Chapter 15

International Responsibility of the AOG in International Law: Is there a Case for an African Approach?

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1 Introduction

In many African political, legal, and civil society circles, a broad perception prevails that the International Criminal Court (ICC) was established by Western countries to police African countries. It has encouraged support for the establishment of the African Court of Human and Peoples Rights (ACtHPR) and ten years later, the adoption of a Protocol on the Statute of the African Court of Justice and Human Rights (ACtJHR) with exclusive jurisdiction in African situations. While making headlines by raising strenuous objections against the arrest warrants issued against sitting heads of State such as al-Bashir, Uhuru Kenyatta, and Gaddafi (the latter being overtaken by his death in October 2011 at the hands of opposition forces), the African Union’s (AU) position as regards Armed Opposition Groups (AOG, also referred to as an Armed non State Actor) has been less clear. This issue is however material since African leaders, who have resorted to protecting themselves against impunity have in addition, at times, been also implicated with AOGs, which has resulted in their implicit sanctioning of human rights violations, and consequently—the undermining of the international rule of law. Against this backdrop, we interrogate whether

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and how the ACtHPR (and eventually ACtJHR) would address the international responsibility of AOGs.

In this chapter, we focus attention on the likelihood of Africa becoming the first region to recognise legal obligations binding on the AOG that would trigger the group’s legal responsibility in Africa. By ‘organized AOGs’ we refer to groups that exist for an extended period of time, and are not sporadic ad hoc anomic groups. Some of these groups operate in peace times, others in war times, and often—in both circumstances whether in fragile, failed, or stable states. The “‘universe’ of Armed Non-State Groups” spans a range of incongruent categories labelled variedly: Rebels and guerrillas, militias, clan chiefs and “Big Men”, warlords, terrorists, criminals, Mafia, gangs, mercenaries, private military companies and private security companies, marauders, freedom fighters, separatists, and secessionists, supplemented by the recent addition of “ethnic militia”. While differing in their motivation and intention as well as in strategies of operation, these groups share the fact that most of them harm unarmed civilians whether deliberately or otherwise; operate and cooperate, and establish networks at a transnational level; and opt for loose web-like architectures rather than hierarchical organization.

AOG violent activities do not engage only government troops. Notably, “[f]ighting also occurs between non-state actors without state security forces playing a direct role in the conflict”, representing a third category of armed conflict (along with international and non-international) referred to as “non-state conflict” that has yet to be articulated in legal terms. Issues arising from AOGs’ activities pertain to the protection of civilians, violent methods used (hostage taking and summary execution), types of weapons employed in various contexts, and recognition of humanitarian non-governmental organ-

5 Id., 17. We will not address private military and security companies, a subject dealt here in Ch. Collins.
7 Schneckener: 15–16.
8 Id., 15.
10 Id.