

The effects of internal armed conflicts in the light of international humanitarian law

Saadoudi Youcef

Saadoudiyoucefmedea26@gmail.com
University of Medea Faculty of Law and Political Science, Algeria
<https://orcid.org/0009-0005-8278-3401>

Kamel Rahim

University of Blida 2 Faculty of Law and Political Science, Algeria
Kamelrahim74@gmail.com
<https://orcid.org/0009-0000-4347-0625>

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Abstract

The subject of non-international armed conflicts is of great importance, whether in national or international law, and produces effects when its legal rules are violated, and the legal effects conflict the binding character on all its provisions, whether these provisions belong to international law or to international humanitarian law, because provisions that do not enjoy binding effect do not rise to the level of law, because they do not achieve the objectives for which they were developed. In order to establish the legal effects, international criminal responsibility must be established and the wrongful act must be proven and legally attributed to the person subject to the obligation, as this condition is essential for establishing responsibility. If international criminal responsibility is established against the accused person, it has material and legal consequences for the parties to the conflict, and the injured party has the right to claim compensation from the person who caused the damage .

Keywords: International humanitarian law, non-international armed conflict, international criminal responsibility

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Introduction:

The present study will examine the divergent views of jurists on the attribution of international criminal responsibility, namely whether it lies with the state or the individual. The views of the jurists in question are as follows:

Proponents of the former argue that international criminal responsibility is established for the state alone, not the individual, as it is the addressee of international law and is a person of the international community. They further argue that the individual is the domain of national law, and that the state possesses legal personality. This latter attribute bestows upon the state the capacity for criminal intent, thereby rendering it subject to prosecution. In light of the prevailing discord surrounding the criminal liability of the state in the absence of individual culpability, the Prosecutor of the Nuremberg Tribunal, Mr. Hertle, emphasized in his inaugural address to the court that “the state itself must be criminally prosecuted, albeit with the caveat of not overemphasizing the implementation of collective sanctions” (). This standpoint is predicated firstly on the recognition that the state is no longer the sole focal point around which the provisions of international law revolve, and secondly on the impossibility of criminal accountability of the state as a legal person, thereby rendering the individual the sole subject of such accountability. However, adopting the responsibility of the individual alone makes the state immune from punishment by sacrificing some of its members as responsible for these offenses, i.e. the state excludes its responsibility altogether.

In the following sections, the subjects of international criminal responsibility in non-international armed conflicts will be addressed, followed by an examination of the implications of this responsibility.

Section I: Persons of International Criminal Responsibility in Non-International Armed Conflicts

In order to establish international criminal responsibility, it is necessary to attribute the wrongful act legally to the person subject to the obligation, as this condition is considered essential in establishing criminal responsibility (p. 280, Yatoji, 2018) ..

When international criminal responsibility is established against the accused person, the injured party is entitled to claim compensation for the damage (Muhammad, 2001, p. 332) .

The rules of international responsibility in internal armed conflicts are closely linked to the obligations imposed by international law on its subjects, as they are the consequence of the breach of the rules of international law, and therefore the rules of international responsibility apply to the following persons (Muhammad, 2001, p. 247) :

Firstly, the attribution of international criminal responsibility to the state is paramount.

It is imperative to note that a state is not held directly accountable for a criminal act perpetrated by an individual, unless there is attribution of said act to the state in accordance with established customary or conventional international legal principles. These principles delineate that the sole conduct imputable to a state within the international arena is that of an organ of its government . (01, 1981)

International criminal responsibility is incurred by the state for international crimes and violations of international humanitarian law committed by its representatives regardless of their legal or functional status (1981 ,03) .

In the 1986 Draft Articles on State Responsibility, the International Law Commission drafted Article 19 under the heading ‘International Crimes and Misdemeanors ’. In this article, the International Law Commission defined the international crimes of the State as follows: “An internationally wrongful act results from the breach by a State of an international duty so important in protecting the fundamental interests of the international community that its breach is an international crime committed against that community as a whole ” .(19, 1981)

All acts of a state organ are attributable to the legal person of the state as long as the organ has acted in the capacity specified by the authority or in the capacity conferred on it by internal law. In general, a wrongful act is attributed to the state organ represented by one of its three branches, the legislative, executive and judicial branches (Ta’i, 1982, p. 09-AI) ..

A pertinent exemplar of the state’s criminal responsibility can be found in the Rwanda Tribunal’s pivotal 1994 ruling, wherein it articulated the foundational tenets of Articles 02-08 - the Tribunal’s substantive jurisdiction. Within the purview of Articles 03 and 04 of its Statute, this Tribunal established its jurisdiction over grave crimes. The term "grave crimes" encompasses not only genocide but also crimes against humanity, when perpetrated through systematic, widespread, and targeted assaults against a civilian population . (08-02) In terms of personal jurisdiction, Article 1 of the aforementioned Statute stipulates that the Court is competent to prosecute natural persons who planned, instigated, ordered, assisted or encouraged in any way the organization , preparation or execution of one of the specified international crimes (Statute of the Court ,01) .

In addition to the two aforementioned jurisdictions – *ratione materiae* and *ratione personae* – the ICTR has jurisdiction over crimes that occurred on the territory of Rwanda, including its land surface, airspace, and the territories of neighboring states.

It is therefore evident that criminal responsibility is incurred by every person – heads of state and government, high-ranking officials, and persons in high command – who issue orders that lead to the commission of internationally criminalised acts (Yatouji, 2018, p. 91) ..

It is evident that the Court's jurisdiction encompasses all individuals acting on behalf of the State and under its authority. Consequently, the State is held accountable under international law for all actions perpetrated by individuals belonging to its armed forces and acting within the scope of their duties. This principle is further solidified by the prevailing doctrine of State responsibility, which stipulates that each State is responsible for the actions of its organs, provided that these actions are committed by individuals acting in an official capacity and on behalf of the State.

II: Attribution of Criminal Responsibility to the Armed Opposition
In the application of the law of state responsibility

It is considered an act of the state under international law. This means that any insurgent movement that becomes a new government, or any insurgent or non-insurgent movement that succeeds in establishing a new territory in part of the state that existed before the movement was established, or in territory under its administration, bears responsibility.

It is erroneous to attribute the actions of insurgent or non-insurgent movements to the State on the assumption that the structure and organization of such a movement is independent of the structure and organization of the State , (335-Yetouji, 2018, pp. 334) .It is therefore illogical for a newly established government or state to divest itself of responsibility once the objectives of an insurgent or non-insurgent movement have been realised and it has come into existence as a governing entity (10) , .In light of the aforementioned, it is vital to emphasize that the responsibility for addressing mixed crimes, a principle firmly established for Venezuela in 1903 and for Mexico between 1920 and 1930, must be upheld. This responsibility requires the attribution of the actions of insurgents to the state if the movement successfully realizes its objectives . (Yetouji, 2018, p. 336) .

In this particular context, the ILC endeavored to incorporate the idea of holding armed groups and armed movements accountable for their actions in accordance with international law, particularly those that contravene international humanitarian law. This endeavor was founded on the premise that these entities are bound by the obligation to respect international humanitarian law during the armed conflicts in which they have engaged.

Thirdly, the paper explores the attribution of international criminal responsibility to international organizations .

The capacity of modern international organizations to intervene in the economic, social, political, environmental protection and other fields is well documented. It is therefore reasonable to hypothesize that, as a result of their continuous expansion in several fields, these organizations will increase their intervention with regard to legally protected rights. Consequently, it is plausible that international organizations may transgress and commit wrongful acts. In the context of their expanding activities related to the maintenance of international peace and security, which entails the deployment of military forces to a specific region for peacekeeping or peacebuilding purposes, there is a possibility that these forces may violate the established principles of international law, particularly those pertaining to international humanitarian law (Maryam, 2018, page 44) ..

The cholera outbreak in Haiti is arguably the most significant case in this regard. The issue of the UN's negligence in adopting responsibility for international obligations, and the subsequent role and obligations of the UN and other organizations , became a matter of public discourse.

The facts of the case revolve around the fact that the United Nations dispatched peacekeeping forces, called MINUSTAH, to Haiti following the presidential protests that resulted in armed conflict in several cities, in order to stabilize Haiti under Security Council Resolution 1542 of 2004. Six years later, on 12 January 2010, a major earthquake occurred in Haiti, resulting in significant material and human

losses. In the aftermath of the earthquake, the Security Council reinforced MINUSTAH and expanded its mission to include recovery, reconstruction and stabilization efforts , (Security, 2010) .In the aftermath of the earthquake, which occurred ten months previously, on 22 January 2010, Haiti's National Public Health Laboratory confirmed the first case of cholera in the country. The subsequent outbreak led to over 70,000 infections and more than 8,500 fatalities.

Ten days after the first case, the virus appeared to match a case found in South Asia, which led to suspicions that the UN forces were responsible for the virus. Consequently, on 6 January 2011, UN Secretary-General Ban Ki-moon established an independent advisory body to investigate the source of cholera. This body concluded that the river Artibonite , which studies had determined was the source of the epidemic, was insufficient to spread the epidemic.

Subsequent to these events, the United Nations considered that it had violated an international obligation, that its negligence, recklessness and inaction had led to the spread of cholera, and that it had violated the agreement between the organization and the Haitian government on the status of UN operations in 2004. Subsequent to this, a formal complaint was lodged by the Institute for Justice and Democracy in Boston with a coalition of human activists and Haitian victims, accusing the United Nations. Nations of failing to adhere to international environmental conservation norms and of violating human rights, international convention law, customary international law, and the responsibilities of international organizations as outlined in the agreement (Maryam, 2018, p. 41) .

Following Haiti's reactions and the acknowledgment of responsibility, the WHO has allocated approximately \$2.2 billion over ten years, with a quarter of this amount to be spent between 2013 and 2015 in an initiative to prevent, treat and raise awareness of cholera in Haiti and neighboring countries . (Kristina, 2014, pp. 1000-1005)

International organizations must accept responsibility when they issue orders to states or organizations, provided that such orders result in unlawful acts. To illustrate this point, we may consider the military intervention of NATO in Libya following the revolution in that country. This intervention was based on Security Council Resolution No. 1973 of 2011, which approved the use of all necessary measures to protect civilians and civilian objects. However, it was found that many reports proved that the pilots mistakenly destroyed civilian targets and caused serious damage ..(E, 2011, pp. 10-11)

For the sake of clarity, it is important to note that the resolutions were adopted by the Security Council which rejects the use of force by states and international organizations do not in fact require states to violate international law and commit unlawful acts. It is therefore necessary to distinguish between resolutions that carry general instructions, such as Security Council Resolution 678 of 1990, which authorizes states allied with Kuwait to use all necessary means, and resolutions that carry specific instructions, as in the case of Security Council Resolution 1973 of 2011 regarding Libya ..(D'Aspremont, 2012, pp. 10-11)

Section II: The consequences of criminal responsibility in non-international armed conflicts

The consequences of international criminal responsibility are incurred by those individuals who perpetrate the internationally criminalised act in accordance with the provisions of international criminal law . (Yetouji, 2018, p. 299) . Those who violate international law have a duty to make reparations and compensate the victims and their families (Shanan, 2018, p. 416) .

I: Reparations from the State to Individuals Affected by Violations of International Humanitarian Law

It is appreciated that both the Rome Statute and the Second Protocol to the Hague Convention for the Protection of Cultural Property recognize the rights violated in non-international armed conflict. In such cases, the responsibility to provide reparations to victims is recognised (International, 1998) .They obliged States in cases where an injury may be caused by one of their representatives or agents, to make reparation and repair of whatever kind and form. (Religion, 2016)

With regard to restitution, this is defined as a form of reparation, as is enshrined in numerous international legal and judicial texts which obligate states to pay restitution when they have caused a violation of the rights of persons in the conflict. In this regard, the International Tribunals for Yugoslavia and Rwanda have recognized the protection of the rights of persons, whether property or proceeds is seized illegally. It is noteworthy that the decision of the Tribunals in this case was not based on the victims' claim, but rather a form of punishment, as the Statute of the Tribunals stipulates that: "In addition to imposing a prison sentence, the Chamber may order the restitution to the rightful owners of any property or proceeds seized by criminal behavior , including coercion (.International A) .".

Whereas the Tribunals did not permit individuals (victims of the crime of genocide) to seek redress before their tribunals, they did allow redress through national courts. This is confirmed by Security Council Resolution 827 of 25 May 1993, which established the Yugoslavia Tribunal. The resolution states: "The International Tribunal shall carry out its work without prejudice to the right of victims to seek, through appropriate means, compensation for damages incurred as a result of violations of international humanitarian law (146-Muhammad, 2001, pp. 145) .'.

In the same field, the declaration issued by the Council of the International Institute of Human Law* held on 04/17/1990 attempted to emphasize five basic principles and rules concerning the conduct of hostilities applicable in any non-international armed conflict. These are outlined below :

These principles are as follows :

- The obligation to distinguish between combatants and civilians
- Immunity of the civilian population
- Prohibition of unnecessary suffering .

This declaration is informed by the jurisprudence of normative treaties that extend beyond the parties to the treaty and bind even non-parties to its provisions. It is important to note that no state can disavow the obligations under the pretext that it is not a party to the treaty. This is because when a state commits an act that violates its provisions, it has committed an internationally wrongful act and bears its

responsibility before the other members of the international family and must repair the damage it has caused .

The Agreement on Refugees and Displaced Persons, an annex to the Dayton Accords of 1996, also stipulates that refugees and displaced persons have the right to recover property and real estate deprived of them during hosting since 1991. The Special Commission for Claims on Real Property of Displaced Persons in Bosnia and Herzegovina and the Special Commission for Claims on Property in Kosovo, established in 1999 and 2000 respectively, have both applied this principle in considering requests for property restitution submitted by persons who lost their rights (Yetouji, 2018, p. 484) ...

This right to redress and reparation also finds its source in several international human rights instruments, such as the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment CAT ., (Hamdawi, 2019, p. 338)p as well as the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention for the Protection of All Persons from Enforced Disappearance.

In the same field, regional human rights instruments have also attached great importance to the individual's right to reparation. This is sometimes recognized as the individual's entitlement to compensation for specific offenses and sometimes by addressing the right to compensation in general for violations of individual rights contained in their provisions. Such rights are embodied in the European Convention on Human Rights, the American Convention on Human Rights and the African Charter on Human and Peoples' Rights . (Hamdawi, 2019, p. 339) .

General Comment No. 4 on the African Charter on Human and Peoples' Rights underscored the requirement for victims of torture and other cruel, inhuman, or degrading treatment and punishment to access redress.

It emphasized that non-state actors, individuals, organizations , institutions and other bodies operating outside the state and their structures may affect the exercise of human rights and thus cause violations of Article 05 of the African Charter.

Article 1 of the African Charter obliges states parties to ensure positive compliance with the prevention, prompt investigation, prosecution and punishment of non-state actors who commit acts of torture and other forms of ill-treatment, as well as to repair any damage. This obligation extends even to acts committed by non-state actors, such as instigating or giving explicit or implicit consent to a state that may cause a wrongful act that affects a legally protected right.

In the same context, the Statute of the International Criminal Court affirmed the right of victims to reparations in accordance with the text of Article 75, which stipulates that "the Court shall establish principles regarding reparations to or in respect of victims, including restitution, compensation and rehabilitation, and the Court may issue a direct order from a convicted person specifying appropriate forms of reparations for victims (International Criminal Court, see Article 75) ..

Article 79 of the Statute stipulates: 'A trust fund shall be established by a decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court and for the benefit of prisoners of the victims' (International).

II: Reparations from armed groups to victims of violations

It is recognized that international law does not consider armed groups obligated to make reparations unless, after the conclusion of the non-international armed conflict, they become a new government or succeed in establishing a new state within part of the state's territory, a feat only achieved after these armed groups demonstrate adherence to international humanitarian law and fulfill the following conditions:

-1 Organization : The necessity for a minimum level of organization within armed groups stems from the understanding that a lack of organization engenders chaos and bloodshed. Moreover, armed groups are often incapable of educating their members on the principles of international humanitarian law, thereby hindering their ability to comply with the law under the pretext of ignorance. The establishment of a hierarchy through which commanders can issue orders and instructions is an inherent aspect of organization (Yazji, 2018, p. 296) ..

2 Conflict with a state actor: For an armed group to be subject to Additional Protocol II of 1977, the armed conflict must be against a state. However, it should be noted that this does not mean that Additional Protocol II does not apply to an armed conflict between two or more groups. In such a case, a special agreement between the armed groups is required to respect Additional Protocol II during the armed conflict between those groups (Yazji, 2018, page 299) ..

3- The willingness of armed groups to adhere to international humanitarian law

is a critical consideration in the study of armed conflict. This condition is considered more significant than the preceding ones, given that empirical evidence has demonstrated that the majority of armed groups function beyond the confines of recognized legal frameworks. This condition serves to differentiate armed groups from terrorist organizations . (Yazji, 2018, p. 295) .

In the interest of academic discourse, a salient point pertains to the legal implications of armed groups' declarations of adherence to International Humanitarian Law (IHL). The assertion of such declarations entails an assumption of responsibility in the event of violations, thereby establishing an automatic subjection to the legal framework of IHL. Consequently, under the stipulated conditions, these groups become subject to the provisions of IHL, consequently receiving the protections and benefits outlined in international conventions pertaining to non-international armed conflicts. Conversely, these groups must also bear legal obligations in instances of contravening stipulated regulations, thereby establishing a reciprocal relationship between rights and obligations within a legal framework -Al) .. (Alawi, 2019, p. 71

With reference to the above, we find that, as a general rule, international law does not consider an armed group to be obliged to make reparations unless, after the end of a non-international armed conflict,

it becomes a new government of the state or succeeds in establishing a new state on part of the territory of the former existing state or on territory under its administration . (States)

For instance, the resolutions of the Mixed Commissions established for Venezuela (1903) and Mexico (1920-1930), and the demands of the Bolivar Railway Company, were the subject of a number of applications at the international level: The nation was held accountable for the obligations of a successful revolution from its inception, as it had theoretically represented, from the outlook, a national will to change that was materialised in the ultimately successful outcome , (p. 91 ,2004 .In the Franco-Venezuelan Mixed Claims Commission, in its decision concerning Société Française de Ferrovilles de Venezuela, it was determined that the State cannot be held responsible for the actions of revolutionaries, unless the revolution succeeds, because such acts then entail State responsibility under clearly recognized rules of public law.

In the Socony Vaccum Oil Company case, the United States International Claims Commission justified its denial of compensation to the company on the ground that the expropriation of property that fell under the authority of the Croatian State was not covered by the bilateral agreement concluded by the United States and Yugoslavia. The Commission's position was anchored in the assertion that the emergence of the Independent State of Croatia represented an unsuccessful endeavor by a rebel group, supported by Germany, to secede from Yugoslavia. This assertion was underpinned by the premise that the State had ceased to exist following the withdrawal of foreign forces. In support of this position, the Claims Commission cited the argument that the United States had assumed responsibility for the actions of the (Atwi, 2018, p. 20)

To reinforce our position, the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law in the Philippines committed parties to non-international armed conflict to adhere to the principles and standards of international humanitarian law, and the local division of the dissident armed group ELN in Colombia publicly apologised in 2001 for causing the death of a number of children and the destruction of civilian homes in an armed attack on a village, and expressed their willingness to return the remaining property and objects that had been looted He crowns, 2018, page) . (487

In the same field, the United Nations has called in its various resolutions to oblige armed groups to provide material and moral reparation appropriate to the harm suffered by victims of violations of international humanitarian law during non-international armed conflict. In confirmation of the above, the Security Council adopted a resolution on Liberia in 1996 , (الأمن، 1996) . In the 1998 resolution of the Commission on Human Rights on Afghanistan, the Afghan government was urged to ensure the provision of effective and sufficient medical assistance to individuals suffering violations of international human rights and humanitarian law in the region .. (الدولية ن.)

In the event of a failure on the part of the rebels to reach power and overthrow the existing government, the responsibility for the unlawful acts of the rebels that cause damage and losses to

foreigners is not typically shouldered by either the state or the rebels. This is based on the principle of force majeure, which is beyond the state's control. Nevertheless, the state or the incumbent government is obliged to undertake all necessary measures to curtail the escalation of revolutionary operations and to protect foreigners. However, this norm does have an exception that imposes international responsibility, namely if the state is found to have issued an amnesty for the rebels or assigned a fee (Malawi, 2017, p.) .. (181

Thirdly, the question of reparations in the context of internal unrest:

The loss of life and property caused by internal disturbances and uprisings does not raise legal issues in relation to what the citizens of the state are exposed to, as they are the people of the state and bear the burden of their state, their systems and what their situation has become, and they have no right to compensation for the damage caused to them.

In the context of damage inflicted upon foreigners in the context of demonstrations, disturbances, riots and acts of violence, the state is not held accountable for such actions unless it can be demonstrated that the state has been negligent in its duty to implement adequate measures and safeguards for foreigners. Moreover, the state is only liable if it can be proven that it has failed to trace, arrest and prosecute the perpetrators of such acts (Malawi, 2017, p. 183) . .

In the event that it is determined that the entity in question did not act negligently in preventing the harm caused to foreign nationals, it is not held liable for any liability or compensation. However, it is solely responsible for providing available means to the injured foreign nationals and for repairing the damage caused to them.

This position has been adopted by the International Law Commission in its project on liability for damage caused to foreigners during public outbursts, revolutions and internal disturbances.

This position has been endorsed by the international judiciary through the jurisprudence of international arbitration courts, which has established that, in this context, arbitration requires the occurrence of negligence and negligence by the competent authorities to protect foreigners. A seminal judicial precedent in this area is the 'Noyes case', in which the facts are summarised as follows: 'Noyes' is an American citizen who submitted his case to the US-Panama Claims Commission for adjudication, and the Commission ruled in 1993 that Panama was not responsible for damages suffered by the Americans because the Panamanian authorities had not been proven to have been negligent (Malawi, 2017, p. 184) .

Conclusion:

It is evident from the aforementioned that Common Article 3 signifies the zenith of international regulation of the state of non-international armed conflict, given the manifold forms these conflicts assume. Nevertheless, this article is deficient in its failure to stipulate the minimum humanitarian requirements, a shortcoming that compelled the international community to exert considerable effort,

culminating in the promulgation of Additional Protocol II to the Geneva Conventions. Despite the augmentations introduced by the protocol for non-international conflicts, it is subject to censure for its absence of the requisite legal guarantees to implement its provisions.

It was concluded that individuals are criminally responsible for crimes committed during non-international armed conflicts, thus completing the circle of confirming the responsibility of natural persons. If the elements of responsibility are completed, they have a legal effect, namely the obligation to compensate for damage and the party to the conflict that violates the provisions of international humanitarian law is held liable.

It is evident that international responsibility is incurred by armed groups in a manner consistent with that of legitimate state governments. In the event of victory, these armed groups are obligated to provide compensation to the victims of the conflicts for all losses incurred .

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