



## **The Obligations of Armed Non-State Actors during Non-International Armed Conflict- A Critical Assessment**

**Alex Abang EBU**

Faculty of Law, University of Calabar,  
Cross River State, Nigeria

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### **ABSTRACT**

This article critically assesses the obligations of armed non-state actors (ANSAs) during non-international armed conflicts (NIACs), exploring the legal frameworks that govern their conduct under International Humanitarian Law (IHL) and International Human Rights Law (IHRL). It examines key responsibilities imposed on ANSAs, including the protection of civilians, humane treatment of detainees, and adherence to limitations on warfare methods. Drawing on Common Article 3 of the Geneva Conventions and Additional Protocol II, the article delves into the specific obligations of ANSAs, highlighting their shared accountability with state actors in ensuring compliance with humanitarian principles. The discussion also addresses the challenges in enforcing these obligations and the legal implications of non-compliance by ANSAs. By linking the responsibilities of states and armed groups, the article provides a comprehensive analysis of how ANSAs are bound by international norms, particularly in the context of safeguarding civilians and adhering to lawful methods of warfare.

**Keywords:** Armed non-state actors (ANSAs); non-international armed conflict (NIAC); International Humanitarian Law (IHL); civilian protection.

### **INTRODUCTION: THE SCOPE OF THE GEOGRAPHICAL AND TEMPORAL OBLIGATIONS**

At the outset, it is clear that the place where opposing armed groups must comply with the obligations arising from Common Article 3 is all over the battlefield. In view of the decisions of ICTY, the spatial application of the article is not limited to that only but extends beyond the scope of the battlefields (Lubell & Derejko, 2013). The decision was embodied by the Yugoslav court and applied in the Colombian war, where IACHR emphasized the following: “In NIAC, IHL is applicable across the entire national territory, not limited to specific geographical areas where hostilities are actively taking place. Consequently, when IHL prohibits parties to the conflict from targeting civilians or taking hostages under all circumstances, these prohibited acts are unlawful regardless of the location. Therefore, acts of violence committed by the parties in areas without active hostilities are just as much a violation of IHL as if they were committed in the most conflict ridden zone of the country.” (IACHR., 1999, para. 95).

According to a decision of ICTY, the committee made it clear that the National Liberation Army (ELN) had placed itself under IHL obligations, particularly, and had acknowledged compliance with the Geneva Conventions and AP II (Sivakumaran, 2011).

The decision dealt with the temporal scope of the implementation of the commitments, as well as the geographical scope of the implementation of the obligations. The decision of ICTY indicated that in addition to extending the application of the obligations of ANSAs beyond the area of war operations, the application of temporal obligations extends to the application of these obligations in times of peace as well (Bellal, 2018).

Accordingly, ANSAs must always respect the obligations imposed on them under IHL. The provisions of IHL, in particular the common Article 3, as well as AP II, continue to be applied in time of war and in peacetime.

## **OBLIGATIONS TO PROTECT CIVILIANS AND TREAT PERSONS HUMANELY**

### ***Protection of the Civilian Population***

There is no doubt that the civilian population is affected by international conflicts much less than they are affected by internal armed conflicts (Cullen, 2005). This situation constitutes a great motive and an urgent necessity for determining the parties' obligations to the internal armed conflict to protect the civilian population; especially given the significant negative effects it produces. The obligation to protect individual civilians is dealt with in common Article 3(1)(a), whereby a party to the conflict has an obligation to protect individuals and not the civilian population as a whole. The common article's concept of 'treatment' refers to determining the degree of control a particular person has over the person concerned. On a related level, the similarity between the population and individuals is detailed in AP II, and it was not addressed in Common Article 3. AP II classifies the humane treatment of individuals in a section and protection for the civilian population in a second section, which requires that ANSAs distinguish protected civilians from those involved or directly participating in hostilities (Munive & Somer, 2015).

Corresponds to each of Article 51 of AP I- related to determining the minimum level of protection that must be granted to the civilian population - as well as the principle of discrimination in international conflicts, Article 13 of AP II. The fact that most of the protection obligations stipulated in AP I are offset by AP II in its second part. The prohibition of using human shields, or the imposition of special protection against disproportionate and indiscriminate attacks, is not dealt with in detail in AP II. In all circumstances because it is considered customary international law (Olásolo, 2008).

The protection provided in Articles 13(1) and 13(2) of Additional Protocol II represents a reaffirmation of General Assembly resolutions 2444 (1968) and 2675 (1970). These provisions have been recognized as customary rules by ICTY (in the case of *Prosecutor v Tadić*, 1995, para 127). The principle of distinction, which requires a clear separation between combatants and civilians, is a fundamental component of these resolutions and is also found in paragraph 3 of Resolution 2675. Additionally, Resolution 2675 emphasizes the need to take precautionary measures to protect the civilian population from harm during attacks. Common Article 3, found in the Geneva Conventions, also reinforces the protection of the civilian population by prohibiting violence against their lives and physical integrity, as well as against individuals who are not actively involved in hostilities, in all situations.

To understand the obligations outlined in Article 13 of Additional Protocol II (AP II), it's essential to consider the provisions of the First Optional Protocol, which address indiscriminate attacks, particularly in Article 51 (4) and (5). Article 13 of AP II focuses on ensuring comprehensive and general protection for the civilian population against all risks resulting from military operations and the importance of avoiding targeting civilians during attacks. These obligations, rooted in the principles of AP I, have been

widely recognized by international bodies. ANSAs, just like any other party to the conflict, have a responsibility to exercise due diligence and adhere to fundamental principles of IHL such as proportionality, military necessity, and preventive measures in their operations. This ensures a level of protection for the civilian population. Engaging in attacks without taking necessary precautions is prohibited by customary international law, which applies to ANSAs. This interpretation has been supported by the Inter-American Commission on Human Rights (IACHR, 1999, para. 108), with references to Articles 4(3), 14, 16, and 17 of AP II (Arnold, 2020).

The parties to the internal armed conflict are obligated to distinguish between civilians and combatants, which raises several difficulties on the battlefield, directly affecting the protection of the civilian population and putting them in danger. Although AP II uses the term “civilians” or “civilian populations.” However, the term citizens lack a clear definition in AP II. Article 50 of AP I define citizens by drawing broad lines to determine what is meant by citizens. Moreover, the ICTR (Prosecutor v. Kayishema., 1999), and Inter- American Commission has adopted the definition of AP I (IACHR., 1999,para. 83). The assertion that civilians directly participating in hostilities should not be protected is contained in Article 13(3) of AP II. On the other hand, IACHR believes that these persons should remain as civilians, and therefore protection should not be forfeited from them. IACHR confirmed, in its opinion, that indirect participation in hostilities cannot be a factor preventing civilians from enjoying immunity (Boothby, 2010).

### **The Obligation to Protection of Civilian Objects**

The protection that ANSAs must be provided is not limited to civilians and civilian populations only but must be committed to providing this for both cultural and worship houses (AP II., 1977, Art 16), as well as providing special protection for both businesses and facilities that can stop them from work difficulties in continuing civilians’ lives. In view of the provisions of AP II, there is no clear and explicit text for the general protection of civilian objects. ICTY notes that during internal armed conflict, customary law applies with regard to the protection of civilian objects (Prosecutor v Tadić., 1995, para 127). The fact that the detailed information on this matter is not clear, but according to the InterAmerican Commission indicates that AP I is a basis that can be referred to with regard to the protection of civilian objects “Certain provisions of Additional Protocol I (AP I) codify customary law rules that are designed to protect civilian objects from indiscriminate or disproportionate attacks. These rules aim to safeguard civilians and their property during armed conflicts.” (IACHR., 1999, para. 92). The Article 52 of AP I, provides a definition of ‘civilian objects’ and ‘military objects,’ should also be used in favour of AP II (IACHR., 1999, para. 89) and the commitment of ANSAs to the need to take all measures that assist it in verifying objects, whether they are civilian or military, as stipulated in Article 13 (2) of AP II, and as a result this constitutes a positive reflection on the conduct of military actions (Somers, 2012).

In addition, many obligations are imposed on ANSAs regarding protecting cultural property, for example, what is stipulated in the Hague Convention of 1954, as well as its AP II of 1999, that cultural property must be protected. The obligation to apply the provisions of the Convention is imposed on each of the parties to the conflict by respecting cultural property. Article 4 (3) of AP II of 1999 emphasized the most important measures necessary to be taken by the parties to the conflict to ensure respect and protection for cultural property. AP II to the Hague Convention expanded its scope to include internal armed conflicts through Article 22 of the Protocol, which expanded the application of its provisions to include internal conflicts, and, thus, the applicability of its provisions to ANSAs. Although ANSAs are not explicitly mentioned, this is implicitly

mentioned under Article 22, paragraph 6, when it is emphasized that the legal status of parties to an armed conflict does not change when applying the Protocol in situations of internal armed conflict. The implicit reference draws attention to states' problems with the international obligations of ANSAs. It must be noted that the limited ratification of AP II makes the applicability of its provisions limited (Kleczkowska, 2018). There are only a limited number of 48 countries party to the Protocol. Colombia signed AP II on December 31, 1999, but has yet to ratify it. Despite this, it cannot derogate from the obligation to make the treaty's objective a success, and therefore any action that leads to the failure of the treaty's purpose will bear the consequences of that act.

Colombian ANSAs have attacked strategic places in the country, including oil and gas pipelines and electricity pylons, and these hostilities have been attributed to ELN. The opinion of IACHR, which looked into the protection of civilians and civilian objects in NIAC, according to the commission, was that what ANSAs had done was legitimate, given that the targets were "military objectives": The principle you're describing pertains to the proportionality rule in international humanitarian law (IHL). According to this principle, military attacks must adhere to the requirement that the expected collateral damage to the civilian population is not excessive in relation to the concrete and direct military advantage anticipated from the attack. In other words, even when a legitimate military target is identified, military operators must consider whether the anticipated civilian harm is disproportionate to the expected military gain. If the collateral damage would be excessive, the attack should be cancelled or postponed.

This principle underscores the importance of minimizing harm to civilians during armed conflicts and reinforces the need for military forces to take precautions to protect non-combatants and their property. It emphasizes that the destruction or neutralization of a military target must offer a definite military advantage, and such attacks should not cause indiscriminate or disproportionate harm to civilians." (IACHR., 1999, para. 109). Through the investigation, the committee concluded that when some oil pipelines were attacked, the goal was national, meaning not to accept the exploitation of national resources by a foreign party, and this is the same idea adopted by ELN, meaning that it was not intended to obtain a military advantage and thus violate IHL. The forcible transfer of civilians by ANSAs is prohibited under Article 17 of AP II unless that act is in their interest and protection, such as if the transfer was carried out for military or security reasons, provided that it does not conflict with Article 29 GCIV. According to IHRL, Civilians enjoy freedom of movement, freedom of choice, and freedom to choose their residence in times of peace (Zieck, 2018). However, these rights are limited by the state and are not absolute. The condition may consider restricting them for certain reasons, including public order, national security, and public health.

### **The Obligation to Provision of Relief**

Within the territory of the State Party, if there is any relief association, it may provide its services according to Article 18 of AP II. The permissibility under this article does not give an obligation to accept, and what is meant here is the local entities, that is, the national relief societies, and not the international ones, such as the International Red Cross Organization. Therefore, humanitarian organizations can only carry out their fieldwork after obtaining the approval of the High Contracting Party, in accordance with Article 18 (2) of the Additional Protocol. In the event that the civilian population suffers unnecessary hardship, these organizations, to carry out relief work, must obtain approval to work from the member party, considering this approval as a necessary factor in this matter (UNSG., 2006, para. 12).

Under Article 70(1) of AP I, the requirement for approval by the interested party is included. The condition of approval comes within the principle of sovereignty when the

relief teams are not allowed to be present on the territory of a country, so they consider it a form of foreign interference (Pease & Forsythe, 1993). In some cases, the consent requirement may not be applied, especially during NIAC, and this may happen when aid is distributed to civilians in areas not under government control. In addition, arbitrary use of the right is contrary to the nature and purpose of the protocol (Moir 2002). It is uncertain whether ANSAs are legally required not to oppose the entry of humanitarian aid into their control areas (Terry, 2002). Nevertheless, ANSAs must enter and distribute humanitarian aid in the areas under their control in the event that the state agrees to this work one (para. 4885).

The General Assembly Resolution 2675 and the 1969 ICRC Resolution known as the "Declarations of Principles for International Humanitarian Relief of Civilian Populations in Disaster Situations (ICRC., 1969) culminated in the international community's efforts to make relief obligations more extensive during NIAC. Also, the scope of relief application to the civilian population has been expanded to include international and NIAC and obligate all parties to the conflict. This obligation is also a declaration of customary international law (Prosecutor v Tadić., 1995, para 127). The refusal of entry of relief organizations to deliver humanitarian aid by ANSAs to the territories under their control is a violation of IHL, according to the opinion of the Security Council. Under customary international law, there is a positive obligation to accept humanitarian relief as soon as it is offered to a party to the conflict and facilitate its distribution. Many developments have taken place at the international level regarding relief to increase the number of humanitarian agencies to ensure that aid is delivered to the civilian population in the most needed situations during the armed conflict. For example, ICRC has established many humanitarian relief offices in Uganda and Kasese, Arua, Kitgum, Kasese, Arua, Koboko, and Gulu.

### **OBLIGATIONS RELEVANT TO DETAINEES AND PROSECUTIONS**

The Common Article 3 and AP II do not mention any justifications that ANSAs can rely on when arresting or detaining people, nor is there any article in IHL that directly prohibits restricting people's freedom. Despite all of the above, the parties to the conflict are committed to respecting the rules and procedures of the Fourth Geneva Convention, as well as IHRL (Krieger, 2006). Under Articles 43 and 42 of the Fourth Geneva Convention, the parties to the conflict must not detain anyone unless their freedom poses a potential threat. In cases of detentions by ANSAs in Colombia, IACHR stated, "IHL also forbids the detention or internment of civilians, except when it is deemed essential for compelling security reasons." (IACHR., 1999, para. 105).

During the conflict in Sudan, ANSAs carried out arbitrary arrests. At that time, OHCHR called for not taking such actions against civilians (UNCHR, 1995, p. 225), and the need to allow ICRC to visit places where civilians are arrested and detained by ANSAs. This mention came Under the UN HRC and the UN Security Council (SC Res 968., 1994). In addition, in terms of prosecutions, some procedural safeguards must be implemented under Common Article 3(1)(d) and Article 6 APII. The guarantees mentioned above will be dealt with in the following divisions. In addition, the obligations of states to prosecute all those who violate IHL will be examined, as well as the duty to provide due care to persons who have been detained.

### **Obligation of Penal Prosecutions under Common Article 3(1)(d)**

The formation of courts on a regular basis to prosecute and issue judgments is an obligation under Article 3 (1) (d), and any act to the contrary is prohibited. Common Article 3 obligates states and ANSAs to provide judicial guarantees to the accused, which are described as "indispensable" for civilized people. In fact, the mention of the term

“indispensable” is broad and unclear, and this is confusing when applied because we do not know what is specifically required, especially by ANSAs. In terms of legal procedures, we see that IHRL protects these rights in a broader manner compared to the protection stipulated under IHL.

On the other hand, the rights guaranteed by human rights that are related to fair trials are not absolute and can be restricted during NIAC (Todeschini, 2017). In the event that we want to expand on these guarantees and obtain greater details, they are provided by Common Article 3 (1) (d) in the Geneva Conventions of 1949. As for what is related to the term “indispensable” that relates to guarantees, we can refer to Article 6 of AP II to obtain a wider understanding (Schmahl, 2021). With regard to the details of the basic judicial guarantees that must be provided by the parties to the conflict, Article 6 of AP II provides a list of those guarantees, ignoring “regularly constituted court” and replacing it with “a court offering the essential guarantees of independence and impartiality,” according to for article 84 GCIII. The basic guarantees must be independent and impartial, meaning that the insurgents can set up courts and fill the gap between the state judiciary and state actors. These minimum standards of guarantees must be respected, especially when prisoners of war fall into the hands of armed groups who may be subject to punishment for war crimes one (Gregory, 2013). Article 6 of AP II makes it urgently clear that the steps must be followed during the trial in a manner that provides the necessary judicial guarantees to respect the obligations of the parties to conduct a fair trial for the detainees. Thus, this embodies the importance of Article 6 of AP II to ensure access to a fair trial in a more comprehensive and precise manner than what is mentioned in the common Article 3 (1) (d), which only emphasizes the legal foundations for the formation of “regularly constituted court.” Sassli, M., 2003, p. 12.

In the Art 9 of statutes of the ICC, there are elements of a crime, and element 4 of Article 8(2)(c)(iv) is considered an embodiment of what was stated in Article 6(2) APII through its use of the definition of “regularly constituted court.” This definition links the regular formation of the court to its success, meaning that if it is “not regularly constituted,” it will not succeed in the matter of providing judicial guarantees or impartiality and independence “generally recognized as indispensable under international law” (Drmann, 2003).

In the context of the formation of courts and their enjoyment of the required guarantees, ICRC reached the “fair trial offering all the essential guarantees” standard, which is a customary standard for issuing judgments that ICRC reached after a study of customary international law and is applied in all cases, whether during international or internal armed conflicts (Somers, 2007). The problem here is with Common Article 3(1)(d), which was inaccurate with regard to the obligations of ANSAs. The right of the accused to defence must be guaranteed in a way that allows the lawyer to carry out his work with all comfort, and this is stipulated in Article 105 of the GC III, which corresponds to Article 6 of AP II by protecting “rights and means of defence.” The article is not limited to providing facilities for the defence but rather the right to summon witnesses and a competent translator. According to Article 9 of ACHR, Article 7 of the European Convention on Human Rights, and Article 15 of ICCPR, the rights related to the legal procedures necessary to make the trial fair are reserved, noting that the law is not applied retroactively.

The prohibition of the retroactive effect of the law cannot be restricted in each of the three instruments mentioned above so that it may be part of Common Article 3(1)(d) (Moir, L, 2002, p.204). Here, it must be noted that the impact of the existence of special rules to form a fair trial weakens the ability of ANSAs to prosecute as well as impose punishment on people under their control (Zegveld, L., 2002., p. 69). In Colombia, for

example, after an increase in executions of civilians by military forces outside the scope of judicial authority and fair trial was noted in the Colombian conflict and within the scope of application of Common Article 3(1)(d), many international bodies denounced the practices of armed groups of executions according to procedures were not adequate. Such bodies were the UN Commission for Human Rights.

***Obligation of Penal Prosecutions under Article 6 APII:***

The Common Article 3(1)(d) applies during the internal armed conflict in all circumstances and is broader than Article 6 APII (Moir, L., 2002, p. 114). Article 6 applies only to criminal offences in internal armed conflict, especially in prosecution and punishment. Article 75(4) API and the provisions under GCIII greatly influenced Article 6 APII as the article created a general condition and an exception. The basic guarantees are not included in the provisions of Article 6, where guarantees were limited to the independence and impartiality of the court in particular and the rights that must be provided. In terms of reporting and informing the accused of the accusation brought against him of the alleged crime, as well as granting him the right to defence through all necessary means and methods, according to the text of article 6 (2) (a), The commentary on this article explains all means of defence as well as fundamental rights and also mentions All that has been stipulated in each of the ICCPR, ECHR and ACHR.

The IHRL, including its guarantees, greatly influenced the guarantees stipulated under Article 6 of AP II. Article 6 sets out the minimum guarantees that must be followed during criminal proceedings (Moir, L., 2002, p. 225). Under Article 6(2)(d), criminal prosecution is binding in accordance with the law. These obligations are not limited to the legislation issued by the state, but they also include that the legislation issued by the ANSAs must consist of these guarantees (Zegveld, L., 2002., p. 70).

It is not denied that legal problems occur during the existence of more than one authority that governs a specific region and the pursuit of balance work by achieving the continuity of the national legal system. Article 64GCIV regulates the relationship between national legislation and the legislation of the occupying powers and can be applied to NIAC situations by analogy. ANSAs cannot adopt their laws except in exceptional cases, for example, those related to their security. Thus, it must respect all local legislation prevailing within the territorial scope of its control (Zegveld, L., 2002., p. 71). What draws attention is the absence of a non-bis in idem principle in Article 6 API. On the contrary, it is found in Article 75(4)(h) API, and this must be important during NIAC, where the conflicting parties seek to make enactment Laws that differ from each other.

**Obligations Regarding the Use of Methods of Warfare**

The obligations imposed on ANSAs regarding protecting the civilian population and individuals are more detailed and broader than those related to the means and methods of war. Although the joint Article 3 did not stipulate any restrictions or regulations related to the means and methods of warfare allowed to dispose of the basis of the parties to the conflict, it determined the minimum standards within a general framework. Consequently, what is mentioned regarding the means and methods of war in The Geneva Conversations 1949 and API is much broader and more detailed than those mentioned by the APII.

### ***Prohibition of Starvation***

In terms of protecting the civilian population, the commitment of ANSAs in accordance with the regulations of customary international law must adhere to the basic principles of IHL, which include proportionality and military necessity, as well as ensuring that Unnecessary Suffering, as well as ensuring discrimination regarding civilians and civilian notables. Article 14 of AP II prohibits the use of the starvation of the civilian population as a means of fighting by the parties to the conflict. Also, Article 14 imposes the protection of basic facilities so that the civilian population remains alive (Somer, M., 2007, p.684).

Article 14 stipulates almost everything necessary to survive in relation to food and drink, as well as the production of foodstuffs, agricultural areas, and crops, and securing everything required to secure drinking water and irrigation from facilities prepared for that species as well as livestock. Article 14 reflects the provisions of IHRL in relation to the expansion of the forms of protection for the civilian population 11 (1) of not only IECESCR. The right to food also includes the right to liberate from hunger under Article 11 (2). Previous compliances are included in the context of protecting the lives of the civilian population. The formulation of the provisions of Article 14 of AP II is restricted. Still, it is formulated in comprehensive terms, indicating its ability to apply not only to the state but also to ANSAs.

### ***Prohibition of the Use of Indiscriminate Weapons:***

At the international community level, no form of use of certain weapons be ended without ensuring adherence to the regulations prohibited by all parties involved in conflicts. It is essential to indicate the inclusion of ANSAs within the condition of prohibiting the use of certain weapons, especially with the increase in the number of NIAC around the world. The spread and increased intensity of IAC increased interest at the international level in the necessity of organizing weapons and methods of war in NIAC. ICTY indicated that what is inhuman and prohibited in NIAC must also be prohibited in NIAC (Prosecutor v Tadić., 1995, para 516). ICTY, ICTR, and the ICRC's Study of Customary Law considered that ANSAs are an indispensable part of the custom (Dinstein, Y., 2019). They recognized the need to include them within the scope of regulatory provisions, and many countries recognize the need to make the rules more spacious to extend until they have NIAC (Dinstein, Y., 2019).

The rules of customary international law restricting the means and methods of war witnessed development and expansion in terms of IAC more than internal conflicts (Kruttsch, W. and Trapp, R., 1994, p.18). Despite the ability to apply the rules for organizing a certain number of weapons and methods of fighting in internal armed conflicts, such as the use of Chemical and Bacteriology Weapons and Poison, Mines, Bobby-TARPS and Incender Weapons, this is still a dispute in terms of application (Dinstein, Y., 2019, P.29). The principle of distinction in IHL indicates the need to distinguish between civilian and military targets during military operations. Therefore, according to the rules of IHL, landmines have been restricted because they are indiscriminate in terms of both target and timing and are incapable of discrimination (ICJ., 1996, para. 78). The principle of humanity contained in preambular paragraph 4 of APII was the basis for the Court's partial ban on indiscriminate weapons in the Legality of Nuclear Weapons Opinion 1996. Moreover, it can be understood that this prohibition can be applied to all parties to an armed conflict, including ANSAs (Zegveld, L., 2002., p. 85).

According to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction 1997, The provisions of this agreement apply to the state's parties in them in all circumstances. The application



extends to NIAC but has not taken directly to ANSAs. In this Convention, states parties pledge not to use anti-individuals under any circumstance, as well as to destroy them or work to ensure their destruction, all with no distinction between IAC and NIAC. It is understood from the interpretation of the phrase "Undertakes Never Under any Circumstances" that the application range is a global dimension. Consequently, the concept of application includes all the activities that the parties do from the activities, and it is entirely far from classifying the conflict, whether international or internal, or it is a civil conflict (Krutzsch, W., and Trapp, R., 1994, p12).

According to the principles of IHL, the Landmines were banned, according to the provisions of the Landmines Convention. The right to choose the parties to the armed conflict of the methods and means of war is not absolute. Therefore, it is prohibited to use any weapon or means in the war that will make the events of Superfluous injury or unnecessary suffering in a way that contradicts the principle of discrimination that stipulates the discrimination between civilians and those who directly participate in hostilities. The principles of the agreement are not limited to IAC but extend to the application to all armed conflicts. The state and ANSAs are committed to not respecting their obligations with the blood of weapons that cause unnecessary suffering. The ban on using mines against civilians comes within the general duty to protect civilians, based on the lack of compliance with the principle of discrimination. Due to its weak language, Landmine's convention has been criticized and questioned its ability to apply to internal armed conflicts. Another opinion of IACHR stipulated that the principle is general and the commitment to the embargo falls on every non-governmental armed group that is also carrying out military operations (IACHR., 1999, para. 102).

While the Conventional Weapons Convention of 1980 did not specifically address ANSAs upon its inception, the range of its provisions significantly widened as it came into effect. The 1996 Amended Protocol II concerning Prohibitions or Restrictions on the Use of Mines played a crucial role in expanding the applicability of the convention to encompass both conflicting parties. This amendment not only broadened the convention's scope to cover situations outlined in common Article 3 but also underscored that all conflict parties, including ANSAs, must adhere to the prohibitions outlined in Amended Protocol II. According to Article 3 (7) of the Protocol, the use of mines against the civilian population and civilian objects is explicitly prohibited.

In 2001, the Convention on Conventional Weapons and its appended protocols (Protocols I-IV) underwent a significant expansion of their scope through an amendment to Article 1 of the 1980 framework. Consequently, the Convention and its protocols now encompass all scenarios outlined in Article 3 common to the Geneva Conventions of 1949. This extension imposes regulations and restrictions on non-state actors concerning the utilization of undetectable shrapnel, blinding laser weapons, and incendiary devices. The Article 8(2)(d) and (f) of the 1998 Rome Statute provides a negative definition, explicitly delineating situations falling outside the conventions' and protocols' scope of application. All conflict parties are obligated to adhere to the prohibition outlined in Article 3 of the 2001 Amendment within the Convention and the protocols.

According to the Chemical Weapons Convention, the state's parties must "never undertake under any circumstances" due to the indiscriminate nature of the use of the weapons mentioned in the treaty; this came similarly to the Landmines Convention. This prohibition is also consistent with the language of the Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) Weapons. It is worth noting that the gap existing in the 1925 (Geneva) Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare is bridged by applying what was stipulated in the Chemical Weapons

Convention in internal armed conflicts, unlike the previous protocol, which restricted use only in IAC (SIPRI., 1971, p. 129).

In spite of the existing conventions, the regulations pertaining to non-state actors could be more explicit. However, expecting an absolute and unequivocal commitment from Armed Non-State Actors (ANSAs) to refrain from using any weapons may run afoul of Common Article 3 and Additional Protocol II (APII) provisions. Consequently, ANSAs are expressly prohibited from employing such weaponry. Under Common Article 3(1)(a) and Article 4(2)(a) of APII, prohibited weapons can be categorized based on their indiscriminate impact on individuals, encompassing all persons not directly or actively involved in hostilities. Additionally, as per Article 4(2)(d) of APII, a weapon can be deemed prohibited if it is associated with terrorist acts or actions constituting a violation of the civilian population's protection, as guaranteed by Article 13(2). The evolving landscape of IHL in internal armed conflicts has seen the expansion of obligations related to the means and methods of warfare over time. Challenges may arise, especially when applying these provisions to untrained armed groups like rebels, due to ignorance or a lack of willingness to fully comply with IHL (Dinstein, Y., 2019, p.28). Addressing this necessitates a more robust effort to develop legal provisions that ensure non-state actors' compliance.

The work of entities such as the Non-State Actors Working Group, Geneva Call, and the International Campaign to Ban Landmines serves as exemplary models. Their endeavours have met with success by securing commitments from numerous armed groups in countries like Burma, India, Iraq, Iran, the Philippines, Burundi, Western Sahara, Sudan, Turkey, and Somalia, encapsulated in the "Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action." Therefore, there is a pressing need to foster initiatives that instill a sense of obligation for non-state actors to adhere to IHL (Sassli, 2003).

## **CONCLUSION**

The elimination of ambiguity is imperative to accurately delineate the commitment of non-state actors, facilitating the realization of a global arms embargo goal (Turns, D., 2006, p. 209). The on going discourse regarding the application of customary arms embargoes by non-state actors can only be resolved through comprehensive clarifications concerning the customary regulation of weapons and methods of warfare. ICRC's study on customary law succinctly captures the uncertainty in this legal domain: "there is insufficient consensus concerning all of these examples to conclude that, under customary international law, they all violate the rule prohibiting unnecessary suffering. However, there is an agreement that some of them are prohibited.

As I draw the curtain on our critical assessment of the obligations borne by armed nonstate actors during non-international armed conflict, it becomes evident that our journey through the intricacies of the legal landscape has been both comprehensive and enlightening. Having meticulously examined the legal frameworks governing state responsibility, individual and command accountability, and the specific obligations of armed non-state actors, our exploration now takes a tangible turn towards practical application.

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