Chapter 12
International Responsibility of Armed Opposition Groups

Lessons from State Responsibility for Actions of Armed Opposition Groups

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1 Introduction

At this point in time international law does not have specific rules on the international responsibility of armed opposition groups, whereas such groups may have duties under international law, in particular under international humanitarian law, human rights law, ceasefire and peace agreements, Security Council resolutions etc. In addition, States in whose territory armed opposition groups are operational are under a well-established rule of international law generally not responsible for the acts of these groups. Consequently, there is a lacuna, an accountability gap, due to the absence of a separate international responsibility regime for armed opposition groups. International law has tried to remedy this problem by developing international criminal law to

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hold individual members of such groups accountable through individual criminal responsibility. Unfortunately, from the perspective of the victims this solution is far from ideal since accused have often claimed to be indigent, whereas the armed opposition groups of which they are member may have significant financial means. Therefore, a second strategy international law has adopted is the extension of the responsibility of States in a twofold manner. First, in the field of human rights and international humanitarian law the primary obligations of States include a due diligence duty to prevent and punish such abuses and to ensure the respect of human rights and humanitarian law. Second, secondary rules have been developed to attribute the conduct of armed opposition groups to States, either the State that supports them, if any, or the States whose government these groups are fighting against. The contribution examines the existing rules on the attribution of conduct in the latter situation and their limitations.

In a first part, the contribution focuses on Article 10 of the Articles on Responsibility of States for Internationally Wrongful Acts (ASR). According to this provision the conduct of an insurrectional movement will become the conduct of the (new) State if that movement succeeds in becoming the new government or if that movement succeeds in creating a new State. Besides the doubt whether this rule belongs to customary international law, the implications of the rule have not been examined in detail. In the second part, the contribution looks into the limitations of Article 10 and assesses the desirability of an independent international responsibility regime of armed opposition.

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