other to comply, producing a mutually reinforcing dynamic that can improve humanitarian outcomes overall.⁴⁴

The objective customary law argument holds that certain norms of IHL have crystallized as

universal obligations by virtue of their acceptance by the international community, and that their binding force on NSAGs follows automatically from their customary status, without the need for any act of formal consent.⁴⁵ IHL thus functions as a regime of conduct regulation that operates at the level of the conflict itself rather than the identity of its parties. It mitigates the human cost of armed conflict regardless of who is fighting, ensuring that the humanitarian protections it establishes remain available to vulnerable persons wherever violence reaches the threshold of armed conflict.⁴⁶

3. LEGAL OBLIGATIONS OF NON-STATE ARMED GROUPS

3.1 Treaty-based obligations under Common Article 3

Common Article 3 of the Geneva Conventions of 1949 occupies a foundational position in the regulation of NIACs.⁴⁷ The International Court of Justice, in the Nicaragua case, described Common Article 3 as reflecting “elementary considerations of humanity”.⁴⁸ In fact, it represents the minimum standard of humanitarian conduct applicable in all armed conflicts not of an international character. It is commonly referred to as a “mini-convention” within the Geneva framework precisely because it establishes, within a single article, a self-contained set of obligations that function independently of the broader treaty context.

The adoption of Common Article 3 as a regulatory framework for non-international armed conflicts, represented a turning point in the development of international humanitarian law. For the first time in a multilateral treaty, the international community acknowledged that armed conflicts occurring within the territory of a single state were not beyond the reach of

³⁹ Id art 51(5)(b)

⁴⁰ Id art 57; Sassòli International Humanitarian Law, above at note 7 at 30–32.

⁴¹ ICRC Customary International Humanitarian Law, Vol I (2005, Cambridge University Press) at 35–36.

⁴² Id at 37–38.

⁴³ Sassòli International Humanitarian Law, above at note 7 at 33–35.

⁴⁴ ICRC Customary International Humanitarian Law, above at note 32 at 40–42.

⁴⁵ Sivakumaran The Law of Non-International Armed Conflict, above at note 1 at 71–73.

⁴⁶ Id at 74–75.

⁴⁷ Sassòli International Humanitarian Law, above at note 7 at 36–38.

⁴⁸ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits) [1986] ICJ Rep 14, para 218.

international legal regulation. Importantly, the article addressed its obligations to “each Party to the conflict”, a formulation that was understood from the outset as extending its scope beyond the contracting states to encompass non-state parties to internal conflicts.⁴⁹ This drafting choice reflected a practical recognition that the purpose of humanitarian law, could not be achieved if legal obligations were restricted to state actors alone.

The substantive obligations imposed by Common Article 3 are minimum and non-derogable. Persons taking no active part in hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, must in all circumstances be treated humanely, without adverse distinction based on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.⁵⁰ To this end, Common Article 3 prohibits violence to life and person, including murder, mutilation, cruel treatment, and torture; hostage-taking; outrages upon personal dignity; and the passing of sentences or carrying out of executions without prior judgment by a regularly constituted court affording all judicial guarantees. These provisions constitute the minimum core of IHL applicable to NSAGs in internal conflicts, and they reflect universal humanitarian values that transcend the particular legal systems or ideological commitments of any party to a conflict.⁵¹

In African conflicts, the applicability of Common Article 3 has been repeatedly affirmed by domestic courts, regional human rights bodies, and international tribunals. Its obligations bind all NSAGs engaged in NIACs on African territory, regardless of whether those groups have formally acknowledged the Geneva Conventions, issued declarations of compliance, or entered into any form of agreement with state parties. The article’s binding force derives from

its status as both a treaty provision and customary international law.

3.2 Expanded obligations under Additional Protocol II

Additional Protocol II to the Geneva Conventions, adopted in 1977, extends and elaborates the minimum standards of Common Article 3 in the context of NIACs.⁵² However, it applies within a more restrictive threshold as it governs only conflicts occurring in the territory of a High Contracting Party between that party’s armed forces and dissident armed forces or other organized armed groups that, under responsible command, exercise sufficient control over a part of the territory to enable them to carry out sustained and concerted military operations and to implement the Protocol. This higher threshold reflects the tension between the Protocol’s humanitarian ambitions and states’ concerns about sovereignty and the recognition of insurgent groups. By limiting its application to conflicts involving organized armed groups capable of exercising territorial control, Additional Protocol II effectively excludes from its scope many of the loosely organized, mobile, or fragmented armed groups that characterize contemporary African conflicts. This limitation has been a persistent subject of scholarly criticism, and it reinforces the practical importance of customary IHL as a gap-filling mechanism in situations below the Additional Protocol II threshold.

Where Additional Protocol II does apply, it provides significantly more detailed and comprehensive protections than Common Article 3.⁵³ These include enhanced safeguards for the civilian population against the dangers arising from military operations; specific prohibitions on the use of starvation as a method of combat and on attacks against objects indispensable to the survival of the civilian population; detailed provisions

⁴⁹ICRC, above at note 32 at 43–44.

⁵⁰Sivakumaran *The Law of Non-International Armed Conflict*, above at note 1 at 76–78.

⁵¹Geneva Conventions (I–IV) 1949, common art 3.

⁵²Sivakumaran *The Law of Non-International Armed Conflict*, above at note 1 at 79–80.

⁵³Sassòli *International Humanitarian Law*, above at note 7 at 40–42.

governing the humane treatment of persons deprived of their liberty, including standards for detention conditions, medical care, and judicial guarantees; and provisions protecting cultural objects and places of worship against attack or use for military purposes.⁵⁴

The Protocol's provisions on the conduct of hostilities are particularly significant for NSAG accountability. They incorporate the principles of distinction and proportionality as binding operational rules, give specific content to the obligation to take precautions in attack, and prohibit indiscriminate attacks. They also contain express provisions on the protection of the civilian population from displacement, requiring that civilians not be compelled to leave their own territory for reasons connected with the conflict, except where their security or imperative military reasons so demand.

Additional Protocol II also acknowledges the practical realities of internal armed conflicts in ways that are directly relevant to NSAG accountability.⁵⁵ It creates no formal procedures for NSAGs to "join" or "accede to" the Protocol, recognizing that such groups cannot become parties to treaties in the conventional sense. Instead, its obligations attach automatically to all parties to a qualifying conflict, reinforcing the functional approach to humanitarian law that characterizes the post-1977 framework.

3.3 Customary international law and its extended application

Customary international law extends NSAG obligations well beyond the boundaries of treaty law and constitutes, in many African contexts, the primary operative framework for regulating NSAG conduct. The basic work in this area is the ICRC's comprehensive 2005 study on customary IHL, which identified 161 rules of customary international humanitarian law applicable in both international and non-

international armed conflicts.⁵⁶ The study's methodology, based on the systematic analysis of state practice and *opinio juris* across all regions of the world, gave its conclusions an authority that, while not formally binding, has been widely accepted by states, tribunals, and international organizations.

The rules identified as customary include virtually all of the core principles governing the conduct of hostilities (the obligation to distinguish between civilians and combatants; the prohibition of indiscriminate attacks; the prohibition of disproportionate attacks; the obligation to take precautions to spare the civilian population; the prohibition of attacks against civilian objects; and the prohibition of attacks against objects indispensable to the survival of the civilian population). They also include rules relating to the protection of humanitarian personnel and objects, the treatment of detainees, and the prohibition of specified weapons and tactics.⁵⁷

Customary international law's universality and flexibility make it particularly relevant in the African context, where formal legal commitments are uneven, treaty ratification is incomplete, and the practical reach of state law is often limited. Unlike treaty obligations, which bind only parties that have consented to them, customary norms bind all actors by virtue of the general practice and legal conviction of the international community. An NSAG cannot escape customary IHL obligations by pointing to its non-party status, its rejection of state authority, or its ideological opposition to the institutions that developed the relevant rules. The binding force of customary IHL on NSAGs is thus both comprehensive in scope and independent of consent.

The practical application of customary IHL in African conflict settings has been reinforced by the jurisprudence of the International Criminal Court, which has consistently applied customary

⁵⁴Id at 43–44.

⁵⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, 1125 UNTS 609, arts 1(1), 2–3; Sivakumaran *The Law of Non-International Armed Conflict*, above at note 1 at 79–80.

⁵⁶Additional Protocol II to the Geneva Conventions 1977, arts 1–3.

⁵⁷ICRC Customary International Humanitarian Law, above at note 32 at 35–36.

norms to the conduct of both state and non-state parties in situations before it. Cases arising from conflicts in the Democratic Republic of Congo, the Central African Republic, Uganda, Mali, and other African states have clarified and extended the customary rules applicable to NSAGs, producing a growing body of authoritative jurisprudential guidance.

3.4 Theoretical justifications for binding NSAGs

Understanding why NSAGs are legally bound by IHL requires a theoretical explanation, because these actors lack the formal legal personality that traditionally grounds the rights and obligations of states in international law.⁵⁸ The challenge is not purely theoretical, the perceived legitimacy of IHL obligations among NSAG commanders and fighters depends in part on whether those actors understand and accept the legal rationale for the law's application to them. Scholars have generally identified three complementary theoretical justifications.

The first is functional necessity. NSAGs are often central participants in contemporary armed conflicts, and they are frequently responsible for the majority of IHL violations in contexts where state forces are also engaged in misconduct.⁵⁹ Excluding NSAGs from the legal framework applicable to armed conflict would create large and unacceptable gaps in the protection of civilians and other vulnerable persons. The functional necessity rationale holds that humanitarian law must regulate all actors whose conduct seriously affects the humanitarian situation on the ground, regardless of their formal legal status. The alternative, confining IHL to state actors while leaving non-state parties unregulated, would render the law unable to fulfil its fundamental purpose.

The second justification is responsibility by participation. By taking up arms and engaging in hostilities, NSAGs implicitly assume the obligations that attach to belligerent status under

international law.⁶⁰ This rationale draws on a long-standing principle of international legal reasoning, that participation in a legally regulated activity triggers the rights and responsibilities associated with that activity. An NSAG that seeks to exercise the privileges of belligerency, including the right to attack military objectives and to treat captured enemy fighters in accordance with applicable law, must also accept the corresponding obligations, including the duty to protect civilians, respect detainees, and comply with the rules governing the conduct of hostilities.

The third rationale is the universality of customary international law. Certain IHL norms, including the protection of civilians, the prohibition of torture, and the prohibition of indiscriminate attacks, have attained the status of peremptory norms (*jus cogens*) or at least of universal customary rules binding on all actors in the international system.⁶¹ These norms protect fundamental human interests that are not contingent on formal consent or recognition. Their application to NSAGs is not, on this view, an imposition from without but a reflection of the universal moral and legal consensus that certain forms of conduct are absolutely prohibited in armed conflict, whoever carries them out. Together, these three rationales establish a sound theoretical basis for the binding character of IHL on NSAGs. They reflect a fundamental shift in the framework of international humanitarian law. That is, from a framework oriented exclusively toward regulating sovereign states, to one that recognizes the operational reality of contemporary armed conflicts and seeks to regulate all parties capable of influencing the humanitarian consequence of a conflict.⁶²

3.5 Limitations of the legal framework

While NSAGs are clearly legally bound by IHL, the existing framework is being undermined by

⁵⁸Sivakumaran *The Law of Non-International Armed Conflict*, above at note 1 at 84–85.

⁵⁹ Sassòli *International Humanitarian Law*, above at note 7 at 48–50.

⁶⁰Sivakumaran *The Law of Non-International Armed Conflict*, above at note 1 at 86–87.

⁶¹ICRC *Customary International Humanitarian Law*, above at note 32 at 53–54.

⁶²Sassòli *International Humanitarian Law*, above at note 7 at 51–53.

several practical and structural limitations that bear directly on enforcement and compliance. These limitations do not negate the validity of the legal obligations but condition the manner and degree to which those obligations are realized in practice.

The most fundamental limitation is the enforcement deficit that arises from NSAGs' lack of formal legal personality. Unlike states, which are subject to a range of inter-state enforcement mechanisms, including diplomatic pressure, economic sanctions, collective security measures, and the compulsory jurisdiction of international courts, NSAGs are not recognized subjects of international law in the full sense.⁶³ They cannot be brought before international courts as respondent parties; they cannot be the objects of UN Security Council enforcement action in the same way as states; and the mechanisms of inter-state compliance, such as the formal notification of protecting powers and the convening of fact-finding commissions under the Geneva Conventions, have limited practical applicability to non-state parties. This structural gap between the imposition of obligations and the availability of enforcement tools represents the central accountability challenge in the regulation of NSAGs.

A second limitation relates to the asymmetry between NSAG duties and their exclusion from international law-making processes. NSAGs bear substantive obligations under IHL but possess no corresponding rights as subjects of international law, and they have no formal role in the processes through which the rules binding them are developed and codified.⁶⁴ This asymmetry can undermine the perceived legitimacy of IHL among NSAGs. Groups that regard the legal framework as externally imposed, the product of state interests and institutional hegemony, may be less inclined to comply with its requirements, particularly when compliance conflicts with their strategic objectives or internal normative codes.

Addressing this legitimacy gap requires engagement strategies that go beyond mere coercion and seek to build genuine understanding of and commitment to humanitarian standards within NSAG structures.

A third set of limitations is contextual and operational. In many African conflicts, ongoing hostilities, weak or absent domestic institutions, limited access for humanitarian monitors and investigators, acute resource constraints, and pervasive political instability combine to prevent IHL obligations from translating into actual compliance on the ground.⁶⁵ NSAGs operating in environments of extreme insecurity may lack the organizational capacity to implement humanitarian standards, even where their leadership is formally committed to doing so. The gap between declared policy and actual conduct in the field, a recurring feature of NSAG accountability across the African continent, reflects in part the operational difficulties of enforcing discipline in dispersed, mobile, and often poorly resourced fighting forces.⁶⁶

A fourth limitation is the need for complementary non-legal strategies. Because legal rules alone cannot guarantee adherence, sustainable accountability depends on a combination of domestic enforcement mechanisms, regional institutional engagement, compliance-oriented interaction with NSAGs, and international support. Law must be supplemented by practical, institutional, and political strategies if it is to be effective in the challenging environments that characterize contemporary African conflicts.⁶⁷ These challenges are examined in greater depth in the sections that follow.

4. STRUCTURAL CHALLENGES IN THE AFRICAN CONTEXT

⁶³Sivakumaran *The Law of Non-International Armed Conflict*, above at note 1 at 88–89.

⁶⁴Sassòli *International Humanitarian Law*, above at note 7 at 54–56.

⁶⁵Human Rights Watch *World Report 2021: Events of 2020* (HRW, 2021), Africa country chapters, available at: <<https://www.hrw.org/world-report/2021>> (last accessed 10 July 2026).

⁶⁶*Id* at 26–28.

⁶⁷Sassòli *International Humanitarian Law*, above at note 7 at 57–58.

4.1 Legal Ambiguity and the question of legal personality

One of the most persistent conceptual challenges in regulating NSAGs lies in their ambiguous position within the international legal order.⁶⁸ While IHL imposes binding obligations on these actors, it does not accord them full international legal personality, creating a structural asymmetry.⁶⁹ NSAGs are subject to legal duties without enjoying corresponding rights or participating in the processes through which those rules are formulated.⁷⁰ This doctrinal inconsistency has direct consequences for legitimacy and compliance. From a normative standpoint, imposing obligations without representation may weaken the perceived authority of legal rules among NSAGs.⁷¹ Unlike states, which contribute to customary international law through practice and *opinio juris*, NSAGs are largely excluded from these processes.⁷² Consequently, the legal framework governing their conduct may appear externally imposed rather than internally binding.⁷³

Granting full legal personality to NSAGs is politically contentious, as it risks conferring legitimacy that states are unwilling to concede.⁷⁴ This tension between legal coherence and political reality lies at the heart of the regulatory dilemma, particularly in African contexts where conflicts involve groups contesting state authority.⁷⁵

4.2 Internal Disunity, Instability, and Command Responsibility

A defining feature of many African NSAGs is their organizational volatility.⁷⁶ Unlike

conventional armed forces, many NSAGs exhibit decentralized command structures, shifting alliances, and internal factionalism. This fragmentation challenges the application of IHL, particularly in relation to command responsibility.⁷⁷

Command responsibility presupposes hierarchical control over subordinates, but where authority is diffuse or contested, establishing such control is difficult.⁷⁸ This complicates attributing responsibility for violations and undermines deterrence.⁷⁹

Fragmentation also leads to inconsistent compliance within the same group. While some factions may adhere to IHL, others may disregard norms entirely, resulting in uneven conduct.⁸⁰ In protracted conflicts, splintering exacerbates this problem, as new factions may lack both the capacity and incentive to comply with legal standards.⁸¹

In regions such as the Sahel and eastern Democratic Republic of Congo, overlapping mandates and shifting loyalties illustrate this complexity.⁸² These dynamics expose the limitations of legal frameworks that presuppose organizational coherence where none exists in practice.⁸³

4.3 Institutional weakness and domestic enforcement gaps

IHL's effectiveness depends on domestic enforcement capacity.⁸⁴ Many African states, however, face structural weaknesses: limited resources, inadequate training, and fragile judicial systems.⁸⁵ A key issue is the incomplete incorporation of international crimes into

⁶⁸ Sivakumaran *The Law of Non-International Armed Conflict*, above at note 1 at 260–65.

⁶⁹ Sassòli *International Humanitarian Law*, above at note 7 at 32–36.

⁷⁰ *Id* at 36–38.

⁷¹ Sivakumaran *The Law of Non-International Armed Conflict*, above at note 1 at 266–68.

⁷² Sivakumaran *The Law of Non-International Armed Conflict*, above at note 1 at 268–70.

⁷³ Sassòli *International Humanitarian Law*, above at note 7 at 40–42.

⁷⁴ *Id* at 45–47.

⁷⁵ Sivakumaran *The Law of Non-International Armed Conflict*, above at note 1 at 271–73.

⁷⁶ *Id* at 274–76.

⁷⁷ Sassòli *International Humanitarian Law*, above at note 7 at 100–02.

⁷⁸ Sivakumaran *The Law of Non-International Armed Conflict*, above at note 1 at 276–78.

⁷⁹ *Id* at 279–80.

⁸⁰ Sassòli *International Humanitarian Law*, above at note 7 at 105–07.

⁸¹ Sivakumaran *The Law of Non-International Armed Conflict*, above at note 1 at 281–82.

⁸² ICRC *Customary International Humanitarian Law*, above at note 32 at 32–34.

⁸³ Sassòli *International Humanitarian Law*, above at note 7 at 108–10.

⁸⁴ Sivakumaran *The Law of Non-International Armed Conflict*, above at note 1 at 283–84.

⁸⁵ *Id* at 285–86.

domestic law. Without clear legislation criminalizing war crimes, domestic courts may lack jurisdiction to prosecute NSAG members.⁸⁶ Even when laws exist, procedural and evidentiary challenges hinder implementation.⁸⁷

Governance challenges corruption, political interference, and insecurity, further compound these limitations.⁸⁸ In conflict-affected areas, state reach may be restricted, leaving populations vulnerable and violations unpunished.⁸⁹ This accountability gap reflects broader state-building difficulties in post-colonial and conflict-affected contexts.⁹⁰ Addressing it requires both legal reform and investment in institutional capacity.⁹¹

4.4 Political challenges and the dilemma of engagement

Regulation of NSAGs is shaped by political considerations, particularly state reluctance to engage actors perceived as illegitimate.⁹² Interaction with NSAGs may risk political recognition, threatening sovereignty or emboldening insurgents.⁹³ Non-engagement, however, can produce unintended consequences - states may forgo opportunities to influence NSAG behaviour and promote IHL compliance.⁹⁴ Constructive engagement, focused on humanitarian objectives rather than political recognition, can facilitate dialogue, training, and dissemination of legal norms.⁹⁵

The challenge lies in balancing non-recognition and constructive engagement.⁹⁶ In protracted African conflicts, rigid non-engagement strategies may be counterproductive; more

calibrated approaches are required to disentangle political legitimacy from humanitarian necessity.⁹⁷

4.5 Practical realities

Empirical evidence confirms a persistent gap between legal norms and actual conduct.⁹⁸ In Nigeria, Boko Haram has perpetrated attacks on civilians, abductions, and destruction of property.⁹⁹ In the DRC, multiple armed groups have committed sexual violence, forced displacement, and other systematic abuses.¹⁰⁰ These patterns reflect deeper structural issues such as weak enforcement, limited deterrence, and strategic use of violence.¹⁰¹ Violations of IHL may be instrumental, serving as a means of control, instilling fear, or extracting resources.¹⁰² The persistence of such violations highlights the limitations of purely normative approaches. Legal rules alone are insufficient without effective mechanisms for enforcement.¹⁰³ What is required is an approach that integrates legal, institutional, and political strategies in equal measure.¹⁰⁴

5. LIMITS AND POSSIBILITIES OF ACCOUNTABILITY MECHANISMS

5.1 Domestic prosecutions and the primacy of state responsibility

States bear the primary responsibility for investigating and prosecuting IHL violations.¹⁰⁵ This obligation draws from the principle of *aut dedere aut judicare* (extradite or prosecute), requiring states to either bring perpetrators of graves to their courts for the purposes of trying

⁸⁶ Sassòli International Humanitarian Law, above at note 7 at 150–52.

⁸⁷ Id at 153–55.

⁸⁸ Sivakumaran The Law of Non-International Armed Conflict, above at note 1 at 287–88.

⁸⁹ Id at 288–90.

⁹⁰ Sassòli International Humanitarian Law, above at note 7 at 155–57.

⁹¹ Id at 158–60.

⁹² Sivakumaran The Law of Non-International Armed Conflict, above at note 1 at 291–93.

⁹³ Id at 294.

⁹⁴ Sassòli International Humanitarian Law, above at note 7 at 162–64.

⁹⁵ ICRC Customary International Humanitarian Law, above at note 32 at 35–37.

⁹⁶ Sivakumaran The Law of Non-International Armed Conflict, above at note 1 at 295.

⁹⁷ Sassòli International Humanitarian Law, above at note 7 at 165–67.

⁹⁸ ICRC Customary International Humanitarian Law, above at note 32 at 40–42.

⁹⁹ Human Rights Watch World Report 2019: Nigeria (HRW, 2019), available at: <<https://www.hrw.org/world-report/2019/country-chapters/nigeria>> (last accessed 10 July 2026).

¹⁰⁰ Id at 15–17.

¹⁰¹ Sivakumaran The Law of Non-International Armed Conflict, above at note 1 at 296–98.

¹⁰² Id at 299.

¹⁰³ Sassòli International Humanitarian Law, above at note 7 at 170–72.

¹⁰⁴ Id at 173–75.

¹⁰⁵ Geneva Conventions I-IV (1949) arts 49, 50, 129 & 147 respectively; Protocol I above at note 31 art 85; Rome Statute of the ICC 1998, art 17; Sivakumaran The Law of Non-International Armed Conflict, above at note 1 at 300–02.

them, or to hand them over to another state that is willing to do so.

Domestic courts offer advantages such as proximity to affected communities, familiarity with context, and potential societal impact.¹⁰⁶ Effectiveness varies considerably across jurisdictions. In many African states, incomplete legal frameworks and weak judicial capacity limit prosecution of complex international crimes.¹⁰⁷ Issues such as inadequate training, limited resources, and insecurity further undermine court effectiveness.¹⁰⁸

Political considerations may influence prosecutorial decisions. Governments may avoid cases that could destabilize peace processes or implicate powerful actors, resulting in selective prosecutions.¹⁰⁹ Despite these challenges, strengthening domestic mechanisms is essential. Without robust national systems, international efforts are unlikely to achieve sustainable results.¹¹⁰

5.2 International criminal accountability

The International Criminal Court addresses impunity for serious IHL violations.¹¹¹ Its jurisdiction extends to war crimes in NIACs, including acts by NSAGs, reinforcing the principle that no actor is beyond the law.¹¹²

In African situations, the ICC has prosecuted leaders for murder, rape, and child soldier recruitment, contributing to jurisprudence and clarifying IHL applicability to NSAGs.¹¹³ However limitations exist. For instance, jurisdiction is restricted to states parties or UN Security Council referrals, and reliance on state cooperation can hinder enforcement. Criticisms of selectivity and political bias affect legitimacy.¹¹⁴ Nevertheless, the ICC remains a

critical component where domestic mechanisms are unable or unwilling to act.¹¹⁵

5.3 Hybrid and internationalized tribunals

Hybrid tribunals combine domestic and international elements, offering workable responses to limitations of national and international courts.¹¹⁶ They operate within domestic systems while benefiting from international expertise.¹¹⁷

Advantages in Africa include enhanced local ownership, adherence to international standards, and capacity-building opportunities.¹¹⁸

Challenges include the need for political will, funding, clear mandates, and coordination between domestic and international actors.¹¹⁹

5.4 Direct engagement and voluntary compliance approaches

Where formal enforcement is weak, engagement-based compliance is increasingly relevant.¹²⁰ This approach influences NSAG behaviour via dialogue, training, and dissemination of IHL norms.¹²¹

The International Committee of the Red Cross has promoted awareness and adherence to humanitarian standards through direct engagement with NSAGs.¹²² Compliance is thus not solely coercive but also achieved through persuasion and capacity-building.¹²³

5.5 Toward a Comprehensive accountability framework

The limitations of existing mechanisms make a compelling case for a multi-dimensional accountability framework. Rather than relying on a single mechanism, frameworks should integrate domestic, international, regional, and

¹⁰⁶ Id at 303–04.

¹⁰⁷ Sassòli International Humanitarian Law, above at note 7 at 180–82.

¹⁰⁸ Id at 183–85.

¹⁰⁹ Sivakumaran The Law of Non-International Armed Conflict, above at note 1 at 300–06.

¹¹⁰ Id at 307.

¹¹¹ Rome Statute of the ICC 1998, arts 5–8.

¹¹² Sivakumaran The Law of Non-International Armed Conflict, above at note 1 at 308.

¹¹³ Sassòli International Humanitarian Law, above at note 7 at 190–92.

¹¹⁴ Id at 193–95.

¹¹⁵ Sivakumaran The Law of Non-International Armed Conflict, above at note 1 at 308.

¹¹⁶ Sassòli, above at note 7 at 195–98.

¹¹⁷ Id at 190–92.

¹¹⁸ Id at 193–95.

¹¹⁹ Id at 201–03.

¹²⁰ Id at 204–06.

¹²¹ ICRC Customary International Humanitarian Law, above at note 32 at 45–47.

¹²² Id at 48–50.

¹²³ Sivakumaran The Law of Non-International Armed Conflict, above at note 1 at 313–15.

engagement-based strategies.¹²⁴ By drawing on complementary mechanisms, this approach increases the prospect of meaningful and sustained compliance.¹²⁵

6. A FRAMEWORK FOR STRENGTHENING ACCOUNTABILITY

6.1 Practical engagement with non-state armed groups

Lessons from African conflicts show that legal frameworks alone are insufficient to ensure compliance.¹²⁶ Direct engagement with NSAGs can complement formal enforcement mechanisms and foster a culture of accountability. Practical engagement entails dialogue, training, and the provision of technical guidance on IHL, without conferring political legitimacy.¹²⁷ This strategy has proven effective in several contexts. For example, humanitarian organizations such as the International Committee of the Red Cross have conducted direct training sessions for NSAG commanders in conflict zones, emphasizing obligations such as distinction, proportionality, and humane treatment.¹²⁸ Such interactions often lead to incremental improvements in conduct, even in the absence of formal enforcement.¹²⁹ In African contexts, engagement must be carefully adapted to fit local realities. Factors such as cultural norms, socio-political motivations of NSAGs, and the security environment shape the design and effectiveness of compliance programs.¹³⁰ Failure to account for these factors risks undermining credibility and producing only superficial compliance.¹³¹

6.2 Strengthening domestic legal and judicial systems

Domestic legal systems remain the cornerstone of accountability.¹³² However, to function effectively, they require systematic reform. This demands, first, the comprehensive incorporation of international crimes into domestic law, covering war crimes, crimes against humanity, and violations of Common Article 3.¹³³ It also requires sustained institutional strengthening for courts and prosecutors, including training in IHL, evidence collection, and the procedural safeguards applicable to complex international crimes.¹³⁴ Robust mechanisms for the protection of witnesses and victims are equally indispensable, particularly in contexts where insecurity persists and those who participate in accountability processes face ongoing risk.¹³⁵ Finally, the independence and impartiality of the judiciary must be safeguarded from political influence if consistent enforcement of the law is to be achieved.¹³⁶ In practice, strengthening domestic systems allows African states to exercise primary responsibility for enforcing IHL, reducing reliance on international mechanisms and promoting local ownership of accountability processes.¹³⁷

6.3 Regional mechanisms and African institutions

Regional institutions can play a critical role in enhancing accountability, particularly in cross-border or transnational conflicts.¹³⁸ The African Union, through instruments such as the African Charter on Human and Peoples' Rights and the African Standby Force, provides both legal and operational platforms for enforcement.¹³⁹

Regional courts, including the African Court on Human and Peoples' Rights, can complement domestic prosecutions by providing judicial

¹²⁴ Sassòli International Humanitarian Law, above at note 7 at 210–12.

¹²⁵ Sivakumaran The Law of Non-International Armed Conflict, above at note 1 at 316–18.

¹²⁶ Id at 45–48.

¹²⁷ Sassòli International Humanitarian Law, above at note 7 at 15–18.

¹²⁸ Sivakumaran The Law of Non-International Armed Conflict, above at note 1 at 49–51.

¹²⁹ Id at 52–54.

¹³⁰ Sassòli International Humanitarian Law, above at note 7 at 20–23.

¹³¹ Sivakumaran The Law of Non-International Armed Conflict, above at note 1 at 55–58.

¹³² Id at 60–62.

¹³³ Prosecutor v Tadić, para 70.

¹³⁴ Sivakumaran The Law of Non-International Armed Conflict, above at note 1 at 63–65.

¹³⁵ Human Rights Watch, above at note 26.

¹³⁶ Sassòli International Humanitarian Law, above at note 7 at 25–27.

¹³⁷ Sivakumaran The Law of Non-International Armed Conflict, above at note 1 at 66–68.

¹³⁸ Id at 69–70.

¹³⁹ Sassòli International Humanitarian Law, above at note 7 at 30–32.

oversight and filling accountability gaps.¹⁴⁰ African Union policy frameworks, particularly the APSA, facilitates coordination among Member States and regional organizations, thereby strengthening collective responses to peace and security threats, including those posed by NSAGs.¹⁴¹

Regional approaches are particularly valuable in Africa due to the transnational nature of many NSAGs, such as jihadist groups operating across the Sahel.¹⁴² Collaborative frameworks allow states to pool resources, share intelligence, and harmonize legal standards.¹⁴³

6.4 Legal and theoretical development

Despite the legal bases established by Common Article 3, Additional Protocol II, and customary law, the framework governing NSAG accountability remains evolving and contested.¹⁴⁴ There is a need for continued doctrinal development to clarify the precise obligations of NSAGs in diverse operational contexts;¹⁴⁵ the applicability of criminal responsibility doctrines in fragmented organizational structures;¹⁴⁶ and the interaction between domestic, regional, and international enforcement mechanisms.¹⁴⁷ Normative development must be sensitive to African realities. Rather than importing doctrinal models from inter-state conflicts, frameworks should be adapted to fit the operational, political, and

social contexts of contemporary African NIACs.¹⁴⁸

6.5 Coordinating compliance mechanisms

Cumulatively, an effective accountability framework requires an approach that cuts across levels. At the domestic level, this means strengthening national judicial and legislative systems so that states can exercise primary responsibility for prosecuting IHL violations. Where domestic mechanisms are insufficient, international support through the ICC and hybrid tribunals must be available to fill the resulting accountability gap. Regional coordination, leveraging African Union instruments and courts, is essential to address the cross-border dimensions of transnational armed groups. And alongside these formal mechanisms, direct engagement with NSAGs through soft-law and humanitarian interventions is indispensable for improving compliance on the ground. This integrated strategy recognizes the limits of coercion and the necessity of combining legal, institutional, and practical tools. By bridging legal aspiration with practical circumstances, African states and institutions can enhance the enforceability of IHL while protecting civilian populations.

7. CONCLUSION

The regulation of non-state armed groups under international humanitarian law remains one of the most pressing challenges in contemporary international law and African conflict management framework. The regulatory framework comprising treaty obligations, customary law, and jurisprudential developments provides robust standards for regulating conduct and ensuring accountability. However, these frameworks are often confronted by structural, political, and implementation barriers that limit their effectiveness.

African conflicts expose the tension between legal prescription and enforcement reality. NSAGs frequently operate in factional and

¹⁴⁰ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights 1998, arts 3–4; MM deGuzman "Complementarity at the african court" in CC Jalloh, KM Clarke and VO Nmeihelle (eds) *The African Court of Justice and Human and Peoples' Rights in Context: Development and Challenges* (2019 CUP) 645 at 648, 676–9.

¹⁴¹ African Union Commission African Peace and Security Architecture (APSA) Roadmap 2016–2020 (AU, 2016) at 82–3; African Union Commission African Union Handbook 2023 (AU, 2023) at 77.

¹⁴² Sassòli International Humanitarian Law, above at note 7 at 33–35.

¹⁴³ ICRC Customary International Humanitarian Law, above at note 32 at 40–42.

¹⁴⁴ Sivakumaran *The Law of Non-International Armed Conflict*, above at note 1 at 71–73.

¹⁴⁵ *Id* at 74–75.

¹⁴⁶ Sassòli International Humanitarian Law, above at note 7 at 36–38.

¹⁴⁷ ICRC Customary International Humanitarian Law, above at note 32 at 43–44.

¹⁴⁸ Sivakumaran *The Law of Non-International Armed Conflict*, above at note 1 at 76–78.

unstable structures, domestic judicial systems are under-resourced, and political sensitivities often constrain engagement strategies. These factors create a persistent gap between the law on paper and the law in practice. To address these challenges, a context-sensitive framework is necessary. Such a framework integrates domestic legal reform, regional coordination, practical engagement with NSAGs, and targeted international interventions. By combining coercive, normative, and persuasive strategies, it is possible to enhance compliance while

respecting the complex realities of African conflicts. Accountability is achievable not through legal prescription alone, but through an approach that brings normative rigour into productive engagement with operational realities. By closing the gap between law and practice, African states and institutions can promote adherence to IHL, reduce the human cost of armed conflict, and contribute to the development of an accountability regime adequate to the complexity of contemporary African conflicts.

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