Chapter 6
Armed Groups and Procedural Accountability: A Roadmap for Further Thought

Katharine Fortin

Abstract This chapter investigates the meaning of the term "accountability", as it is used in policy discussions surrounding armed groups. It takes a detailed look at literature from public administration on the concept of procedural accountability and applies it to the various accountability mechanisms that evaluate the conduct of armed groups against international norms. In doing so, the chapter points out some of the shortcomings of some of these accountability mechanisms. It ends by examining some of the more innovative accountability models, such as the process created by Geneva Call and the ad hoc processes created by the UNAMA field office in Afghanistan vis-à-vis the Taliban.

Keywords Accountability · Armed groups · Compliance · International humanitarian law · Human rights law

Contents

Katharine Fortin (k.m.a.fortin@uu.nl) is a lecturer in public international law at the Netherlands Institute of Human Rights, Utrecht University and a member of the Utrecht Centre of Accountability and Liability Law.

K. Fortin (✉)
Utrecht Centre of Accountability and Liability Law, Netherlands Institute of Human Rights, Utrecht University, Utrecht, The Netherlands
e-mail: k.m.a.fortin@uu.nl

T.D. Gill et al. (eds.), *Yearbook of International Humanitarian Law 2016,*
Yearbook of International Humanitarian Law 19,
https://doi.org/10.1007/978-94-6265-213-2_6

6.1 Introduction

The purpose of this chapter is to seek a better understanding of how to achieve the accountability of armed groups under international law. The chapter applies insights from public administration literature on the concept of procedural accountability, to monitoring mechanisms which evaluate the conduct of armed groups against international norms. In doing so, the chapter considers whether, and to what extent, State orientated systems of accountability are able successfully to hold non-State actors, such as armed groups, accountable. Showing that it is problematic simply to include armed groups in procedures which were designed by States, for States, the chapter examines some innovative alternative accountability models. These include the process created by Geneva Call and the ad hoc practices of the United Nations Assistance Mission in Afghanistan (UNAMA)'s office in vis-à-vis the Taliban. The chapter thereby shows that accountability mechanisms which are tailor-made for armed groups may be able to produce a better model of accountability that not only holds armed groups to account but simultaneously reinforces efforts to persuade armed groups to take ownership of humanitarian norms and comply with them.

6.2 Accountability Context

The background to this chapter's focus on accountability lies in the changed context of modern armed conflicts. While formerly armed conflicts used to be international, nowadays they are mainly non-international and therefore involve one or more armed groups.[1] They also involve high numbers of civilian casualties.[2] As a result, today's conflict landscape creates a pressing need to *inter alia* understand how armed groups fit, and should be treated, within the system of international law which is primarily created and enforced by States. It is against this context that an increasing number of studies have been undertaken that seek to shed light on the source and scope of armed groups' obligations under international humanitarian law and international human rights law.[3] The new conflict landscape has also prompted research on how better to secure the compliance of armed groups with these norms, through *inter alia* humanitarian engagement, special agreements and undertakings.[4] In response to the high civilian casualties of modern armed conflict, there has been a consistent emphasis put on the importance of the accountability of both State actors

[1] On the lack of inter-state conflict, see Pettersson and Wallensteen 2015; and Crawford 2014.

[2] See for example the joint statement by the Secretary-General of the United Nations and the President of the ICRC of 31 October 2015: ICRC (2015) World at a turning point: Heads of UN and Red Cross issue joint warning. https://www.icrc.org/en/document/conflict-disaster-crisis-UN-red-cross-issue-warning. Accessed 29 June 2017; see also UN Security Council (2016a), paras 3, 4 and 9.

[3] See for example Zegveld 2002; Sivakumaran 2012; Murray 2016; Fortin 2017.

[4] See for example Bangerter 2011, 2015; Bellal and Casey-Maslen 2011; Bongard and Somer 2011, Heffes and Kotlik 2014; Sassòli 2010; Saul 2017; Sivakumaran 2015.

and armed groups.[5] It is this latter issue that this chapter seeks to examine more carefully, focusing specifically on the accountability of armed groups.

Within most discussions about the need to secure the accountability of armed groups, the term "accountability" is employed narrowly to refer to the need to secure criminal prosecutions of an armed group's individual members.[6] While acknowledging that criminal prosecutions are a fundamentally important way of securing justice for victims of violations of international humanitarian law, this chapter focuses instead on the accountability of the armed groups themselves. The rationale behind this approach is the view that the current focus on criminal prosecutions is insufficient because it fails to address in numerous ways the full scale of harm committed by those armed groups as entities in their own right.[7] Firstly, individual criminal prosecutions pay very little attention to the role played by the *organisation* behind the perpetrators (i.e. the armed group) and its ability to amplify the powers of the group's constituent individual members.[8] Secondly, not all violations of international humanitarian law or international human rights law amount to war crimes.[9] As a result, international criminal law on its own is not capable of providing legal redress for all violations of international humanitarian law or international human rights law perpetrated by armed groups. Thirdly, and in a similar vein, criminal tribunals are only able to order reparations for individuals and communities that match the individual perpetrator's contribution to the crimes charged.[10] As a result, prosecutions are unable to secure redress for the full spectrum of collective violations committed by a particular party to an armed conflict.[11]

The structural inability of international criminal law to address the total harm caused by armed groups is evident by comparing the evolution of the accountability framework for armed groups with the evolution of that for States. The accountability framework for States initially comprised of judicial fora where the responsibility of the organisation (i.e. the State) could be found. It only later included

[5] Since 2009, the United Nations Secretary-General has identified "accountability" for violations of international law as one of the "core challenges" of the international community. See UN Security Council 2009.

[6] See a general review of the Reports of the Secretary-General on the protection of civilians in armed conflict, 2009–2016 which focus systematically on accountability; see Brunée 2005, p. 47.

[7] For a rare acknowledgment of the need for measures beyond the prosecution of individual perpetrators, see UN Security Council 2009, paras 68–73.

[8] Kleffner 2009, p. 245; and Moffett 2015, p. 325.

[9] UN Security Council 2009, para 69.

[10] Although the International Criminal Court (ICC) Appeals Chamber has confirmed that collective reparations are possible, it has also confirmed that a convicted person's liability for reparations must be proportionate to the harm caused and, *inter alia*, his or her participation in the commission of the crimes for which he or she was found guilty, in the specific circumstances of the case. See *Prosecutor v Thomas Lubanga Dyilo*, Judgment on the appeals against the "Decision establishing the principles and procedures to be applied to reparations" of 7 August 2012 with AMENDED order for reparations (ANNEX A) and public annexes 1, 2, 3 March 2015, Case No ICC-01/04-01/06-3129, para 118.

[11] Moffett 2015, p. 325.

judicial fora which could make findings about the individual criminal responsibility of State agents. The ability to prosecute individuals for international crimes was developed post-World War II in reaction to a view that a sole recourse to State responsibility was not a sufficient remedy for international crimes, because international crimes are committed by *individuals* and not only by *abstract entities.*[12] Paradoxically when it comes to armed groups, the pattern of development has developed in a converse manner. The accountability framework started by securing the criminal responsibility of armed group members, and there are, as yet, very few judicial fora in which armed groups can be held to account, as legal entities.[13] This anomaly confirms the sense in investing further effort in securing the accountability of armed groups themselves, alongside efforts to advance the individual criminal responsibility of armed groups' members.[14]

It is common nowadays for a multiplicity of UN accountability mechanisms to make statements identifying violations by armed groups of particular humanitarian norms. For many years special rapporteurs acting under mandates created by the Human Rights Council (HRC) (and its predecessor the Commission on Human Rights) have examined the acts of armed groups when they visit States embroiled in non-international armed conflicts.[15] Equally, the UN Security Council and the HRC now consistently address the acts of armed groups as well as States, in situations of non-international armed conflicts.[16] Likewise, the acts of armed groups are also regularly scrutinised by UN field offices and commissions of inquiry, alongside States.[17] While human rights treaty bodies have been traditionally reluctant to address armed groups in their findings, in 2013 the Committee on the Elimination of Discrimination against Women (CEDAW) indicated a willingness to assess the acts of armed groups in instances where they have an identifiable political structure and exercise significant control over population or territory.[18] It is these kinds of

[12] Nuremberg International Military Tribunal, *United States of America, French Republic, United Kingdom and the USSR v Hess, Goring et al.*, Judgment, 1 October 1946, para 447.

[13] For examples of instances in which armed groups have been held responsible in domestic jurisdictions, see Moffett 2015, pp. 335–345.

[14] UN Security Council 2009, para 68; see also Bellal 2015, pp. 305–306 and Moffett 2015, pp. 325–330.

[15] One of the earliest examples of a Special Rapporteur examining the acts of armed groups was in 2001. See UN General Assembly 2000, para 27; for a more recent example see UN General Assembly 2016c.

[16] UN Security Council 2016b, c, d, e, f; UN General Assembly 2016a, b.

[17] See for example MONUSCO and OHCHR 2014.

[18] See the CEDAW Committee's General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations of 18 October 2013 which states that "although non-State actors cannot become parties to the Convention […] under certain circumstance, in particular where an armed groups with an identifiable political structure exercises significant control over territory and population, non-State actors are obliged to respect international human rights". Committee on the Elimination of Discrimination against Women (CEDAW) 2013; on the willingness of human rights treaty bodies to monitor the acts of armed groups, see also Sassòli 2010, p. 39.

non-judicial accountability mechanisms that are the subject of this chapter. For while these kinds of accountability mechanisms are an important positive step in securing the accountability of armed groups, the attention that they give to armed groups has occurred out of necessity, rather than planning or design.[19] As a result, little consideration has been given to the question studied by this chapter, namely whether, and to what extent, a State orientated procedural system can effectively deliver the accountability of armed groups.[20]

6.3 Definitions of Accountability

In legal literature, little differentiation is made between the term "accountability" and the term "responsibility". Both terms are used interchangeably to refer to judicial processes whereby actors are held responsible for wrongful acts. Yet when it comes to armed groups, there are significant advantages in understanding the term accountability more broadly than responsibility. Indeed, interpreting accountability more broadly allows an enquiry into the "answerability" of armed groups to go forward, despite the current lack of rules on the circumstances in which armed groups can be held responsible for the legal acts of their members and the lack of judicial fora for formally establishing their responsibility.[21] Menno Kamminga, who conducted a notable study into accountability, found that responsibility was a "limited subcategory" of the "wider concept" of accountability.[22] In doing so, he drew upon one of the observations made by the International Court of Justice in the *Corfu Channel* case where the Court found that "a State on whose territory an act contrary to international law has occurred, may be called upon to give an explanation".[23] Interestingly, the court found that the State's duty to give an explanation for its actions existed independently from any finding that the State had *prima facie* responsibility for such an act.

The identification of the distinction between accountability and responsibility goes to the heart of what has been termed the *procedural side* of accountability. Indeed, it is argued that a better understanding of the procedural dimension of accountability provides valuable insights into how the accountability of armed groups can better be achieved, in a rich variety of non-judicial contexts. It is furthermore argued that in order to gain a better understanding of the concept,

[19] See the account by Philip Alston, Special Rapporteur on Extrajudicial, Summary or Arbitrary Killings, in which he explains *how* and *why* the mandate was forced to find a means to respond to extrajudicial killings by armed groups, UN General Assembly 2007, paras 40–44.

[20] See Brunée 2005 for an evaluation of this question.

[21] There is a growing body of literature considering the responsibility of armed groups for wrongful acts. See for example Moffett 2015; Bílková 2015; Verhoeven 2015, but the idea is still nascent.

[22] Kamminga 1992, pp. 45.

[23] ICJ, *Corfu Channel case*, Judgment, 9 April 1949, [1949] I.C.J. Reports 4, p. 4 and 18.

public administration literature is the best place to start. Here the term accountability has long been used to refer to procedures which ensure that public power is held in check. However, for many years within this field the term accountability was also over-used, without any attention given to its meaning. In a bid to "save the concept"[24] from nebulousness, a number of authors embarked on a series of analytical studies designed to identify the core sense of the term. In doing so, they developed an important body of writing defining the concept of accountability as a procedural mechanism. This literature is helpful when looking at procedural mechanisms currently holding armed groups to account as it helps identify what accountability is and how it can be achieved.

Mulgan, a key author within this movement to clarify the concept of accountability, finds that there are at least four key requirements/components for defining accountability as a mechanism: (i) the accountability forum must be a third party; (ii) the accountability forum should have "rights of authority" over the entity under scrutiny (iii) the person being held accountable must have the opportunity to explain his conduct; and (iv) the accountability forum must have the possibility of imposing sanctions.[25] Bovens, another key author in this movement, identified the same key features in his writing. He asserts that there needs to be a "relationship" between an actor and an accountability forum, in which the actor has an "obligation to explain and to justify his or her conduct" and the forum can ask questions and "pass judgment", such that the actor will face "consequences".[26] It is significant that Curtin and Nollkaemper, some of the few legal scholars to have explored the term, adopt a similar definition of accountability. Perhaps not surprisingly considering their legal focus, they include the further requirement that the behaviour of the actor being held to account must be scrutinised against "prior established rules or principles".[27] Before seeing how the main constituent components of these definitions apply to accountability mechanisms that address the acts of armed groups, their features are examined in more detail below.

It is clear from the literature on accountability referred to above, that one of its most important requirements is the need for account to be given to a third party. According to Mulgan's definition above, accountability must be external, in that the account is given to an entity "outside" the person or body being held to account.[28] Indeed, it is this need for "a significant other" that distinguishes the concept of accountability from other concepts that fall outside the term's core scope, for example, personal culpability, morality and professional ethnics.[29] Accountability has a key external dimension in that it involves a relationship between an actor

[24] Bovens 2007, p. 449.
[25] Mulgan 2000, p. 555.
[26] Bovens 2010, p. 951.
[27] Curtin and Nollkaemper 2005, p. 8.
[28] Mulgan 2000, p. 555.
[29] Bovens 2007, p. 450.

—"the accountor"—and a forum "the accountee".[30] According to public administration literature, the external forum can have many manifestations. It can be a particular individual or agency, but it may also be a more virtual entity, such as the general public.[31] In other words, an accountability process, and the relationship upon which it is based, can be of varying degrees of formality and institutionalisation. At its most formal, it will be created and managed by a judicial institution, such as a tribunal or court.[32] At its most informal, the relationship may be created by an ad hoc interaction between a politician and the media or between a public body and a civil society organisation.[33] The observation that accountability can be achieved by less formal structures is helpful when considering the accountability of armed groups. It demonstrates that the lack of judicial fora able to hold armed groups to account—and the lack of secondary rules on how to attribute wrongful acts to armed groups—need not *per se* be a bar to achieving their accountability. Indeed, it has been asserted that it is precisely these types of formal obstacles that have created the rich variety of alternative non-judicial modes of accountability for non-State actors, on the international plane.[34]

Irrespective of the type of forum, public administration literature consistently emphasises that the forum must have "rights of authority" over those it is calling to account. By this it is meant that the accountability mechanism is able to assert rights of "superior authority" over those being held to account, including "the right to demand answers and impose sanctions".[35] Significantly, authors writing on accountability have indicated that these "rights of authority" can have a different character in every forum. For example, if the entity is a court, the forum will have "legal authority"; if the forum is an employer it will have "professional authority;" if the forum is a journalist, it will have "moral authority". Yet no matter what the character of the "authority", it has been recognised that it is "crucial that the actor *is, or feels, obliged to inform the forum about his or her conduct*".[36] This sense of obligation may stem from formal rules obliging the actor to subject its behaviour to scrutiny by the forum in question but it could also stem from a feeling of moral obligation. In that sense, it can be seen to be inherently connected to the requirement articulated by Curtin and Nollkaemper that the behaviour of the actor is held to account against "prior established rules or principles".[37]

[30] Ibid.; see also Grant and Keohane 2005, p. 29.

[31] Bovens 2007, p. 450 and 460. It is noteworthy that Bovens calls this a 'horizontal accountability' relationship. See also Curtin and Nollkaemper 2005, p. 10 for a discussion of different persons or institutions to which account can be rendered.

[32] Bovens 2007, p. 460; and Bovens 2010, p. 951.

[33] Mulgan 2000, p. 565; and Bovens 2007, p. 455.

[34] Brunée 2005, p. 24.

[35] Mulgan 2000, p. 555.

[36] Bovens 2010, p. 952.

[37] Curtin and Nollkaemper 2005, p. 8.

When looking at existing accountability mechanisms for armed groups, it is interesting to note that literature exploring the idea of accountability indicates that it needs to include a "*social interaction and exchange*, in that one side, that calling for the account, seeks answers and rectification while the other side, that being held accountable, responds and accepts sanctions".[38] In other words, public administration literature asserts that a mechanism will not achieve accountability if it simply metes out censure, judgment or punishment upon a wrongdoer. Accountability can only be achieved if there is a truth-seeking process that gives the accountee an opportunity to ask questions and the accountor an opportunity to render "an account" of his or her conduct. In other words, the process needs to comprise of a "back-and-forth conversation" or an "ongoing process of account-giving and account-taking".[39] This requirement tallies with Kamminga's observation that unlike "responsibility", the term "accountability" indicates that the entity being held to account has a duty to provide an "explanation".[40] This requirement fits with the fact that courts and tribunals, fora that lawyers would most instantly identify as accountability mechanisms, tend to give the respondent—be it an individual or organisation—the opportunity to give an account of his or her behaviour.[41]

Whether or not the term "accountability" includes "sanctions" is a subject of debate among public administration scholars.[42] Some authors consider that the process of "'*calling* to account' […] [is] incomplete without a process of rectification".[43] Despite disagreement on this question, many writers acknowledge that most accountability mechanisms have the power to impose "sanctions", when the term is interpreted widely.[44] For example, it has been pointed out that in many circumstances the issuance of public criticism, shaming, stigmatisation or even simple exposure will constitute a sanction of sorts, for many actors.[45] It has also been pointed out that an accountability mechanism may also judge an actor's

[38] Mulgan 2000, p. 555.

[39] Rached 2016, p. 4.

[40] Kamminga 1992, p. 5.

[41] It is noteworthy in this respect that the right to defend oneself and thereby render an "account" of one's behaviour is enshrined in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature 4 November 1950, 213 UNTS 221 (entered into force 3 September 1953); Article 14 of the International Covenant of Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) (ICCPR); and Article 8 of the American Convention on Human Rights, opened for signature 22 November 1969, 1144 UNTS 123 (entered into force 18 July 1978); It is also found in Article 21 and 20 of the Statutes of the International Criminal Tribunal for the former Yugoslavia and Rwanda, respectively, UN Security Council 1993 and UN Security Council 1994; and Article 67 of the Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002).

[42] Bovens 2007, p. 451; and Mulgan 2000, p. 556.

[43] Mulgan 2000, p. 556. See also Rached 2016, p. 9.

[44] Bovens 2007, p. 452.

[45] Rached 2016, p. 9.

behaviour positively, rather than negatively.[46] For although the word "sanction" has a heavy connotation of penalty to most people, formally it encompasses both positive and negative meanings i.e. penalties or rewards.[47] As a result, the sanctions requirement will also be satisfied when a mechanism finds that an entity being held to account is not guilty of any wrongdoing.

6.4 Towards an Accountability of Armed Groups?

Having reviewed the various elements of the definition of accountability, it can be seen that many of the non-judicial accountability mechanisms mentioned above (e.g. the UN Security Council, etc.) are capable of achieving accountability when they scrutinise State action. Mechanisms that are created by States to review State action against State-created norms have normative and procedural "rights of authority" over the States that they scrutinise. Likewise, State-made accountability mechanisms incorporate procedural rights for States to refute the allegations against them. Examples of these procedural rights can be seen in the fact that human rights treaty bodies request States to submit their own report, before they make their own findings on the State's compliance with the treaty obligations.[48] Similarly, it is customary for the President of the UN Security Council to invite representatives of States which are on the agenda of the Council to participate in any session examining that State.[49] In a similar manner, States scrutinised by the HRC via its Universal Periodic Review procedure or special sessions are given the opportunity to provide an account of their position to the Council.[50] However, when the same mechanisms turn their attention to the acts of armed groups, the situation is quite different. The following section considers how the bodies which are currently holding armed groups to account—in the wider sense of the word—compare to the definition of "accountability" set out above. The only part of the definition which is

[46] Bovens 2007, p. 452.

[47] See Oxford English Dictionary, Online edition, http://www.oed.com. Accessed 10 July 2017.

[48] See for example Article 40 ICCPR, above n 41, which invites States parties to submit reports on the measures they have adopted to give effect to the rights in the Covenant and on the progress made in the enjoyment of those rights.

[49] Rule 37 of the Provisional Rules of Procedure of the Security Council allows any member of the United Nations which is not a member of the United Nations Security Council to be invited, as a result of the decision of the Security Council, to participate without a vote in the discussion of any question brought before the Security Council when *inter alia* the Security Council considers that the interests of the member are specially affected. UN Security Council 1983.

[50] For the Universal Periodic Review, see the UN General Assembly Resolution 60/251, which created the Human Rights Council and described how the new universal periodic review process would be a "cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned". UN General Assembly 2006, para 5(e); see the special sessions of the Human Rights Council, for example UN General Assembly 2017a; and UN General Assembly 2017b.

not scrutinised explicitly in this latter section is that of "sanctions". It has been seen that this requirement will in most instances be fulfilled when a monitoring mechanism produces a report or public statement, detailing an armed group's behaviour.

When the above components of accountability are compared with the accountability mechanisms that are scrutinising the acts of armed groups, it can be seen that the externality requirement is generally the easiest to satisfy. For despite their other arguable shortcomings, the United Nations accountability mechanisms that evaluate the acts of armed groups against international law standards are clearly external to the armed groups in question. Indeed, the requirement of externality is more likely to be an issue for accountability processes set up by the armed groups themselves. This can be seen by looking at an example involving the Taliban in Afghanistan. In 2013, the Taliban announced that it had taken steps to address civilian casualties by establishing "a special commission under the supervision of the military commission for the avoidance of civilian losses".[51] Although the Taliban has not made the commission's *modus operandi* public, it has indicated that its mandate is to "get information" and "evaluate […] civilian losses" attributed to Taliban members.[52] In September 2014, the Taliban openly encouraged Afghans to report any information about civilian casualties to the commission, regardless of the perpetrator. The group promised that it would conduct "comprehensive investigation[s]", impart justice according to *Sharia* law, "pave the way for mutual conciliation" and "create proper condition[s] to offer compensation and extend condolence to the victim party."[53]

So far, the Taliban has refused to make the details of individual investigations public. However, in 2016, they published four reports that contained the findings of its newly created "special organ", detailing civilian casualties for 2016.[54] In its annual 2016 report, the Taliban claimed to have documented 5 232 civilian casualties between January–December 2016, of which 71% were caused by the "Americans and the stooge administration" and 12% were caused by the Taliban. These figures starkly contradict with UNAMA's findings for the same period, which found 11 418 civilian casualties, 61% of which it attributed to Anti-Government elements. Historically, UNAMA has welcomed the Taliban's reports on the basis that it "welcomes public reporting by all sides of the conflict, including the Taliban".[55] However, it has also repeatedly made clear that it will not accept the Taliban findings without extensively corroborating their veracity. As a result, UNAMA takes pains to diligently check the many "war crimes" reports produced by the Taliban, and publish a record of its verification efforts.[56] UNAMA has also emphasised on more than one occasion that such reports from the Taliban are only valuable if their findings are communicated to those responsible for battlefield

[51] UNAMA and OHCHR 2013, p. 5.
[52] Ibid.
[53] UNAMA and OHCHR 2014, p. 73.
[54] UNAMA and OHCHR 2016b, p. 76.
[55] UNAMA and OHCHR 2016a, p. 73.
[56] See for example UNAMA and OHCHR 2012a, p. 17; and UNAMA and OHCHR 2013, p. 36.

actions i.e. its fighters.[57] In a similar vein, UNAMA has warned that the Taliban should not issue these reports, simply as part of a public relations exercise.[58]

UNAMA has also asked for more details, on how the Taliban's new fact-finding commission defines the term "civilian". It has furthermore asked about the Taliban's code of conduct regarding civilian casualty protection, its mechanisms to ensure accountability and any cases against its members.[59] Yet as far as this author is aware, the UNAMA has not yet explicitly commented on the organ's independence. Yet, the definition of accountability above highlights the importance of this aspect. For it is unlikely that a "special organ" under the supervision of the Taliban's "military commission" can satisfy the requirement of "externality" that is needed to deliver effective accountability. When examining this question, it would be relevant to find out whether the Taliban's "special organ" is operationally independent from its military chain of command.[60] It would also be relevant to determine whether the Taliban's military chain of command retains discretion on the opening and closing of investigations against particular members of the group.[61]

Although it is relatively straightforward for United Nations mechanisms to satisfy the externality requirement, it will be shown below that some of the other requirements are more challenging. In particular, the idea that an accountability forum must have "rights of authority" over an armed group is more difficult. Indeed, it has been shown above that it requires attention to two distinct but connected ideas: the authority of the norms and the authority of the forum. The former requirement stems from Curtin and Nollkaemper's observation that any judgment or assessment needs to be rendered on the basis of "prior established rules or principles".[62] Indeed, it seems obvious that where it is doubtful whether a particular entity is bound by a particular norm, the persuasive force of any statement finding that entity to have violated that norm will be inevitably diminished. This highlights the acute need for clarity on the question about which norms of international law are binding upon armed groups. While it has been long accepted that armed groups are bound by Article 3 Common to the Geneva Conventions and Additional Protocol II of the Geneva Conventions, the application of human rights law to armed groups remains controversial.[63] The "rights of authority" argument set out above explains why it is essential to find clarity on these questions, for the accountability of armed

[57] UNAMA and OHCHR 2011b, p. 4; UNAMA and OHCHR 2012b, p. 5; and UNAMA and OHCHR 2015b, p. 56; UNAMA and OHCHR 2016b, p. 78.

[58] UNAMA and OHCHR 2015b, p. 55; UNAMA and OHCHR 2016a, p. 73; and UNAMA and OHCHR 2016b, p. 78.

[59] UNAMA and OHCHR 2016a, p. 73.

[60] See ECtHR, *Al-Skeini and Others v UK*, Grand Chamber Judgment, 7 July 2011, Application No. 55721/07, paras 167 and 172–175 for judicial guidance on the requirement of externality or independence.

[61] Ibid.

[62] Curtin and Nollkaemper 2005, p. 8.

[63] Saul 2017, p. 3; for recent studies of the obligations of armed groups under human rights law, see Fortin 2017; Murray 2016.

groups to be achieved. For so long as there is doubt and debate about the legal legitimacy of applying particular norms to armed groups, the force of any pronouncements by mechanisms seeking to achieve the accountability of armed groups under human rights law will be compromised and restricted.[64]

According to the accountability literature, it is also important to give attention to the question of whether armed groups *feel bound* by particular norms. For while as a matter of positive law, it is widely agreed that armed groups do not need to consent to be bound by humanitarian norms, the value and effectiveness of procedural accountability will clearly be heightened in instances where an armed group expresses its consent to a norm. [65] In instances where an armed group feels an affinity with the content of humanitarian norms, the "rights of authority" of the mechanism will be greater.[66] This observation demonstrates that contemporary efforts to promote the "ownership" of the humanitarian norms by armed groups are not only useful to increase armed groups' compliance with international humanitarian law, but also useful to achieve their accountability.[67] Current studies have shown that armed groups can take ownership of humanitarian norms in different ways, a few of which will be mentioned here. First it has been demonstrated that there is an important value in consulting armed groups about the *need* for new norms, even though they are not formal actors in the norm creation process.[68] Such efforts can help ensure that any resultant norms are realistic and capable of implementation.[69] The ownership of norms by armed groups may also be achieved by their being consulted in the drafting process of new treaty norms.[70] Ownership of norms may also be achieved by armed groups signing special agreements that go beyond their treaty obligations under international humanitarian law.[71]

As part of efforts to promote compliance, armed groups are also regularly encouraged to sign deeds of commitment setting out their commitment to certain existing humanitarian norms.[72] The efforts of Geneva Call have been pioneering in this regard. Over the last seventeen years, the organisation has created an original "inclusive" approach under which armed groups can express their adherence to international humanitarian norms by means of deeds of commitment, thereby taking ownership of these rules.[73] If individuals in the higher ranks of an armed group

[64] This idea is explored in more detail in Fortin 2017, pp. 4–5 and 15–18.

[65] For the role of State consent in the creation of obligations for armed groups, see Murray 2016; Sivakumaran 2006; Kleffner 2011; Fortin 2017. For the view that consent of an armed group is relevant in the context of human rights obligations, see Ryngaert 2008, p. 308.

[66] There is scope for further research on the 'authority' of international law as applied by armed groups, but this is left for further studies.

[67] Bellal and Casey-Maslen 2011, p. 191; see also Sassòli 2010, p. 6 and 25–26.

[68] Sassòli 2010, pp. 15–20 and 22; Rondeau 2011, p. 658.

[69] Rondeau 2011, p. 659.

[70] Ibid., p. 658.

[71] Heffes and Kotlik 2014.

[72] Sassòli 2010, p. 25; Sivakumaran 2015, p. 130; Ryngaert and Van de Meulebroucke 2011.

[73] See Bongard and Somer 2011 for an overview of Geneva Call's work.

agree to particular norms, there is a greater likelihood that these norms will be respected and implemented.[74] While there is no guarantee that deeds of commitment will be complied with, it is notable that Geneva Call has rarely encountered non-compliance in its work.[75] Armed groups are also being encouraged to create internal regulations in the form of codes of conduct defining the type of behaviour that the leadership expects from its members.[76] Although these efforts have borne fruit, sometimes when an armed group adopts humanitarian norms, the integrity of the norms are lost during the internalisation process.[77] For example, armed groups may deviate from standard interpretations of key international humanitarian law terms.[78] For instance, the SPLM in Sudan passed penal laws that took a problematically wide approach to the issue of which individuals they could target.[79] It will be shown below that similar problems have arisen in relation to the Taliban's approach to the notion of civilian.

The application of the "rights of authority" requirement at a normative level additionally highlights the need for accountability mechanisms to make sure that there is a solid connection between the conduct they are scrutinising and the entity that is being held to account. This is crucial for the mechanism to have rights of authority over the entity, and not just over its individual members. It has been pointed out already that accepted rules of attribution, when it comes to armed groups, are not yet in existence. Yet the "rights of authority" requirement reminds us that when an accountability mechanism makes conclusive pronouncements about the behaviour of an armed group violating a particular norm, it needs to pay attention to the issue of attribution. Thus it must demonstrate how it has ascribed the individual conduct that it has scrutinised, to the armed group. Scholars working in this area have noted that accountability mechanisms scrutinising the acts of armed groups often only give minimal attention to the issue of attribution.[80] This may be because of the aforementioned lack of rules providing guidance on *how* and *when* attribution can be ascertained, as a matter of law. It may also be because entities such as commissions of inquiry see their role to be primarily aimed at the gathering evidence for the establishment of criminal courts in the future. As a result, commissioners may feel that their priority is to identify individual crimes, rather than establish the responsibility of the group. However, on the basis that many accountability mechanisms make findings that armed groups are violating international norms, a consideration of attribution remains important, in order for the mechanism's findings vis-à-vis the group to also have validity.

---

[74] Saul 2017, p. 13; Bangerter 2015, pp. 123–124; Schneckener and Hofmann 2015, pp. 96–97. See also ICRC 2008, p. 22.

[75] Bongard and Somer 2011, p. 696.

[76] Bangerter 2012. See in particular p. 12 on the definition of codes of conduct.

[77] Sivakamaran calls this "translation". Sivakumaran 2015, p. 133.

[78] See Saul 2017, p. 14.

[79] Sivakumaran 2015, p. 137.

[80] Bellal 2015.

The other important limb of the right of authority argument pertains to the "right of authority" of the accountability mechanism itself, over the armed group. The existence of this criterion reminds us that it is important to give consideration not only for the armed group's acceptance of the underlying norm, but also its relationship with the forum itself. Indeed, it is argued that this is an aspect of the accountability definition that needs more consideration, particularly at UN level. For it is noteworthy that in most instances, accountability mechanisms applying international law have traditionally held States to account, rather than armed groups. Having created the United Nations system, States have the opportunity to participate within its procedures, and provide an account of their behaviour in instances where they are held to account.[81] As a result, when the UN General Assembly, UN Security Council, Human Rights Council, a special rapporteur or a human rights treaty body calls out a State for violating a provision of international law, there are many procedural avenues—formal and informal—through which States can provide their own account of their behaviour.[82] The accountability frameworks monitoring States' compliance with humanitarian norms contain procedural channels through which States can enter into "social interaction and exchange" with the monitoring mechanism, and refute the factual allegations against them.[83]

However, when these fora turn their attention to armed groups, the relationship between addressee and accountability forum is completely different. Armed groups have not been involved in the process of designing these accountability mechanisms and nor do they have formal procedural rights within them. As a result, within many of these accountability systems, armed groups have no recourse to procedural channels, enabling them to refute the allegations against them. This not only causes a tension but also compromises the ability of these mechanisms to deliver "accountability". For although armed groups are the subject of the mechanisms' findings, they have little "relationship" with them in a procedural sense, and no opportunity to participate in a dialogue about their behaviour. This observation is illustrated by the fact that in some instances where armed groups are the subject of the substantive findings of such a mechanism, they are excluded from the report's recommendations. For example, in the 2014 final report of the International Commission of Inquiry on the Central African Republic, the Séléka and Anti-balaka groups were identified as parties to the armed conflict, but not addressed in the recommendations section. The recommendations were addressed only to the Transitional Government, the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA), the UN Security Council, the UN Secretary-General, the Office of the UN High Commissioner for Human Rights (OHCHR), the HRC and relevant regional organisations, such as the African Union (AU) and the European Union (EU).[84]

[81] See n 49 and n 50 of this chapter.

[82] Ibid.

[83] Mulgan 2000, p. 355.

[84] UN Security Council 2014.

Likewise, in the Report of the OHCHR on the situation of human rights in Mali in 2012, 28 paragraphs were devoted to documenting the violations in the north of the country under the control of *inter alia* the National Movement for the Liberation of Azawad (MNLA), Al Qaeda in the Islamic Maghreb (AQIM), Ansar Dine and the Movement for Oneness and Jihad in West Africa (MUJAO), but the report's conclusions only made recommendations to the government of Mali and the international community, but did not address the armed groups.[85]

It is unclear whether omissions of this kind are the result of a political sensitivity on the part of the reports' drafters or oversight. Certainly practice on this issue is inconsistent. For example, the Commission of Inquiry for Syria has consistently addressed its recommendations to the armed groups involved in the conflict in Syria, since its inception.[86] Yet the fact that some reports do not address armed groups in their recommendations at all creates pause for thought. For according to the literature surveyed above, accountability needs to involve a "social interaction and exchange".[87] Perhaps most pertinently, it has been shown that it is important that accountability mechanisms give an actor the opportunity to explain its conduct to others.[88] It is clear from the definitions of accountability explored in this chapter, that accountability mechanisms that censure armed groups, without any attempt to communicate that censure to the armed groups themselves, are compromising their ability to deliver "accountability". Their statements remain important, in that they constitute international condemnation of particular actions and contribute to subsequent prosecutions, but they are unlikely to affect the behaviour of the entity whose conduct is subject to scrutiny. While it would be unrealistic to expect all accountability mechanisms to feed into armed groups' behaviour on the ground, it is notable that small changes seem to have been achieved through the existence of a social interaction and exchange between the monitoring mechanism in question and the armed group. The two examples that are explored below relate to the UNAMA office in Afghanistan and the work of Geneva Call.

6.4.1 UNAMA

Perhaps the most interesting example to highlight in this respect can be found in a further review of the practice of the UNAMA office in Afghanistan, which has already been mentioned above. UNAMA was established in March 2002 by UN Security Council Resolution 1401 at the request of the government of Afghanistan, with a mandate to monitor and promote human rights and the protection of civilians in armed conflict. Twice annually, UNAMA produces a report on the Protection of

[85] UN General Assembly 2012b, paras 18–46 and 66–70.

[86] See for example, UN General Assembly 2011, para 113; UN General Assembly 2012a, para 133. See also UN Human Rights Council 2009, p. 427.

[87] Mulgan 2000, p. 555.

[88] Curtin and Nollkaemper 2005, p. 8.

Civilians in Armed Conflict. Comparing the reporting process with the definition of accountability above, it can be seen that the UNAMA field office is capable of delivering a wide-sense of accountability, albeit not judicial in character. It is applying international norms to the parties to the armed conflict, and it is producing a documentation of its findings. Most fascinatingly, a study of UNAMA's reports demonstrates that they have produced a conversation between the UNAMA office and the Taliban. The reports evidence an "evolving dialogue" between the Taliban and UNAMA on humanitarian issues over the last five years.[89] Most notably, in 2011, the Taliban started responding to the UNAMA reports, in many cases disputing the casualties that had been attributed to it and providing its own list of incidents that UNAMA had not taken account of. In response, UNAMA diligently reviewed the status of each listed incident provided by the Taliban, preparing a detailed response which was later shared with the Taliban source.[90] While sharing its reaction, UNAMA regularly commented that the Taliban's definition of civilian was inconsistent with international humanitarian law.[91] Even though over the last years, the Taliban has started its own investigative unit, it continues to respond to UNAMA's reports.[92]

It is clear from the UNAMA reports that there is a social interaction and exchange between the UNAMA and the Taliban, both inside and outside of the reporting process. In many instances, this is clearly mutually critical. The Taliban regularly denies the allegations made by UNAMA against it and has accused UNAMA of producing propaganda.[93] It has also seemingly rejected UNAMA's 2016 report on the Protection of Civilians in Armed Conflict entirely saying that its own civilian casualty unit is better placed to gather figures on civilian casualties.[94] In turn, the UNAMA has regularly criticised the Taliban for causing high civilian casualties and chided it for not following through its commitments on the ground.[95] Yet over the years, the dialogue between the two entities seems to have contributed to the Taliban devoting more attention to humanitarian norms, at least on paper.[96]

[89] UNAMA and OHCHR 2011a, p. 11.

[90] See UNAMA and OHCHR 2012a, p. 17; see also UNAMA and OHCHR 2014, p. 76; and UNAMA and OHCHR 2016b, p. 78 where it indicates that it monitors "public reporting" by all parties to the conflict.

[91] See for example UNAMA and OHCHR 2011b, p. 15; UNAMA and OHCHR 2012b, pp. 5–6, 14, 17 and 28–29; UNAMA and OHCHR 2013, p. 33; UNAMA and OHCHR 2014, p. 74; UNAMA and OHCHR 2015b, p. 54.

[92] See the analysis of the special unit above. See also for example UNAMA and OHCHR 2014, p. 76; and UNAMA and OHCHR 2016b, p. 77, detailing the Taliban refutation of the UNAMA and OHCHR Midyear Report 2016 (UNAMA and OHCHR 2016a).

[93] UNAMA and OHCHR 2014, p. 75.

[94] See the full Taliban response to the UNAMA and OHCHR Final Report 2016 in UNAMA and OHCHR 2016b, Annex 6, pp. 122–123.

[95] UNAMA and OHCHR 2016b, p. 78.

[96] UNAMA has often expressed frustration that the Taliban's statements that it plans to take measures to protect civilians do not translate into better protection for civilians on the ground.

Perhaps most importantly, it is notable that the Taliban's definition of civilians—although still not consistent with international humanitarian law—has become wider over the course of the years, so that it now provides greater protection for non-military government workers.[97] It is likely that this change can be credited at least partly to UNAMA's regular and consistent response to the Taliban's reports and engagement on the content of international humanitarian law norms. UNAMA has made a habit of reminding the Taliban that its deliberate targeting and killing of civilian members of the Government administration is a violation of international humanitarian law.[98] It also has regularly instructed the Taliban that only military objects may be the lawful objects of attack and that civilians may not be targeted unless, and only for such time as they take a direct part in hostilities. Perhaps most importantly, the dialogue between the two entities ensures that UNAMA's comments are reaching the Taliban's leaders. For it appears that the Taliban has developed an internal practice of reading UNAMA's reports and responding to them. For example, in a public statement in 2013, the Taliban acknowledged receipt of UNAMA's 2013 Mid-Year Report on the Protection of Civilians, which had been provided to it several hours prior to its public launch. Interestingly, it chastised UNAMA that it had not been given enough time to analyse its contents or discuss its conclusions.[99] In some ways, this chastisement may be seen as a success for UNAMA as it confirms that the Taliban is prepared to devote time and effort to considering its statements.

The UNAMA example shows the benefits of such a dialogue with armed groups, where it is possible, on the content of humanitarian norms. While the Taliban's compliance with international humanitarian law in Afghanistan remains highly unsatisfactory, it can be seen how the existence of such a dialogue can have the effect of ensuring that international humanitarian law is discussed within armed groups—a necessary first step towards its internalisation.[100] Secondly, it increases

See UNAMA and OHCHR 2011b, p. 15; UNAMA and OHCHR 2014, p. 77; UNAMA and OHCHR 2015b, p. 54; and UNAMA and OHCHR 2016b, p. 78.

[97] For the Taliban's unlawful targeting of government officials and workers, see UNAMA and OHCHR 2012b, p. 17. For the Taliban's evolving attitude to the definition of "civilian", see UNAMA and OHCHR 2013, p. 32. Here UNAMA expressed concern about the Taliban's definition of "civilian" as "those who are in no way involved in fighting: the white bearded people, women, children and common people who live an ordinary life". In January 2015, the Taliban broadened this definition to "any person who is not engaged in activities against the Taliban: "those people who do not stand shoulder to shoulder with the enemy forces and are not considered to be carrying out actions against Jihad". UNAMA and OHCHR 2014, p. 74. In April 2015, the Taliban issued a statement that seemed to recognise that government workers have civilian status. See UNAMA and OHCHR 2015a, p. 66.

[98] UNAMA and OHCHR 2012b, p. 17; UNAMA and OHCHR 2013, p. 14 and 33; UNAMA and OHCHR 2015b, pp. 44–45; and UNAMA and OHCHR 2016b, p. 61.

[99] UNAMA and OHCHR 2013, pp. 32–33.

[100] See Bangerter 2011, p. 355; see also Bangerter 2015 on the importance of dialogue with armed groups to promote the acceptance of humanitarian norms.

the prospect of an armed group taking ownership of key definitions, such as the definition of "civilian" and ensuring that they are in line with international humanitarian law. Thirdly, it provides armed groups with the opportunity to provide an account of their behaviour in a manner that brings them "in from the cold" procedurally. It was seen in the public administration definitions above that a true accountability process must allow the actor being held to account, with an opportunity to provide an account of its own behaviour. On a deeper level, dialogue between an armed group and an accountability mechanism such as UNAMA, may be seen as the first step toward achieving a level of acceptance of the accountability mechanism by the group. It prevents the pronouncements of the accountability mechanism being *merely* directed at the international community. Instead, it allows the statements to play a role in efforts designed to persuade armed groups to comply with humanitarian norms. This allows the process of accountability to go beyond mere chastisement and carry with it a "promise of performance".[101] In other words, it achieves a model of accountability that is not only backward looking but also forward looking.[102] Such a model, which may be particularly suited to UN field offices reporting on local actors, not only holds armed groups to account but simultaneously contributes to efforts taken to persuade armed groups to take ownership of humanitarian norms and comply with them.

6.4.2 Geneva Call

Before ending, it is also significant to note how closely the *modus operandi* of Geneva Call matches the definitions of accountability explored in this chapter. While the organisation does not hold itself out as pursuing accountability *per se*, it can be seen that this is what it achieves in its work. In encouraging armed groups to sign deeds of commitments on humanitarian norms, the organisation fulfils the requirement that an assessment of the armed group's conduct is on the basis of "prior established rules or principles". It also ensures that Geneva Call has normative rights of authority over the group, as there is no room for the armed group to reject the norm on the basis that it is "State-made" and the group's ownership of the norm thereby is secured. After an armed group signs a deed of commitment, Geneva Call provides support and monitoring to ensure that its commitments are honoured. Under the deed of commitment, the armed group agrees to allow and cooperate with the monitoring of its compliance by Geneva Call and even provides self-reporting on its compliance.[103] This ensures that Geneva Call also has procedural "rights of authority" over the armed groups. In instances of non-compliance,

[101] Rached 2016, p. 11; Dubnick questions whether there is a correlation between accountability and future performance in Dubnick 2005.

[102] Curtin and Nollkaemper 2005, p. 8.

[103] Sassòli 2010, p. 36.

Geneva Call may choose to conduct an onsite verification mission, as it did in Central Mindanao in the Philippines in 2009. Geneva Call also reserves the right to publicise the group's compliance or non-compliance. As a result, non-compliance is met with consequences that range from private censure to public condemnation. It is seen from this description that Geneva Call works in a manner that is able to deliver accountability. In that sense, it is a clear demonstration that mechanisms which are tailor-made for non-State actors are much more easily able to achieve their accountability, than mechanisms which were designed for States.

6.5 Conclusions

This chapter calls for reflection on what "accountability" means in the context of policy discussions relating to armed groups. Indeed, when looking at issues relating to armed groups, it has been shown that the term "accountability" is more helpful that the concept of "responsibility" because it separates the concept of "answerability" from "responsibility". Indeed, it has been shown that a wider approach to "accountability" allows an enquiry into the answerability of armed groups to go forward, despite the fact that the rules on responsibility of armed groups have not yet been fully worked out. Moreover, the chapter has demonstrated that an inquiry into the accountability of armed groups requires not only an inquiry into how the rules apply to armed groups but also an inquiry into the legitimacy of these rules and the authority of the various institutions monitoring their compliance. As a result, it is a particularly appropriate lens through which the accountability mechanisms currently scrutinising the acts of armed groups can be assessed. Indeed, in a world where a sole focus on legal arguments is regularly proving inadequate to solve the problem of increasing violence by armed groups, the concept of "accountability" provides a useful roadmap for further research on other ways to engage with armed groups on humanitarian norms. It also provides an indication of the directions in which the procedural framework of international law might have to develop in order to accommodate armed groups in the legal framework.

Importantly, this chapter shows that when State-based accountability mechanisms make changes in their normative mandate to accommodate new actors, without accompanying shifts in procedure, their ability to attain "accountability" over these new actors is compromised. It aims therefore to prompt reflection on the value of UN bodies turning their attention to armed groups, without an accompanying shift in procedure. Recognising that there is value in a State-orientated system and understanding that States will likely object to giving armed groups' procedural rights within it, the chapter's recommendations in this respect are modest. Rather than calling for an overhaul of the State-based system, the chapter argues that parallel tailor-made mechanisms may be the best way to achieve the accountability of armed groups. Indeed, it shows that accountability frameworks which are tailor-made for non-State actors—such as the process created by Geneva Call—can more easily achieve the accountability of armed groups, than mechanisms which

were designed for States. This is partly because such mechanisms can more easily secure normative and institutional authority over armed groups, because they are dependent upon the consent and participation of the armed groups. Yet, the chapter argues that understanding accountability as a "social interaction" may facilitate small changes to be made by certain State-based accountability mechanisms, to bring armed groups in from the procedural cold.

Perhaps most importantly, this chapter shows that accountability is not an on/off property, but a graduated concept. As a result, it shows that small changes to State-based systems of accountability may, if the circumstances of the armed conflict allow them, contribute to increasing their effectiveness in relation to armed groups. For example, the chapter shows that it may make a difference whether an armed group is addressed in a body's recommendations, whether the report is sent to the group prior to publication and whether the armed group has a procedural channel through which it can refute or reply to the allegations against it. The chapter shows that small adjustments, particularly by field offices, may help create a relationship and dialogue between the mechanism and the armed group. While in some instances the creation of such a relationship will not be possible due to the nature of the conflict or the nature of the armed group, this chapter shows how dialogues and interactions—when they are possible—can also bring humanitarian benefits. Indeed, it has shown that giving armed groups the opportunity to provide an account of their actions not only contributes to the authority of the forum but also strengthens armed groups' ownership of norms. In that respect, the chapter has demonstrated that non-judicial accountability mechanisms hold the potential to be more than just a means to facilitate the prosecution of individuals or express condemnation of a particular group. They may also have prospective value, in that they can feed into efforts designed to improve an armed group's compliance with international humanitarian law.

References

Articles, Books and Other Documents

Bangerter O (2011) Reasons why armed groups choose to respect international humanitarian law or not. International Review of the Red Cross 93(882):353–384

Bangerter O (2012) Internal Control: Codes of Conduct within Insurgent Armed Groups, Small Arms Survey Occasional Paper No. 31. Small Arms Survey, Graduate Institute of International and Development Studies, Geneva

Bangerter O (2015) Comment – Persuading armed groups to better respect international humanitarian law. In: Krieger H (ed) Inducing compliance with international humanitarian law. Cambridge University Press, Cambridge, pp 112–124

Bellal A (2015) Establishing the direct responsibility of non-state armed groups for violations of international norms: Issues of attribution. In: Gal-Or N, Ryngaert C, Noortmann M (eds) Responsibilities of the non-state actor in armed conflict and the market place. Brill Nijhoff, Leiden, pp 304–321

Bellal A, Casey-Maslen S (2011) Enhancing compliance with international law by armed non-state actors. Goettingen Journal of International Law 3(1):175–197
Bílková V (2015) Establishing direct responsibility of armed opposition groups for violations of international humanitarian law. In: Gal-Or N, Ryngaert C, Noortmann M (eds) Responsibilities of the non-state actor in armed conflict and the market place. Brill Nijhoff, Leiden, pp 263–284
Bongard P, Somer J (2011) Monitoring armed non-state actor compliance with humanitarian norms: A look at international mechanisms and the Geneva Call deed of commitment. International Review of the Red Cross 93(883):673–706
Bovens M (2007) Analysing and assessing public accountability, a conceptual framework. European Law Journal 13(4):447–468
Bovens M (2010) Two concepts of accountability: Accountability as a virtue and as a mechanism. West European Politics 33(5):946–967
Brunée J (2005) International legal accountability through the lens of the law of state responsibility. Netherlands Yearbook of International Law 36:21–56
Committee on the Elimination of Discrimination against Women (CEDAW) (2013) General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations. UN Doc. CEDAW/C/GC/30
Crawford E (2014) From inter-state and symmetric to intra-state and asymmetric: Changing methods of warfare and the law of armed conflict in the 100 years since World War One. Yearbook of International Humanitarian Law 17:95–118
Curtin D, Nollkaemper A (2005) Conceptualizing accountability in international and European law. Netherlands Yearbook of International Law 36:3–20
Dubnick M (2005) Accountability and the promise of performance: in search of the mechanisms. Public Performance and Management Review 28(3):376–417
Fortin K (2017) The accountability of armed groups under human rights law. Oxford University Press, Oxford
Grant RW, Keohane RO (2005) Accountability and abuses of power in world politics. American Political Science Review 99(1):29–43
Heffes E, Kotlik M (2014) Special agreements as a means of enhancing compliance with international humanitarian law in non-international armed conflicts: An inquiry into the governing legal regime. International Review of the Red Cross 96(895/896):1195–1224
ICRC (2008) Increasing Respect for International Humanitarian Law in Non-International Armed Conflicts. ICRC, Geneva
Kamminga M (1992) Inter-state accountability for violations of human rights. University of Pennsylvania Press, Philadelphia
Kleffner J (2009) The collective accountability of organized armed groups for system crimes. In: Van der Wilt H, Nollkaemper A (eds) System Criminality in International Law. Cambridge University Press, Cambridge, pp 238–269
Kleffner J (2011) The applicability of international humanitarian law to organized armed groups. International Committee of the Red Cross 93(882):443–461
Moffett L (2015) Beyond attribution: Responsibility of armed non-state actors for reparations in Northern Ireland, Colombia and Uganda. In: Gal-Or N, Ryngaert C, Noortmann M (eds) Responsibilities of the non-state actor in armed conflict and the market place. Brill Nijhoff, Leiden, pp 323–344
MONUSCO, OHCHR (2014) Report of the United Nations Joint Human Rights Office on Human Rights Violations Committed by the Mouvement du 23 Mars (M23) in North Kivu Province, April 2012–November 2013. http://www.ohchr.org/Documents/Countries/CD/UNJHROOctober2014_en.pdf. Accessed 19 May 2017
Mulgan R (2000) "Accountability": An ever-expanding concept? Public Administration 78 (3):555–573
Murray D (2016) Human rights obligations of non-state armed groups. Bloomsbury, Oxford/Portland
Pettersson T, Wallensteen P (2015) Armed conflicts 1946–2014. Journal of Peace Research 52 (4):535–550

Rached DH (2016) The concept(s) of accountability: Form in search of substance. Leiden Journal of International Law 29(2):317–342
Rondeau S (2011) Participation of Armed Groups in the Development of the Law Applicable to Armed Conflicts. International Review of the Red Cross 92(883):649–672
Ryngaert C (2008) Human rights obligations of armed groups. Revue Belge de Droit International 1(2):355–381
Ryngaert C, Van de Meulebroucke A (2011) Enhancing and enforcing compliance with international humanitarian law by non-state armed groups: An inquiry into some mechanisms. Journal of Conflict and Security Law 16(3):443–472
Sassòli M (2010) Taking armed groups seriously: Ways to improve their compliance with international humanitarian law. Journal of International Humanitarian Legal Studies 1(1):5–51
Saul B (2017) Enhancing civilian protection by engaging non-state armed groups under international humanitarian law. Journal of Conflict & Security Law 22(1):39–66
Schneckener U, Hofmann C (2015) The power of persuasion: The role of international non-governmental organisations. In: Krieger H (ed) Inducing compliance with international humanitarian law. Cambridge University Press, Cambridge, pp 79–111
Sivakumaran S (2006) Binding armed opposition groups. International and Comparative Law Quarterly 55:369–394
Sivakumaran S (2012) The law of non-international armed conflict. Oxford University Press, Oxford
Sivakumaran S (2015) Implementing humanitarian norms through non-state armed groups. In: Krieger H (ed) Inducing Compliance with International Humanitarian Law. Cambridge University Press, Cambridge, pp 125–146
UNAMA, OHCHR (2011a) Afghanistan, Midyear Report 2011, Protection of Civilians in Armed Conflict. https://unama.unmissions.org/sites/default/files/2011_midyear_poc.pdf. Accessed 19 May 2017
UNAMA, OHCHR (2011b) Afghanistan, Final Report 2011, Protection of Civilians in Armed Conflict. https://unama.unmissions.org/sites/default/files/unama_poc_report_final_feb_2012.pdf. Accessed 19 May 2017
UNAMA, OHCHR (2012a) Afghanistan, Midyear Report 2012, Protection of Civilians in Armed Conflict. https://unama.unmissions.org/sites/default/files/2012_mid-year_report.pdf. Accessed 19 May 2017
UNAMA, OHCHR (2012b) Afghanistan, Final Report 2012, Protection of Civilians in Armed Conflict. https://unama.unmissions.org/sites/default/files/2012_annual_report_eng_0.pdf. Accessed 19 May 2017
UNAMA, OHCHR (2013) Afghanistan, Final Report 2013, Protection of Civilians in Armed Conflict. https://unama.unmissions.org/sites/default/files/feb_8_2014_poc-report_2013-full-report-eng.pdf. Accessed 19 May 2017
UNAMA, OHCHR (2014) Afghanistan, Final Report 2014, Protection of Civilians in Armed Conflict. https://unama.unmissions.org/sites/default/files/2014-annual-report-on-protection-of-civilians-final.pdf. Accessed 19 May 2017
UNAMA, OHCHR (2015a) Afghanistan, Midyear Report 2015, Protection of Civilians in Armed Conflict. https://unama.unmissions.org/sites/default/files/unama_protection_of_civilians_armed_conflict_midyear_report_2015_final_august.pdf. Accessed 19 May 2017
UNAMA, OHCHR (2015b) Afghanistan, Final Report 2015, Protection of Civilians in Armed Conflict. https://unama.unmissions.org/sites/default/files/poc_annual_report_2015_final_14_feb_2016.pdf. Accessed 19 May 2017
UNAMA, OHCHR (2016a) Afghanistan, Midyear Report 2016, Protection of Civilians in Armed Conflict. https://unama.unmissions.org/sites/default/files/protection_of_civilians_in_armed_conflict_midyear_report_2016_final_rev.1-9sept.pdf. Accessed 19 May 2017
UNAMA, OHCHR (2016b) Afghanistan, Final Report 2016, Protection of Civilians in Armed Conflict. https://unama.unmissions.org/sites/default/files/protection_of_civilians_in_armed_conflict_annual_report_2016_final280317.pdf. Accessed 19 May 2017

UN General Assembly (2006) Resolution 60/251. Human Rights Council. UN Doc. A/RES/60/251
UN General Assembly (2007) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. UN Doc. A/62/265
UN General Assembly (2011) Human Rights Council: Report of the Independent International Commission of Inquiry on the Syrian Arab Republic. UN Doc. A/HRC/S-17/2/Add.1
UN General Assembly (2012a) Human Rights Council: Report of the Independent International Commission of Inquiry on the Syrian Arab Republic. UN Doc. A/HRC/19/69
UN General Assembly (2012b) Human Rights Council: Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Mali. UN Doc. A/HRC/22/33
UN General Assembly (2016a) Human Rights Council: Resolution S-25/1. The deteriorating situation of human rights in the Syrian Arab Republic, and the recent situation in Aleppo. UN Doc. A/HRC/RES/S-25/1
UN General Assembly (2016b) Human Rights Council: Resolution S-26/1. Situations of human rights in South Sudan. UN Doc. A/HRC/RES/S-26/1
UN General Assembly (2016c) Human Rights Council: Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on his Mission to Ukraine. UN Doc. A/HRC/32/39/Add.1
UN General Assembly (2017a) Human Rights Council: Report of the Human Rights Council on its twenty-sixth special session (on the human rights situation in South Sudan). UN Doc. A/HRC/S-26/2
UN General Assembly (2017b) Human Rights Council: Report of the Human Rights Council on its twenty-fifth special session (on the deteriorating situation in the Syrian Arab Republic). UN Doc. A/HRC/S-25/2
UN Security Council (1983) Provisional Rules of Procedure of the Security Council. UN Doc. S/96/Rev.7
UN Security Council (1993) Report of the Secretary-General pursuant to paragraph 2 of Security Council Resolution 808 (1993). UN Doc. S/25704
UN Security Council (1994) Resolution 955 (1994). UN Doc. S/RES/955
UN Security Council (2009) Report of the Secretary-General on the protection of civilians in armed conflict. UN Doc. S/2009/277
UN Security Council (2014) Final Report of the International Commission of Inquiry on the Central African Republic. UN Doc. S/2014/928
UN Security Council (2016a) Report of the Secretary-General on the protection of civilians in armed conflict. UN Doc. S/2016/447
UN Security Council (2016b) Resolution 2295 (2016). UN Doc. S/RES/2295
UN Security Council (2016c) Resolution 2293 (2016). UN Doc. S/RES/2293
UN Security Council (2016d) Resolution 2274 (2016). UN Doc. S/RES/2274
UN Security Council (2016e) Resolution 2301 (2016). UN Doc. S/RES/2301
UN Security Council (2016f) Resolution 2299 (2016). UN Doc. S/RES/2299
Verhoeven S (2015) International responsibility of armed opposition groups. In: Gal-Or N, Ryngaert C, Noortmann M (eds) Responsibilities of the non-state actor in armed conflict and the market place. Brill Nijhoff, Leiden, pp 285–303
Zegveld L (2002) The accountability of armed opposition groups in international law. Cambridge University Press, Cambridge

Case Law

ECtHR, *Al-Skeini and Others v UK*, Grand Chamber Judgment, 7 July 2011, Application No. 55721/07

ICC, *Prosecutor v Thomas Lubanga Dyilo*, Judgment on the appeals against the "Decision establishing the principles and procedures to be applied to reparations" of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2, 3 March 2015, Case No. ICC-01/04-01/06-3129

ICJ, *Corfu Channel case*, Judgment, 9 April 1949, [1949] ICJ Reports 4

Nuremberg International Military Tribunal, *United States of America, French Republic, United Kingdom and the USSR v Hess, Goring et al.*, Judgment, 1 October 1946

Treaties

American Convention on Human Rights, opened for signature 22 November 1969, 1144 UNTS 123 (entered into force 18 July 1978)

European Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature 4 November 1950, 213 UNTS 221 (entered into force 3 September 1953)

International Covenant of Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976)

Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002)