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# Beyond State Attribution: Drones, Non-State Armed Groups, and Multi-Pathway Accountability under International and Islamic Law

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## Abstract

**Research Objective:** This article examines whether international law can secure accountability for attacks by non-State armed groups using weaponized commercial and improvised drones, and tests it against the Islamic law of war (*siyar*) and rebellion (*aḥkām al-bughāt*) that most groups invoke. **Research Method:** It combines doctrinal analysis of treaty law, customary international humanitarian law, the Articles on State Responsibility, and international jurisprudence with comparative analysis of classical *fiqh* and contemporary Muslim scholarship, applied to documented drone use in Iraq, Syria, Yemen, Myanmar, Sudan, the Sahel, and Somalia. **Results:** The difficulty is organizational, not technological: merging detection and strike into one cycle erodes target verification, proportionality assessment, and the capacity to cancel an attack. Attribution to a supporting State under Article 8 requires instructions, direction, or effective control over the specific operation, while Article 10 retrospectively covers movements that become the government. Classical Islamic law converges with IHL on non-combatant immunity, restraint in weapons of uncertain aim, and compensation for wrongful harm; the groups' expansive readings of *tatarrus* and *tabyit* depart from their professed law. **Findings and Implications:** Failed State attribution does not create an accountability vacuum. Four pathways remain: the State's own wrongful conduct, armed group responsibility, individual criminal responsibility, and command responsibility, each entailing reparation, supplemented by State-funded schemes analogous to the *bayt al-māl*. Where war crimes are uncodified, as in Indonesia's new Criminal Code, criminal pathways lack a national forum. **Conclusion:** Accountability depends on separating these pathways and matching evidence to their distinct elements. **Contribution:** It offers an integrated compliance–attribution–responsibility framework, a multi-level evidentiary model, and a mapping of IHL onto *siyar*. **Limitations and Suggestions:** Because it relies on open-source documentation without fieldwork, the study recommends testing the model against forensic case files, armed-group reparations practice, and groups' internal rules.

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## Introduction

Commercial drones have changed who can wield air power. Low-cost quadcopters and small fixed-wing platforms, bought off the shelf and modified with modest engineering, have given non-state armed groups capabilities for reconnaissance, fire correction, target designation, and direct attack that long belonged to state militaries.[1] The drone campaign of the so-called Islamic State in Iraq and the Levant (ISIL/Da'esh) in Iraq and Syria,[2] strikes by Ansar Allah (the Houthis) in Yemen, the spread of armed and reconnaissance drones among armed groups in the Sahel and Somalia, and, more recently, the drone warfare of resistance forces in Myanmar, of the Rapid Support Forces in Sudan, and of the armed opposition that overthrew the Syrian government in December 2024 show that the phenomenon is no longer episodic but a structural feature of contemporary non-international armed conflicts.[3]

This diffusion has legal significance at two moments. Before an attack, the question is whether a group operating such platforms can in fact comply with the rules of distinction, proportionality, and precautions. After an attack, the question is who bears responsibility when financing, supply, training, target selection, and operation are spread among several actors, some of them foreign States. The Security Council has recognized the supply-side dimension by condemning the flow of unmanned aircraft systems and their components to terrorist groups, and its Counter-Terrorism Committee adopted the Abu Dhabi Guiding Principles on the terrorist use of such systems in 2023.[4] These instruments are preventive. They do not determine how responsibility is allocated once an unlawful drone attack has occurred.

The problem is not confined to the conflicts in which it first appeared. The same characteristics that made commercial drones attractive to ISIL/Da'esh in Mosul, namely low cost, global availability, ease of replacement, and the absence of meaningful export scrutiny for civilian components, make them available to armed groups wherever such groups operate. For States that are not party to the Rome Statute or the Additional Protocols, including several in Southeast Asia, the question of which legal pathways remain open after a drone attack is therefore practical rather than hypothetical. It

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[1] Don Rassler, *The Islamic State and Drones: Supply, Scale, and Future Threats* (West Point, NY: Combating Terrorism Center at West Point, 2018), 5–6.

[2] This article follows United Nations usage: UN Security Council Resolution 2370 (August 2, 2017), UN Doc. S/RES/2370; Abu Dhabi Guiding Principles. The group's claim to statehood and to caliphal authority has been expressly rejected by Muslim scholars: Open Letter to Dr. Ibrahim Awwad al-Badri, alias "Abu Bakr al-Baghdadi," September 19, 2014.

[3] Bárbara Morais Figueiredo, *The Use of Uncrewed Aerial Systems by Non-State Armed Groups: Exploring Trends in Africa* (Geneva: UNIDIR, 2024), 2, https://doi.org/10.37559/CAAP/24/PACAV/01; United Nations Office of Counter-Terrorism and Conflict Armament Research, *Global Report on the Use of Unmanned Aircraft Systems by Non-State Armed Groups for Terrorism-Related Purposes* (New York: UNOCT, 2024), 41–42; on more recent practice, see Su Mon, "The War from the Sky: How Drone Warfare Is Shaping the Conflict in Myanmar," ACLED, July 1, 2025; Centre for Information Resilience, "Alleged Drone Strikes in Port Sudan," Sudan Witness, May 13, 2025; Broderick McDonald, "The Drones of Hayat Tahrir al-Sham: The Development and Use of UAS in Syria," GNET Insights, December 20, 2024.

[4] UN Security Council Resolution 2370 (August 2, 2017), UN Doc. S/RES/2370; Counter-Terrorism Committee, *Non-Binding Guiding Principles on Threats Posed by the Use of Unmanned Aircraft Systems for Terrorist Purposes* (Abu Dhabi Guiding Principles), UN Doc. S/2023/1035.

determines whether domestic prosecutors, investigative mechanisms, and victims have any usable legal basis.

Existing scholarship addresses this problem in separate fragments, as Table 1 shows. One body of work examines the legal framework and accountability for armed drones used by States.[5] A second, largely security-oriented literature documents how armed groups acquire, modify, and deploy drones, but does not draw the consequences for legal responsibility.[6] A third examines the responsibility of armed groups and the limits of attributing their conduct to States, without engaging the evidentiary and organizational features specific to drone operations.[7] A fourth examines the Islamic law of armed conflict (*siyar*) and of rebellion (*aḥkām al-bughāt*) and their relationship with international humanitarian law (IHL), a literature directly relevant to groups that justify their targeting decisions in Islamic legal terms.[8] No study links the technology-specific compliance problem to attribution and to the full range of responsibility pathways that remain when attribution to a State fails, or tests that problem against the law the groups themselves invoke.

[5] Christof Heyns et al., "The International Law Framework Regulating the Use of Armed Drones," *International and Comparative Law Quarterly* 65, no. 4 (2016): 791–827, https://doi.org/10.1017/S0020589316000385; Allen Buchanan and Robert O. Keohane, "Toward a Drone Accountability Regime," *Ethics & International Affairs* 29, no. 1 (2015): 15–37, https://doi.org/10.1017/S0892679414000732.

[6] Yannick Veilleux-Lepage and Emil Archambault, *A Comparative Study of Non-State Violent Drone Use in the Middle East* (The Hague: International Centre for Counter-Terrorism, 2022), 30.

[7] Liesbeth Zegveld, *Accountability of Armed Opposition Groups in International Law* (Cambridge: Cambridge University Press, 2002), 67, https://doi.org/10.1017/CBO9780511495199; Vladyslav Lanovoy, "The Use of Force by Non-State Actors and the Limits of Attribution of Conduct," *European Journal of International Law* 28, no. 2 (2017): 565, https://doi.org/10.1093/ejil/chx025.

[8] Ahmed Al-Dawoody, *The Islamic Law of War: Justifications and Regulations* (New York: Palgrave Macmillan, 2011); Ahmed Al-Dawoody, "Islamic Law and International Humanitarian Law: An Introduction to the Main Principles," *International Review of the Red Cross* 99, no. 906 (2017): 995–1018; Niaz A. Shah, *Islamic Law and the Law of Armed Conflict: The Conflict in Pakistan* (London: Routledge, 2011); Khaled Abou El Fadl, *Rebellion and Violence in Islamic Law* (Cambridge: Cambridge University Press, 2001); Sohail H. Hashmi, ed., *Just Wars, Holy Wars, and Jihads: Christian, Jewish, and Muslim Encounters and Exchanges* (Oxford: Oxford University Press, 2012); Khaled Ramadan Bashir, *Islamic International Law: Historical Foundations and al-Shaybani's Siyar* (Cheltenham: Edward Elgar, 2018).

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**Table 1.** Mapping of prior studies and the gap addressed

*Source*: Author's compilation from the cited literature.

| Study | Focus | What remains unaddressed |
|---|---|---|
| Heyns et al. (2016); Buchanan and Keohane (2015) | Legal framework and accountability for armed drones used by States | Drone use by armed groups; attribution where a State only supports the operator |
| Casey-Maslen et al. (2018); Seixas-Nunes (2022) | Lawfulness of unmanned and autonomous weapons under IHL | Organizational capacity of armed groups to apply targeting rules |
| Rassler (2018); Veilleux-Lepage and Archambault (2022); Figueiredo (2024) | Acquisition, modification, and operational use of drones by armed groups | Consequences for legal responsibility and accountability |
| Lanovoy (2017); Mackenzie-Gray Scott (2022) | Limits of attributing non-state conduct to States | Drone-specific evidence; pathways that survive failed attribution |
| Zegveld (2002); Heffes and Frenkel (2017); Herman (2025) | Responsibility and reparation obligations of armed groups | Application to drone attacks with distributed roles |
| Al-Dawoody (2011, 2017); Shah (2011); Abou El Fadl (2001); Hashmi (2012); Bashir (2018) | Islamic law of war and rebellion and its relationship with IHL | Application to drone attacks by armed groups that invoke Islamic law; link to attribution and responsibility |
| **This study** | **Links compliance, two-level attribution, and four pathways of responsibility, tested against IHL and the Islamic law of war** | **Proposes a multi-level evidentiary model and an IHL–siyar map for engagement** |

The fourth body of work has not yet been brought to bear on drone warfare by armed groups. It is largely organized around classical doctrinal categories, such as the grounds of war, safe conduct, captives, and treaties, and where it addresses contemporary practice, it concentrates on suicide attacks and human shielding. It has not examined remotely delivered munitions, the organizational setting of the decision to attack, or how Islamic doctrines of causation and liability bear on attribution and responsibility. The omission matters because ISIL/Da'esh, Ansar Allah, al-Shabaab, and several Sahel affiliates justify their conduct of hostilities in Islamic legal terms, so that the law they profess bears directly both on their compliance and on any attempt to engage them.

This article addresses that gap through four questions. First, how does the weaponization of commercial drones affect armed groups' capacity to comply with the rules of distinction, proportionality, and precautions? Second, what legal thresholds govern attributing such attacks to the armed group itself and to a supporting State? Third, where attribution to a State fails, which independent pathways of responsibility remain available, and how does reparation attach? Fourth, how do the classical Islamic law of war and of rebellion, which most of the groups examined invoke, bear on these questions?

The article advances four claims. First, the principal legal difficulty lies not in the drone as a means of warfare but in the organizational environment in which the decision to attack is made. Second, attribution must be analyzed at two distinct levels, the armed group and the supporting State, each with its own threshold, while a third, retrospective route opens where an insurrectional movement becomes the new government. Third, failing to attribute an attack to a State does not create an accountability vacuum, because State responsibility for its own conduct, armed-group responsibility, and individual and command criminal responsibility each rest on independent legal bases, and reparation attaches to each as its legal consequence. Fourth, the organizational conditions that

compliance requires (verification, authorization, and the ability to cancel an attack) are also required by the Islamic law of war that most of the groups examined invoke; the compliance gap is therefore also a gap in their own professed law, which gives humanitarian engagement a footing that does not depend on accepting IHL as an external system. The contribution is an integrated compliance–attribution–responsibility framework, a multi-level evidentiary model that matches categories of drone evidence to the elements of each pathway, and a map of the correspondence between IHL and the Islamic law of war. Because two of these pathways run through the Rome Statute, the analysis also speaks directly to international criminal law.

## Methods

The study employs doctrinal legal analysis. Its primary sources are Common Article 3 of the 1949 Geneva Conventions, Additional Protocols I and II, the customary rules identified in the ICRC study, the 2001 Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), the Rome Statute of the International Criminal Court, and the jurisprudence of the International Court of Justice (ICJ), the International Criminal Tribunal for the former Yugoslavia (ICTY), and, for interpretive purposes only, the Supreme Court of Israel. The analysis also draws, for comparative purposes, on the classical Islamic law of war (*siyar*) and of rebellion (*aḥkām al-bughāt*), and on contemporary fatwas and scholarly statements, because most of the armed groups examined justify their conduct of hostilities in Islamic legal terms. Operational patterns are drawn from institutional and scholarly reports on drone use by armed groups in Iraq, Syria, Yemen, the Sahel, the Lake Chad Basin, and Somalia, supplemented by more recent practice in Myanmar, Sudan, and Syria.

The scope is defined by the platform rather than by the conflict. The study examines drones used by non-State armed groups, centered on two categories: (i) commercial off-the-shelf platforms modified to carry or drop munitions, and (ii) improvised platforms assembled from commercial components. A third category, (iii) military-grade platforms supplied by, or derived from the designs of, a State, such as the Qasef-2K and most of the one-way attack drones used in Yemen, is included as a comparator for two reasons: it shows the precautionary problem of pre-programmed flight in its sharpest form, and State-supplied designs make the supply-side and attribution analysis more pressing. Table 2 identifies the category of each documented pattern.

These contexts were selected purposively because they document three features relevant to the legal analysis: the modification of commercial platforms, their use in populated areas, and reliance on external supply networks. The core incidents date from 2016 to 2019 because they are documented by primary material, such as internal ISIL/Da'esh documents, reports of United Nations panels of experts, and weapons-tracing studies, that meet the corroboration criterion set out below. More recent practice is treated as evidence of trends rather than analysed incident by incident, because its documentation has not yet reached the same standard: the extensive use of commercial and improvised drones by resistance forces in Myanmar since 2021, drone use attributed to the Rapid Support Forces in Sudan since 2023, including long-range platforms reportedly of foreign origin, and the drone units used in the November–December 2024 offensive in Syria by the group that subsequently formed the transitional government.

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The Syrian case is also examined for its bearing on attribution.

Islamic-law sources fall into three kinds. The first are the hadith collections of al-Bukhari and Muslim and Malik's *al-Muwatta'*. The second are classical works of *siyar* and the chapters on jihad and on rebels in the fiqh manuals, notably al-Shaybani's *siyar* as transmitted in al-Sarakhsi's *Sharh al-Siyar al-Kabir*, Ibn Qudama's *al-Mughni*, al-Mawardi's *al-Ahkam al-Sultaniyya*, the Ottoman *Majalla* for the maxims on causation, and, for the Zaydi tradition invoked by Ansar Allah, Ibn al-Murtada's *al-Bahr al-Zakhkhar*. The third are contemporary statements by Muslim scholarly bodies, including the Amman Message (2004), Fatwa No. 3 of 2004 of the Indonesian Council of Ulama (MUI) on terrorism, the 2014 Open Letter to al-Baghdadi, and Article 3 of the Cairo Declaration on Human Rights in Islam (1990). Classical sources are read through the established secondary literature, and the groups' own texts are used only as evidence of the positions they profess.[9]

The analysis proceeds in five steps: identifying the elements of each applicable rule; mapping documented operational patterns onto those elements; identifying where an element is strained or difficult to prove; constructing the pathways of responsibility that remain available; and comparing the results with the corresponding rules of the Islamic law of war and of rebellion. The study involves no fieldwork or original dataset, and its findings are normative and analytical rather than empirical generalizations. Comparative domestic jurisprudence falls outside its scope except where a decision directly assists the interpretation of an international rule.

Three interpretive choices shape the analysis. First, the ICRC study on customary international humanitarian law and the ICRC Interpretive Guidance on direct participation in hostilities are treated as authoritative evidence of the law, not as binding sources in their own right; where States or courts have diverged from them, the analysis notes the divergence. Second, operational reports by research centers and United Nations bodies are used to establish patterns of conduct, not to determine the responsibility of any particular actor for any particular incident. Their findings are relied upon only where they describe recurrent practices corroborated by more than one source or by primary material reproduced in the report, such as the internal ISIL/Da'esh documents analyzed by the Combating Terrorism Center. This distinction between pattern and incident matters, because the legal pathways examined below each require incident-specific proof that open-source material alone cannot supply.

Third, Islamic law is used in two distinct ways. It is used as evidence of the norms the groups profess, against which their conduct can be measured, and as a normative order whose rules can be compared with IHL to identify convergence and divergence. A third use, as a basis for humanitarian engagement, follows from the first two and is developed only in the recommendations. Islamic law is not treated as a source of international law binding on the groups. Because the groups do not share one fiqh tradition, the analysis identifies the tradition invoked at each point: Zaydi for Ansar Allah,

[9] Muhammad ibn Ahmad al-Sarakhsi, *Sharh al-Siyar al-Kabir* (Cairo: al-Sharika al-Sharqiyya li-l-Iʿlanat, 1971); Muwaffaq al-Din Ibn Qudama, *al-Mughni* (Cairo: Maktabat al-Qahira, 1968), Kitab al-Jihad and Kitab Qital Ahl al-Baghy; Abu al-Hasan al-Mawardi, *al-Ahkam al-Sultaniyya* (Cairo: Dar al-Hadith, n.d.); Ahmad ibn Yahya Ibn al-Murtada, *al-Bahr al-Zakhkhar al-Jamiʿ li-Madhahib ʿUlamaʾ al-Amsar* (Beirut: Muʾassasat al-Risala, 1975); on the reading of these sources, see Al-Dawoody, *Islamic Law of War*; Abou El Fadl, *Rebellion and Violence*.

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and Salafi-jihadi readings for ISIL/Da'esh and al-Shabaab.

## Results

### From Civilian Platform to Weapon: The Compressed Targeting Cycle

The significance of modified commercial drones lies less in their low cost than in how quickly a platform designed for filming or light transport becomes a weapon. Internal ISIL/Da'esh documents reveal a managed program of procurement, testing, and do-it-yourself modification, and by early 2017 the group was using quadcopters to drop small munitions on Iraqi forces in Mosul.[10] The platform thus acquires a military character situationally, through its use rather than its design. Islamic legal theory expresses the same idea in the principle that means take the ruling of their ends (*li al-wasāʾil ḥukm al-maqāṣid*): the platform is neutral, but its use is not.[11] This has an often-overlooked legal consequence. Article 36 of Additional Protocol I obliges States to review new weapons, means, and methods of warfare before adoption, but no equivalent mechanism applies to armed groups, so the prior scrutiny of a weapon's characteristics and foreseeable effects that accompanies State procurement is simply absent.[12]

The supply chain behind this transformation is equally significant for the later analysis of responsibility. ISIL/Da'esh relied on commercially available airframes, cameras, batteries, and spare parts procured through civilian vendors and intermediaries, and replaced lost platforms faster than they could be destroyed.[13] Because each component is lawful to trade in isolation, diversion becomes visible only when components are aggregated and modified. This feature explains why preventive instruments focus on transfer monitoring and why, after an attack, recovered wreckage and component tracing are often the only route to identifying external contributors. It also explains why the mere fact that a component originated in a given State says little, on its own, about that State's legal responsibility. Islamic law supplies a comparable basis for preventive control of lawful goods in the doctrine of blocking the means (*sadd al-dharāʾiʿ*), which permits restricting otherwise lawful acts that predictably lead to prohibited harm; classical jurists applied it to the sale of weapons in time of civil strife (*bayʿ al-ṣilah fi al-fitna*), a direct analog to the diversion of drone components.[14]

Operational practice has also integrated these platforms into the targeting cycle. A single quadcopter can locate a target, correct indirect fire, and deliver a munition,

[10] Don Rassler, Muhammad al-ʿUbaydi, and Vera Mironova, "The Islamic State's Drone Documents: Management, Acquisitions, and DIY Tradecraft," *CTC Perspectives*, January 31, 2017; Rassler, *Islamic State and Drones*, 7.

[11] Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 3rd ed. (Cambridge: Islamic Texts Society, 2003), ch. 17.

[12] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1125 UNTS 3, art. 36; Stuart Casey-Maslen et al., *Drones and Other Unmanned Weapons Systems under International Law* (Leiden: Brill Nijhoff, 2018), 198.

[13] Rassler, *Islamic State and Drones*, 5–6.

[14] Kamali, *Principles of Islamic Jurisprudence*, ch. 17; Ibn Qudama, *al-Mughni*, Kitab al-Buyuʿ, on the sale of weapons in time of *fitna*.

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collapsing detection and engagement into one compressed sequence.[15] In Yemen, the use of low-cost one-way attack drones, most of them military-grade designs rather than modified commercial platforms, shifted the logic of attack from the effect of individual strikes to the cumulative effect of repeated ones, producing sustained attritional pressure.[16] Table 2 synthesizes these documented patterns, including more recent practice, identifies the category of platform involved, and sets out the rules each places under strain.

**Table 2.** Documented patterns of drone use by armed groups and the rules placed under strain
*Source*: Author's analysis of the cited reports.

| Context | Platform type | Documented pattern | Rule under strain | Source |
|---|---|---|---|---|
| Iraq (Mosul), 2016–2017 | (i) | Commercial quadcopters modified to drop small munitions in dense urban areas | Distinction; indiscriminate attacks (CIHL Rules 1, 7, 11–12) | Rassler, al-ʿUbaydi, and Mironova (2017) |
| Iraq and Syria, 2014–2018 | (i)–(ii) | Managed procurement of off-the-shelf airframes and components; DIY modification | No weapons review; supply-side responsibility | Rassler (2018) |
| Yemen (al-Anad), January 2019 | (iii) | Pre-programmed Qasef-2K drone with little or no recall after launch | Precautions: duty to cancel or suspend (Rule 19) | Williams and Shaikh (2020) |
| Yemen, 2015–2019 | (iii), with (ii) | Repeated low-cost one-way attack drones used for attrition | Proportionality across repeated attacks (Rule 14) | Balkan (2019) |
| Sahel, Lake Chad Basin, and Somalia | (i) | Diffusion of reconnaissance and armed drones among armed groups | Organizational capacity; precautions in populated areas | Figueiredo (2024) |
| Myanmar, 2021–2025 | (i)–(ii) | Resistance forces convert agricultural and photography drones into strike platforms; more than 2,100 strike events recorded | Distinction; precautions; organizational capacity of decentralized forces | Su Mon (2025) |
| Sudan, 2023–2025 | (i) and (iii) | Long-range strikes on infrastructure in Port Sudan attributed to the RSF; munitions possibly of foreign origin | Distinction (civilian objects); State supply and attribution | Centre for Information Resilience (2025) |
| Syria, Nov.–Dec. 2024 | (ii) | Dedicated drone units with workshop production and 3D-printed parts, used for strikes and for propaganda footage | Terror prohibition (Rule 2); Article 10 ARSIWA | McDonald (2024) |

[15] Peers Lyle, "Air Power Proliferation: How Commercial-off-the-Shelf Drones Are Being Used by Violent Extremist Organisations to Influence the Future of Warfare in the Air," *Air and Space Power Review* 22, no. 3 (2019): 102–103.

[16] Serkan Balkan, *A Global Battlefield? Rising Drone Capabilities of Non-State Armed Groups and Terrorist Organizations* (Ankara: SETA, 2019), 18.

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*Note:* Platform types: (i) modified commercial off-the-shelf; (ii) improvised from commercial components; (iii) military-grade, supplied by or derived from a state design.

**Distinction, Proportionality, and Precautions under Strain**

When surveillance and execution merge, the opportunity for graduated verification of a target's status diminishes, and the decision to attack rests on urgent field indicators that may not suffice to distinguish a military objective from a civilian object. Reports from Iraq and Syria describe munitions dropped in complex urban environments falling outside intended target areas.[17] The relevant rules are not only the basic duty of distinction but also the prohibition of indiscriminate attacks, which covers attacks employing a means that cannot be directed at a specific military objective or whose effects cannot be limited.[18] A small payload is not a guarantee of precision; a hand-released munition of uncertain accuracy, dropped over a dense street, may fall within this prohibition. The normative tradition invoked by most of the groups examined points the same way: classical jurists restricted weapons of uncertain aim where protected persons were known to be present, as the Discussion shows.

Distinction also concerns the status of persons. In a non-international armed conflict, civilians are protected unless and for such time as they directly participate in hostilities, while the ICRC's interpretive approach treats members of organized armed groups who assume a continuous combat function as targetable. Persons whose role is limited to financing, propaganda, or general support remain protected. The Supreme Court of Israel, in *Public Committee Against Torture in Israel v. Government of Israel*, distinguished sporadic participation, after which protection is restored, from a continuing chain of hostile acts, and insisted on reliable, case-specific information; that 2006 judgment predates, and therefore does not apply, the continuous combat function concept later developed by the ICRC.[19] An operator acting on a single video feed and an affiliation-based indicator cannot meet this standard.

Drone operations also raise a status question specific to their supply chain. The technicians who acquire, assemble, and modify airframes perform a function that is indispensable to the group's drone capability, yet the general manufacture and maintenance of weapons is ordinarily treated as indirect participation that does not suspend civilian protection, unless the activity is integrated into a specific military operation, such as preparing and arming a particular drone for an imminent strike.[20] The distinction is consequential. Treating every person in a drone workshop as targetable would erode the protection of civilians working in dual-use repair and retail trades, whereas members of the group who assume a continuous combat function within its drone unit may be attacked at any time. The line must again be drawn on verified function

[17] Rassler, *Islamic State and Drones*, 2; UNOCT and CAR, *Global Report*, 41–42.

[18] Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol. I: *Rules* (Cambridge: Cambridge University Press, 2005), Rules 1, 7, 11–12; Additional Protocol I, art. 51(4).

[19] Nils Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law* (Geneva: ICRC, 2009), 27–36; *Public Committee Against Torture in Israel v. Government of Israel*, HCJ 769/02, Judgment, December 14, 2006, paras. 31, 38–40; Sandesh Sivakumaran, *The Law of Non-International Armed Conflict* (Oxford: Oxford University Press, 2012), 359–360.

[20] Melzer, *Interpretive Guidance*.

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rather than proximity to the technology. The same conclusion follows from the majority position in classical Islamic law, which grounds the immunity of non-combatants in their non-participation in fighting rather than in their belief or affiliation.

Proportionality is likewise measured not by the size of the munition but by the relationship between expected incidental harm and anticipated military advantage in the specific setting.[21] Empirical work on drone attacks identifies features of the attack setting as significant factors in casualty outcomes.[22] The attritional pattern noted above raises a further difficulty. Because proportionality is assessed attack by attack, a high-frequency campaign of individually small strikes can generate aggregate civilian harm that escapes any single assessment. Classical Islamic law faced the same difficulty in its doctrines on night raids (*tabyīt*) and human shields (*tatarrus*), which tolerated harm to protected persons only where it could not be separated from a lawful target, and it is precisely these doctrines that jihadist ideologues have stretched; the Discussion returns to them. The rule is not defective, but its effective application presupposes information and deliberation that compressed operations rarely provide.

A further prohibition is engaged by the way drone strikes are used. Acts or threats of violence whose primary purpose is to spread terror among the civilian population are prohibited in non-international armed conflict by Article 13(2) of Additional Protocol II and by customary law.[23] In *Galić*, the ICTY held that violating this prohibition is a war crime, whose specific intent is the primary purpose of spreading terror and of which the actual infliction of terror is not an element.[24] Filming and publishing strike footage is not unlawful in itself. Where, however, attacks on civilians are repeatedly carried out and systematically disseminated, as ISIL/Da'esh and other groups have done with drone strike videos, the pattern of attack and dissemination may evidence the required purpose. The Rome Statute contains no corresponding war crime, which bears on the criminal pathways discussed below and on the domestic terrorism route examined for Indonesia.

The principle of precautions is satisfied not only by verification before launch but also by the continuing ability to cancel or suspend an attack when it becomes apparent that the target is not a military objective or that incidental harm would be excessive.[25] Some platforms remove this ability altogether. The Qasef-2K used by Ansar Allah against al-Anad Air Base in January 2019, a military-grade loitering munition reportedly derived

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[21] Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, Rule 14; Additional Protocol I, art. 51(5)(b); Jonathan Crowe and Kylie Weston-Scheuber, *Principles of International Humanitarian Law* (Cheltenham: Edward Elgar, 2013), 70.

[22] Taeyoung Kim, Jeongwan Park, and Julak Lee, "An Empirical Study of Factors Influencing Drone Terrorist Attack Casualties," *International Journal of Cyber Warfare and Terrorism* 14, no. 1 (2024), https://doi.org/10.4018/IJCWT.350049.

[23] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977, 1125 UNTS 609, art. 13(2); Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, Rule 2.

[24] *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Trial Chamber Judgement and Opinion, December 5, 2003, paras. 133–137, affirmed by *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Appeals Chamber Judgement, November 30, 2006.

[25] Additional Protocol I, art. 57(2)(b); Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, Rules 15–19.

from an Iranian design rather than a modified commercial drone, followed a pre-programmed course that left little or no possibility of redirection after launch.[26] Others rely on communication links vulnerable to jamming, which degrades control during execution.[27] Where in-flight control is unavailable, the entire precautionary burden shifts to the pre-launch stage, narrowing the circumstances in which use is lawful. A group's limited resources may affect what is "feasible," but they cannot dilute the obligations of distinction and proportionality or the prohibition of indiscriminate attacks.[28]

This asymmetry deserves emphasis because it is sometimes inverted in debate. It is occasionally suggested that armed groups, lacking precision munitions and sophisticated sensors, should be held to a lower standard because they cannot do better. The law points the other way. The feasibility qualifier attaches to precautionary measures, which require a party to do everything feasible to verify targets and to choose means that minimize incidental harm. It does not attach to the prohibitions themselves. A party that cannot verify a target with the means at its disposal is not thereby permitted to attack on the basis of conjecture; it is required to refrain. Limited capability therefore narrows the range of lawful attacks rather than widening the margin of tolerated error. Classical jurists reasoned similarly: where a combatant cannot distinguish the lawful target, the precautionary principle (*al-ihtiyāt*) and the maxim that averting harm takes precedence over securing benefit (*dārʾ al-mafāsid muqaddam ʿalā jalb al-maṣālih*) require restraint.[29]

The decisive variable is therefore organizational. The presence of a human operator does not by itself ensure compliance; the legal value of human control depends on the information available to the operator, the existence of an authority empowered to approve the attack, and mechanisms for review during execution and investigation afterward.[30] Figure 1 sets out this logic: a lawful attack requires that all four checkpoints be satisfied, while the absence of any one exposes the attack to the prohibitions on indiscriminate and disproportionate attacks.

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[26] Ian Williams and Shaan Shaikh, *The Missile War in Yemen* (Washington, DC: Center for Strategic and International Studies, 2020), 17; on the origin of the design, see Conflict Armament Research, *Iranian Technology Transfers to Yemen* (London: Conflict Armament Research, 2017); Panel of Experts on Yemen, Final Report, UN Doc. S/2018/68 (January 26, 2018).

[27] Veilleux-Lepage and Archambault, *Comparative Study*, 40.

[28] Zegveld, *Accountability of Armed Opposition Groups*, 67, https://doi.org/10.1017/CBO9780511495199; Andrew Clapham, *The Rights and Responsibilities of Armed Non-State Actors: The Legal Landscape & Issues Surrounding Engagement* (Geneva: Geneva Academy of International Humanitarian Law and Human Rights, 2010), 5.

[29] *Majallat al-Ahkam al-ʿAdliyya* (Istanbul, 1876), art. 30; Kamali, *Principles of Islamic Jurisprudence*, ch. 17.

[30] Christian Enemark, *Moralities of Drone Violence* (Edinburgh: Edinburgh University Press, 2023), 6; Afonso Seixas-Nunes, *The Legality and Accountability of Autonomous Weapon Systems: A Humanitarian Law Perspective* (Cambridge: Cambridge University Press, 2022), 255–256, https://doi.org/10.1017/9781009090001.

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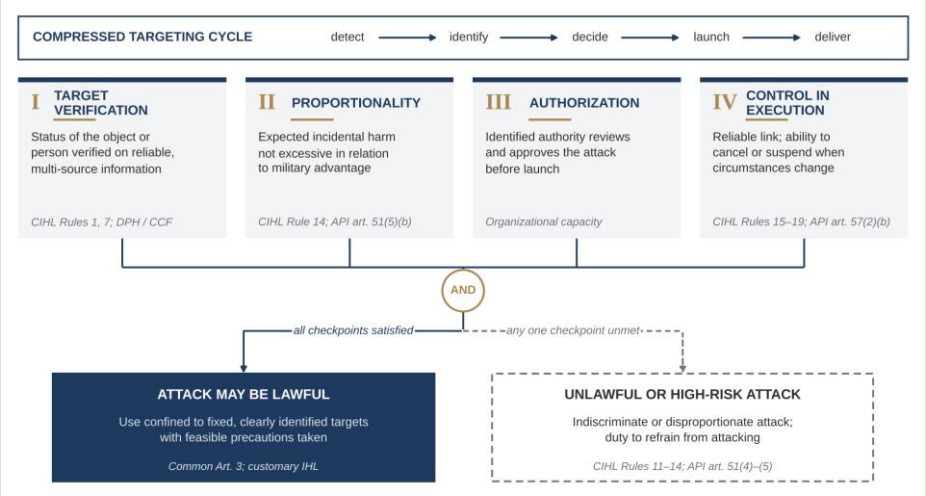



**Fig. 1.** Compliance checkpoints for an attack using a modified commercial drone
*Source:* Author's analysis.

## Two-Level Attribution

Attribution must begin with the armed group itself. The organization criterion, which determines whether a group is a party to a non-international armed conflict, also performs an evidentiary function by revealing the link between an attack and the group's command structure, policies, and resources.[31] Attribution to the group rests on converging indicia, including advance planning, the provision of means, target selection, the publication of strike footage, and the recurrence of a pattern of operations. A claim of responsibility is a supporting indication rather than conclusive proof, because groups may claim attacks for propaganda purposes or decline to acknowledge others.[32] Within the group, drone operations pass through technical modification units, reconnaissance teams, operators, field commanders, and senior leadership, so identifying the final decision-maker requires analysis of the chain of command.[33] The more decentralized the group, the weaker the inference from organization to attribution: in loosely affiliated networks, a drone attack may reflect the initiative of a local cell rather than the policy of the wider organization, and the indicia must then be assessed at the level of the unit that actually planned and executed it. Classical Islamic law drew a comparable line: the law of rebellion treated rebels as a distinct legal category only where they possessed organized force (*shawka*), a parallel examined in the Discussion.

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[31] Daragh Murray, *Human Rights Obligations of Non-State Armed Groups* (Oxford: Hart, 2016), 70; Ezequiel Heffes and Brian E. Frenkel, "The International Responsibility of Non-State Armed Groups: In Search of the Applicable Rules," *Goettingen Journal of International Law* 8, no. 1 (2017): 60.

[32] Murray, *Human Rights Obligations*, 62; Noemi Gal-Or, Cedric Ryngaert, and Math Noortmann, eds., *Responsibilities of the Non-State Actor in Armed Conflict and the Market Place: Theoretical Considerations and Empirical Findings* (Leiden: Brill Nijhoff, 2015), 16.

[33] Ezequiel Heffes, Marcos D. Kotlik, and Manuel J. Ventura, eds., *International Humanitarian Law and Non-State Actors: Debates, Law and Practice* (The Hague: T.M.C. Asser Press, 2020), 5–6, https://doi.org/10.1007/978-94-6265-339-9; Ezio Di Nucci and Filippo Santoni de Sio, eds., *Drones and Responsibility: Legal, Philosophical and Socio-Technical Perspectives on Remotely Controlled Weapons* (London: Routledge, 2016), 2.

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The second level concerns the supporting State. International law does not attribute an armed group's conduct to a State merely because the group operates from its territory or receives its support.[34] Under Article 8 of ARSIWA, conduct is attributable where the group acts on the State's instructions or under its direction or control in carrying out the conduct.[35] The ICJ held in *Nicaragua* that financing, organizing, training, arming, and general planning did not suffice to attribute the Contras' violations to the United States without effective control over the operations concerned, and confirmed in *Bosnian Genocide* that control must be shown over the specific operation in which the violation occurred.[36] The "overall control" test applied in *Tadić* served to classify the conflict and was not accepted by the ICJ as a test of attribution for State responsibility.[37] Table 3 compares these thresholds.

[34] Lanovoy, "Limits of Attribution," 565, https://doi.org/10.1093/ejil/chx025; James Crawford, *State Responsibility: The General Part* (Cambridge: Cambridge University Press, 2013), 406, https://doi.org/10.1017/CBO9781139033060.

[35] International Law Commission, "Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries," *Yearbook of the International Law Commission* 2001, vol. II, pt. 2, art. 8 and commentary, 47.

[36] *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States of America*), Merits, Judgment, ICJ Reports 1986, 14, paras. 109–115; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment, ICJ Reports 2007, 43, paras. 398–406.

[37] *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Appeals Chamber Judgment, July 15, 1999, paras. 120, 137; *Bosnian Genocide*, paras. 404–406.

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**Table 3.** Attribution thresholds compared

*Source*: Author's compilation from ARSIWA and the cited judgments.

| Test | Authority | Threshold | Function | Implication for drone attacks |
|---|---|---|---|---|
| Complete dependence | *Bosnian Genocide* (2007), paras. 392–393; ARSIWA art. 4 | Group is a mere instrument of the State | Attribution of all conduct as a de facto organ | Rarely met by groups with their own command |
| Instructions or direction | ARSIWA art. 8 | Specific instructions or direction for the conduct | Attribution of specific conduct | Proof of tasking: target lists, mission orders |
| Effective control | *Nicaragua* (1986), paras. 109–115; *Bosnian Genocide* (2007), para. 400 | Control over the specific operation in which the violation occurred | Attribution for State responsibility | Supply or training insufficient; control over targeting or timing required |
| Overall control | *Tadić* (1999), paras. 120, 137 | Organizing, coordinating, or planning military actions | Classification of the conflict only | Relevant to internationalization, not to attribution |
| Insurrectional movement becoming government | ARSIWA art. 10 | Movement becomes the new government or establishes a new State | Retrospective attribution of the movement's conduct, including during the conflict | Relevant to Syria after December 2024; not engaged for Ansar Allah |
| Organization criterion | *Tadić*; Murray (2016) | Command structure and capacity to plan and sustain operations | Attribution to the armed group | Claims, footage, and recurring patterns as converging indicia |

Applied to drone attacks, the supply of airframes, components, or operating software may evidence support but does not by itself attribute an attack to the supplier. Attribution requires proof that the State issued instructions for the attack, directed its course, or controlled its decisive elements, such as target selection or timing.[38] Remotely operated and digitally enabled platforms do not alter this substantive threshold. They alter the evidentiary context: telemetry, mission files, target coordinates, command-and-control records, and software updates may prove, or disprove, the required link to the specific operation, but they neither lower nor replace it.[39] Where the platform is a military-grade design supplied by a State, as in category (iii), the supply is stronger evidence of support, but the threshold is unchanged: supply speaks to the State's own conduct, examined below, rather than to attribution of the attack. Islamic law draws the same distinction between the direct perpetrator (*mubashir*) and the remote cause (*mutasabbib*), as the Discussion shows.

The standard of proof compounds this difficulty. The ICJ has required that claims

[38] Carlo de Stefano, *Attribution in International Law and Arbitration* (Oxford: Oxford University Press, 2020), 77; Richard Mackenzie-Gray Scott, *State Responsibility for Non-State Actors: Past, Present and Prospects for the Future* (Oxford: Hart, 2022), 90.

[39] ARSIWA, art. 8 commentary, 47; Seixas-Nunes, *Autonomous Weapon Systems*, 255–256, https://doi.org/10.1017/9781009090001.

against a State involving charges of exceptional gravity be proved by fully conclusive evidence.[40] Drone operations are rarely documented to that standard. Flight data may be encrypted, wiped, or never recovered; communications may pass through commercial platforms beyond the reach of investigators; and supporting States are unlikely to disclose tasking records. In practice, therefore, the threshold of Article 8 will often be unmet not because the link does not exist but because it cannot be proved. This evidentiary reality is precisely why the existence of other, independent pathways of responsibility becomes decisive.

One route of attribution does not depend on control at all. Under Article 10(1) of ARSIWA, the conduct of an insurrectional movement that becomes the new government of a State is attributable to that State, including conduct during the conflict; under Article 10(2), the conduct of a movement that establishes a new State is attributable to the new State.[41] This attribution is retrospective and contingent on the movement's success rather than on any link of control, and it is therefore a limit on, rather than an exception to, the claim that attribution fails. The Syrian case shows its significance. Drone strikes carried out during the November–December 2024 offensive by the group that went on to form the transitional government are, in principle, attributable to the Syrian Arab Republic, so that the State that bears responsibility is the one whose former government the group was fighting. Ansar Allah, by contrast, exercises de facto control over much of northern Yemen but has not become the internationally recognized government; Article 10 is therefore not engaged, and Article 9, which covers the exercise of governmental authority in the absence or default of the official authorities, is unlikely to apply while a recognized government continues to exist.[42]

## Discussion

### Beyond State Attribution: Four Pathways of Responsibility and Reparation as Their Consequence

Attribution identifies to whom an act is ascribed; responsibility may rest on other, independent bases. When roles are distributed among the operator, commander, and external suppliers, a single incident can engage several pathways at once, none of which depends on establishing another.[43] Four pathways of responsibility remain available, and reparation attaches to each of them as its legal consequence. Figure 2 and Table 4 set out this structure.

[40] *Bosnian Genocide*, para. 209.

[41] ARSIWA, art. 10 and commentary.

[42] ARSIWA, art. 9 and commentary.

[43] James D. Fry, "Attribution of Responsibility," in *Principles of Shared Responsibility in International Law: An Appraisal of the State of the Art*, ed. André Nollkaemper and Ilias Plakokefalos (Cambridge: Cambridge University Press, 2014), 112–113; Crawford, *State Responsibility*, 406, https://doi.org/10.1017/CBO9781139033060.

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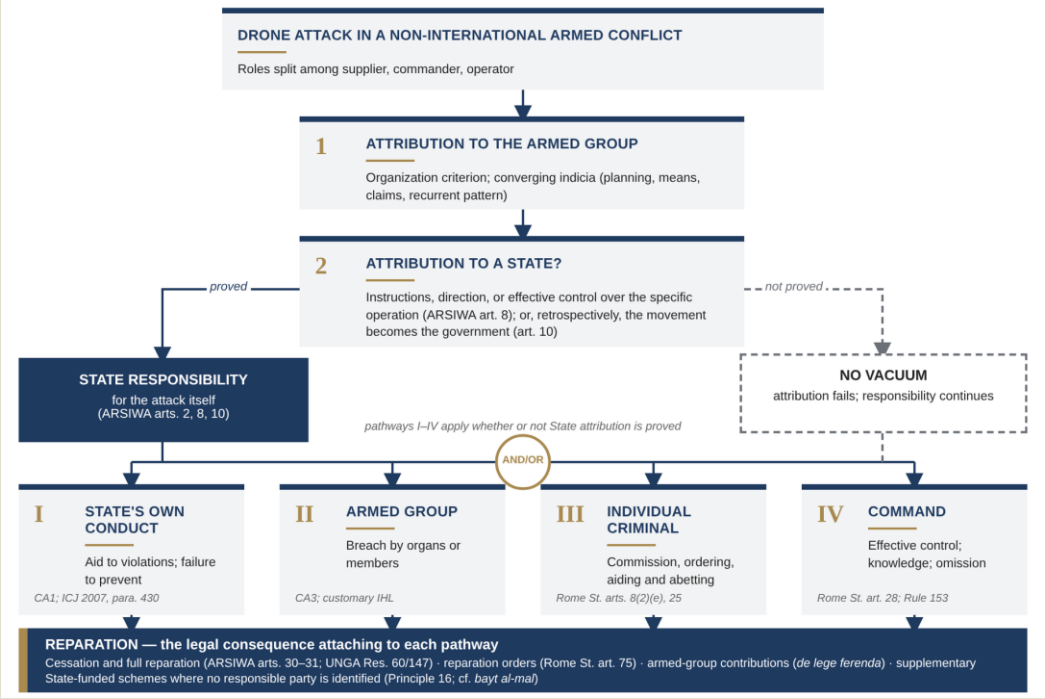



**Fig. 2.** Pathways of responsibility when State attribution fails, with reparation as their consequence
*Source*: Author's analysis.

The first pathway is the State's responsibility for its own conduct. Supplying drones, components, training, or intelligence is not wrongful in itself, but becomes so when it breaches an obligation binding on the State. Common Article 1 of the Geneva Conventions, as interpreted by the ICRC, entails a negative obligation not to encourage, aid, or assist violations by parties to a conflict.[44] The ICJ had already identified the obligation not to encourage violations in *Nicaragua*.[45] These matters because Article 16 of ARSIWA addresses aid or assistance only to another State and does not reach assistance to armed groups. A State may also incur responsibility for failing to prevent where a specific obligation of prevention applies, it knew or should have known of a serious risk, and it had the capacity to influence effectively those likely to commit the violation; responsibility then rests on the obligation, knowledge, capacity, and omission, not on territorial presence alone.[46]

The second pathway concerns the armed group itself. An organized group that is a party to a non-international armed conflict is bound by Common Article 3 and

[44] International Committee of the Red Cross, *Commentary on the First Geneva Convention* (Geneva: ICRC, 2016), commentary on art. 1.

[45] *Nicaragua*, para. 220. The ICRC's broader reading of Common Article 1, which includes a duty to ensure respect by other parties, is contested by some States; the Court's holding supports at least the negative obligation.

[46] *Bosnian Genocide*, para. 430; Heyns et al., "International Law Framework," 793, https://doi.org/10.1017/S0020589316000385; Mackenzie-Gray Scott, *State Responsibility for Non-State Actors*, 247.

customary rules on the conduct of hostilities, regardless of its technical resources.[47] A drone attack planned through a chain of information-gathering, target selection, preparation, and authorization reflects organizational conduct beyond the individual operator. Yet international law still lacks a codified framework, comparable to ARSIWA, that determines the consequences of armed-group responsibility.[48] The gap lies not in whether the group is bound but in the mechanisms that give effect to its breach. Doctrine has proposed to fill it by analogy with the law of State responsibility, attributing to the group the conduct of its organs, its members acting in that capacity, and persons acting under its instructions or control, while adapting the consequences to the group's capacity and to its often transient existence.[49] Applied to drone attacks, this approach makes the group answerable for the operational unit that planned and launched the strike, even where no individual operator can be identified. Classical Islamic law shows that this is not the only available model. Most jurists held that rebels who possessed *shawka* and *ta'wil* were not liable for lives and property destroyed in the course of fighting, while remaining liable for acts outside combat, whereas brigands were fully liable.[50] That model allocates liability by status and by the connection between the harm and the fighting, rather than by analogy with the responsibility of States. On either model, drone attacks directed at civilians fall outside lawful fighting and engage the group's responsibility.

The third and fourth pathways are criminal. Under Article 25(3) of the Rome Statute, individual responsibility extends beyond the operator to those who order, solicit, induce, aid, abet, or otherwise contribute to a crime, which fits the distribution of roles in drone operations.[51] A limitation deserves emphasis. The Rome Statute criminalizes intentionally directing attacks against civilians in non-international armed conflict, but it contains no counterpart to the war crime of launching an attack in the knowledge that it will cause clearly excessive incidental harm, which it confines to international armed conflict.[52] Nor does it criminalize acts whose primary purpose is to spread terror among the civilian population, although that conduct is a war crime under customary law. Disproportionate drone strikes by armed groups may therefore escape prosecution before the Court unless the evidence supports an inference that civilians were the object of the attack. International jurisprudence offers a route for that inference: the indiscriminate character of the means used, or the manifest disproportion of an attack,

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[47] Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12, 1949, 75 UNTS 31, art. 3; Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, Rules 1, 7, 11, 14, 15; Sivakumaran, *Non-International Armed Conflict*, 237–241.

[48] Heffes and Frenkel, "International Responsibility," 60; Buchanan and Keohane, "Drone Accountability Regime," 22, https://doi.org/10.1017/S0892679414000732.

[49] Zegveld, *Accountability of Armed Opposition Groups*, 219, https://doi.org/10.1017/CBO9780511495199; Clapham, *Armed Non-State Actors*, 65.

[50] Abou El Fadl, *Rebellion and Violence*; Ibn Qudama, *al-Mughni*, Kitab Qital Ahl al-Baghy; al-Mawardi, *al-Ahkam al-Sultaniyya*, on fighting rebels.

[51] Rome Statute of the International Criminal Court, July 17, 1998, 2187 UNTS 90, art. 25(3); Elies van Sliedregt, *Individual Criminal Responsibility in International Law* (Oxford: Oxford University Press, 2012), 206, https://doi.org/10.1093/acprof:oso/9780199560363.001.0001.

[52] Rome Statute, arts. 8(2)(b)(iv), 8(2)(e)(i).

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may support a finding that the attack was directed against civilians.[53] A hand-released munition dropped repeatedly over a crowded market, with no means of verifying or limiting its effects, is the kind of conduct to which this reasoning applies. Commanders, in turn, may be liable under Article 28 where they exercised effective command and control, knew or should have known of the crimes, and failed to take necessary and reasonable measures to prevent, repress, or report them. Customary law extends command responsibility to non-international armed conflicts, as the ICTY Appeals Chamber held in *Hadžihasanović* (2003), while Articles 86 and 87 of Additional Protocol I reflect its treaty background.[54] Islamic law, examined below, has its own doctrines on ordering, on coercion, and on superior responsibility.

Reparation is not a fifth pathway but the legal consequence that attaches to each of the four. A responsible State must make full reparation for the injury caused by its wrongful act, and the Basic Principles adopted by the General Assembly likewise presuppose a party liable for the violation.[55] Transitional practice, notably in Colombia, has explored how armed groups may contribute through truth-telling, restitution, the search for the missing, compensation, and guarantees of non-repetition. For Southeast Asia, the Transitional Justice and Reconciliation Commission established in the Bangsamoro peace process and the Aceh Truth and Reconciliation Commission (KKR Aceh) are closer comparators for armed-group contributions to truth and reparation.[56] One element can nonetheless operate without prior attribution. Principle 16 of the Basic Principles encourages States to establish national programs of reparation where the party liable is unable or unwilling to meet its obligations. Such administrative schemes are not an independent basis of responsibility, but they matter most in drone attacks, where the dispersal of roles makes it hardest for victims to identify a respondent, and Islamic law offers an early analogue in the rule that the public treasury pays where a killer cannot be identified.

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[53] *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, Appeals Chamber Judgement, November 30, 2006, paras. 132–133.

[54] Rome Statute, art. 28; Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, Rule 153; Additional Protocol I, arts. 86–87; Ciara Damgaard, *Individual Criminal Responsibility for Core International Crimes: Selected Pertinent Issues* (Berlin: Springer, 2008), 190, https://doi.org/10.1007/978-3-540-78781-5; *Prosecutor v. Enver Hadžihasanović et al.*, Case No. IT-01-47-AR72, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, July 16, 2003.

[55] UN General Assembly Resolution 60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (December 16, 2005); Olivia Herman, *Reparations by Non-State Armed Groups under International Law: From Conflict to Repair in Colombia and Beyond* (London: Routledge, 2025), 51; Luke Moffett, "Beyond Attribution: Responsibility of Armed Non-State Actors for Reparations in Northern Ireland, Colombia and Uganda," in Gal-Or, Ryngaert, and Noortmann, *Responsibilities of the Non-State Actor*; ARSIWA, art. 31.

[56] Transitional Justice and Reconciliation Commission, *Report of the Transitional Justice and Reconciliation Commission* (Manila: TJRC, 2016); Qanun Aceh No. 17 of 2013 on the Aceh Truth and Reconciliation Commission.

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**Table 4.** Pathways of responsibility for drone attacks by armed groups and their remedial consequences

*Source*: Author's analysis.

| Pathway | Legal basis | Elements to be proved | Key drone evidence | Remedial consequence |
|---|---|---|---|---|
| State responsibility by attribution | ARSIWA arts. 2, 8, 10 | Instructions, direction, or effective control over the specific attack; breach | Mission data, tasking communications, command-and-control records | Cessation and full reparation (ARSIWA arts. 30–31) |
| State's own wrongful conduct | Common Art. 1; *Bosnian Genocide*, para. 430; Res. 2370 | Obligation; knowledge of serious risk; capacity to influence; failure to act | Transfer records, component tracing, warnings received | Cessation and full reparation (ARSIWA arts. 30–31) |
| Armed-group responsibility | Common Art. 3; customary IHL; doctrine | Organized party; conduct of members or organs; breach of IHL | Claims, footage, orders, recurrence of pattern | Reparation by the group (*de lege ferenda*); contributions in transitional justice |
| Individual criminal responsibility | Rome Statute arts. 8(2)(e)(i), 25(3) | Elements of the war crime; mode of liability; intent | Operator identity, flight logs, targeting decisions | Reparation orders against the convicted person (Rome Statute art. 75) |
| Command responsibility | Rome Statute art. 28; CIHL Rule 153 | Effective control; knowledge; failure to prevent, repress, or report | Chain of command, reports, internal communications | Reparation orders (Rome Statute art. 75) |
| Supplementary administrative reparation | UNGA Res. 60/147, Principle 16 | Violation; harm; inability or unwillingness of the liable party | Victim documentation, damage assessment | Compensation irrespective of attribution (cf. *bayt al-māl*) |

*Note*: Reparation is the consequence of each pathway rather than a separate basis of responsibility. Armed-group responsibility and its remedial consequences remain partly *de lege ferenda*.

It is useful to distinguish between a normative gap and an enforcement deficit. A normative gap exists where no rule allocates responsibility for the conduct in question. An enforcement deficit exists where rules exist, but the institutions, evidence, or political will required to apply them are lacking. The analysis above suggests that drone attacks by armed groups generate the second far more often than the first. Only two links, the consequences of armed-group responsibility and the content of armed-group reparation, approach a genuine normative gap. The remaining pathways are legally complete but evidentially demanding. This distinction matters for reform: what is needed is less a new treaty on drones than investment in forensic capacity, domestic codification, and mechanisms that allow the existing pathways to be pursued in parallel.

## The Islamic Law of War and of Rebellion: Convergence and Departure

Most of the groups examined justify their conduct of hostilities in Islamic legal terms, but they do not share one tradition. Ansar Allah draws on the Zaydi tradition, while ISIL/Da'esh and al-Shabaab rely on Salafi-jihadi readings that claim to apply classical doctrine directly and set aside the accumulated positions of the schools. Measuring their

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conduct against the classical law serves two purposes: it identifies where the law they profess converges with IHL, and it shows where their reasoning departs from that law. Table 5 summarizes the correspondence.

*Distinction and restraint in weapons.* The Islamic law of war prohibits the deliberate killing of women and children, a prohibition reported in both canonical collections, and the instructions attributed to Abu Bakr to his commanders extend protection to the elderly, to monks, and to crops and buildings.[57] Most jurists grounded this immunity in non-participation in fighting (*qiṭāl*) rather than in belief, so those who do not fight are not to be attacked; a minority grounded liability to attack in unbelief.[58] The majority view is close to the direct-participation test applied above to drone-workshop technicians. It is the minority view, generalized into the claim that the blood of those deemed enemies is permissible in an absolute way, that Salafi-jihadi treatises adopt.[59] The classical debate on the mangonel (*manjaniq*), traced to the siege of Taʾif, is the closest pre-modern analog to a weapon whose effects cannot be controlled. The Hanafi school was comparatively permissive, but the majority permitted such weapons only under necessity and, for many jurists, not where protected persons were known to be present.[60] The Prophetic prohibition of punishment by fire, which only God may inflict, bears in addition on incendiary payloads.[61]

*Incidental harm: tabyit and tatarrus.* Two classical doctrines address the proportionality problem in IHL. The first rests on the hadith of al-Saʿb ibn Jaththama, in which the Prophet, asked about night raids (*tabyit*) in which women and children were harmed, answered that they were "of them."[62] Jurists read the report together with the prohibition on killing women and children, as tolerating unintended harm to protected persons only where it could not be separated from an attack on a lawful target, not as a license to target them. The second is the doctrine of human shields (*tatarrus*). Classical jurists permitted an attack on an enemy shielding behind protected persons only under necessity, required that the protected persons not themselves be the object of the attack, and in several schools imposed expiation (*kaffārah*) or compensation (*diya*) for those killed.[63] Both doctrines thus impose the restraint that the proportionality rule requires, and the duty of expiation and compensation marks incidental harm as a wrong to be

[57] Muhammad ibn Ismaʿil al-Bukhari, *Sahih al-Bukhari*, ed. Muhammad Zuhayr ibn Nasir al-Nasir (Beirut: Dar Tawq al-Najah, 1422 AH), no. 3015; Muslim ibn al-Hajjaj, *Sahih Muslim*, ed. Muhammad Fuʾad ʿAbd al-Baqi (Beirut: Dar Ihyaʾ al-Turath al-ʿArabi, n.d.), no. 1744; Malik ibn Anas, *al-Muwatta'*, ed. Muhammad Fuʾad ʿAbd al-Baqi (Beirut: Dar Ihyaʾ al-Turath al-ʿArabi, 1985), Kitab al-Jihad.

[58] Al-Dawoody, *Islamic Law of War*; Ibn Qudama, *al-Mughni*, Kitab al-Jihad.

[59] Hassan Hassan, *The Sectarianism of the Islamic State: Ideological Roots and Political Context* (Washington, DC: Carnegie Endowment for International Peace, 2016), discussing Abu ʿAbd Allah al-Muhajir's *Masaʾil min Fiqh al-Jihad*, which al-Zarqawi taught to his followers.

[60] Al-Sarakhsi, *Sharh al-Siyar al-Kabir*; Ibn Qudama, *al-Mughni*, Kitab al-Jihad; Al-Dawoody, "Islamic Law and International Humanitarian Law."

[61] Al-Bukhari, *Sahih*, no. 3016.

[62] Al-Bukhari, *Sahih*, no. 3012; Muslim, *Sahih*, no. 1745.

[63] Al-Sarakhsi, *Sharh al-Siyar al-Kabir*; Ibn Qudama, *al-Mughni*, Kitab al-Jihad; Al-Dawoody, *Islamic Law of War*.

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answered rather than a cost to be accepted. It is precisely these doctrines that jihadist ideologues have stretched. In the reasoning of al-Qaeda in Iraq and its successor ISIL/Da'esh, *tatarrus* was converted from a narrow necessity exception into a general justification for mass civilian harm, and the expiation and compensation that the classical law attached to it were dropped.[64] Measured against their own professed law, the high-frequency drone campaigns described above, whose aggregate civilian harm escapes any single assessment, fall outside the classical exception rather than within it.

*Rebels, brigands, and the armed group.* The law of rebellion recognized rebels (*bughat*) as a distinct legal category only where they possessed organized force (*shawka* or *manʿa*) and a plausible interpretive claim (*taʾwil*).[65] Groups lacking these were treated as brigands (*muharibun*) under Q 5:33, and the Shafiʿi and Maliki conception of *hiraba* expressly included spreading terror on the roads (*ikhafat al-sabil*). The *shawka* requirement parallels the organization criterion: both make legal status depend on organized capacity, and both make that capacity the basis for attributing conduct to the group. The *taʾwil* requirement has no counterpart in IHL, which deliberately disregards the cause for which a party fights, but it raises a question that matters for the groups examined. A group that makes civilians the object of attack, or whose primary purpose is to terrorize them, is on a substantial body of contemporary scholarly opinion better classified as brigands than as rebels, with the full liability that the classical law attached to brigandage.[66]

*Causation, ordering, and superior responsibility.* The Islamic law of liability distinguishes the direct perpetrator (*mubashir*) from the remote cause (*mutasabbib*). Where both concur, liability attaches to the direct perpetrator, unless the remote cause was itself wrongful and decisive.[67] The distinction tracks the line drawn above between support, such as the supply of airframes, components, or training, which does not attribute an attack to the supplier, and instructions, direction, or control over the specific operation, which does. Islamic criminal law also addresses those who order a killing and those who execute it under coercion (*ikrah*): the schools differ on whether the one who orders, the one who executes, or both bear retaliation (*qisas*), a disagreement that parallels the distribution of roles under Article 25(3) of the Rome Statute.[68] Its classification of intentional killing (*ʿamd*), quasi-intentional killing (*shibh ʿamd*), and error (*khataʾ*) shows that unintended harm is not legally neutral: it remains compensable even where it is not punishable. Superior responsibility has a well-known precedent. When Khalid ibn al-Walid killed members of the Banu Jadhima who had signaled their surrender,

[64] Mohammed M. Hafez, *Suicide Bombers in Iraq: The Strategy and Ideology of Martyrdom* (Washington, DC: United States Institute of Peace Press, 2007); Hassan, *Sectarianism of the Islamic State*.

[65] Abou El Fadl, *Rebellion and Violence*; al-Mawardi, *al-Ahkam al-Sultaniyya*, on fighting rebels; Ibn Qudama, *al-Mughni*, Kitab Qital Ahl al-Baghy.

[66] Open Letter to al-Baghdadi (2014); The Amman Message (Amman: Royal Aal al-Bayt Institute for Islamic Thought, 2004); Majelis Ulama Indonesia, Fatwa No. 3 of 2004 on Terrorism.

[67] *Majallat al-Ahkam al-ʿAdliyya*, art. 90.

[68] Ibn Qudama, *al-Mughni*, Kitab al-Jirah; Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century* (Cambridge: Cambridge University Press, 2005).

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the Prophet publicly disavowed the act and paid blood-money for the victims, and the hadith "each of you is a shepherd, and each of you is responsible for his flock" grounds the duty of those in authority.[69] The episode combines disavowal, accountability, and reparation, the elements that Article 28 and the remedial consequences of responsibility keep apart.

*Liability, compensation, and the public treasury.* The classical law also answers two questions that IHL leaves open. On the consequences of armed-group responsibility, the majority position that rebels with *shawka* and *ta'wil* were not liable for losses caused in fighting, while brigands were fully liable, offers a model in which liability follows status and the connection of harm to combat. On reparation where the perpetrator cannot be identified, several schools placed blood-money for a victim whose killer is unknown on the public treasury (*bayt al-māl*), an early form of State-funded reparation independent of individual attribution.[70] The Banu Jadhima precedent likewise shows the authority paying compensation for its agent's wrong, and compensation (*diya*) and reconciliation (*sulh*) remain in use in several Muslim-majority conflict settings. For drone attacks with dispersed roles, these rules support the administrative reparation schemes discussed above and give them a basis recognizable to the communities most affected.

The comparison yields both convergence and divergence. The two orders converge on the protection of non-combatants, restraint in weapons of uncertain aim, and compensation for wrongful harm. They diverge on the liability of rebels for harm caused in fighting, on the relevance of the cause for which a group fights, and on the classification of unintended harm, which Islamic law treats as compensable rather than as lawful incidental harm. The groups examined depart from the classical law at exactly the points where IHL is also most strained: the targeting of persons by affiliation, the use of weapons whose effects cannot be controlled, and the stretching of incidental-harm exceptions.

[69] Al-Bukhari, *Sahih*, no. 4339 (Kitab al-Maghazi) and no. 893; Muslim, *Sahih*, no. 1829.

[70] Ibn Qudama, *al-Mughni*, Kitab al-Qasama; Peters, *Crime and Punishment*.

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**Table 5.** Convergence and departure: IHL rules, their counterparts in Islamic law of war, and the groups' readings
*Source*: Author's analysis.

| IHL rule | Counterpart in siyar and *aḥkām al-bughāt* | Departure in the groups' readings |
|---|---|---|
| Distinction (CIHL Rules 1, 7; AP II art. 13) | Prohibition of killing women, children, the elderly, and monks; instructions of Abu Bakr; majority: immunity rests on non-participation in fighting | Liability to attack grounded in belief or affiliation rather than participation |
| Indiscriminate means (Rules 11–12) | Mangonel (*manjaniq*) debate: majority permits only under necessity and restricts where protected persons are present (Hanafi more permissive); prohibition of punishment by fire | Mangonel precedent cited as a general licence for weapons of uncertain aim |
| Proportionality (Rule 14) | Night raid (*tabyit*): unintended harm tolerated only where inseparable from a lawful target; *tatarrus* confined to necessity, with *kaffārah* or *diya* | *Tatarrus* and *tabyit* turned into general justifications; expiation and compensation dropped |
| Precautions (Rules 15–19) | Precaution (*al-ihtiyāt*); averting harm precedes securing benefit (*Majalla*, art. 30) | Not addressed |
| Terror (AP II art. 13(2); Rule 2) | *Hiraba*, including spreading terror (*ikhafat al-sabil*); MUI Fatwa No. 3/2004 | Terror presented as jihad |
| Organization criterion | Rebels (*bughāt*) require organized force (*shawka*) and an interpretive claim (*taʾwīl*); otherwise, brigands (Q 5:33) | Claim to statehood or caliphate rejected by scholars (Open Letter, 2014) |
| Attribution and complicity (ARSIWA art. 8; Rome Statute art. 25(3)) | Direct perpetrator (*mubashir*) and remote cause (*mutasabbib*), *Majalla*, art. 90; ordering and coercion (*ikrah*) | Not addressed |
| Command responsibility (Rome Statute art. 28; Rule 153) | Khalid ibn al-Walid and the Banu Jadhima; "each of you is a shepherd" | Not addressed |
| Reparation (ARSIWA art. 31; UNGA Res. 60/147) | *Diya*; *bayt al-māl* pays where the killer is unknown; rebels not liable for losses in fighting (majority), brigands fully liable | Not addressed |
| Supply-side controls (SC Res. 2370) | Blocking the means (*sadd al-dharāʾiʿ*); sale of weapons in time of *fitna* | Not addressed |

## Implications for Domestic Criminal Law

The criminal pathways depend heavily on domestic implementation, because the International Criminal Court's jurisdiction is limited and most prosecutions of armed-group members occur, if at all, before national courts. Indonesia illustrates the resulting gap. It is party to the 1949 Geneva Conventions, which it implemented by Law No. 59 of 1958, but not to the Additional Protocols or the Rome Statute. Its new Criminal Code, Law

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No. 1 of 2023, in force since January 2026, codifies genocide and crimes against humanity in Articles 598 and 599, following the model of Law No. 26 of 2000 on Human Rights Courts, but it does not codify war crimes.[71] A drone attack by an armed group that violates the conduct-of-hostilities rules could therefore be prosecuted in Indonesia only through ordinary offenses or, where the statutory elements are met, as terrorism under Law No. 5 of 2018.[72] Neither route captures the specific wrong of an indiscriminate or disproportionate attack, nor does either provide a statutory basis for command responsibility as recognized in Article 28 of the Rome Statute. The Military Criminal Code offers no alternative, because it applies only to members of the armed forces.[73]

The terrorism route also creates a tension with IHL. Conduct of a party to a non-international armed conflict that complies with IHL, such as an attack on a military objective, may still be prosecuted as terrorism, while unlawful attacks are captured only as terrorism and not as war crimes. The Government's designation of armed groups in Papua as terrorist organizations in April 2021 illustrates the choice of a terrorism framework over an IHL framework.[74] Islamic law points to a sharper classification. MUI Fatwa No. 3 of 2004 distinguishes terrorism from jihad and declares terror attacks prohibited, and the classical conception of *ḥiraba*, which includes spreading terror, captures attacks whose purpose is to terrorize rather than to fight.[75] Read together with the IHL prohibition of acts whose primary purpose is to spread terror among civilians, these sources would allow Indonesian courts, and the public that follows their work, to treat terror attacks by groups invoking Islam as violations of both orders rather than as a contest between religious and secular law.

The point is not peculiar to Indonesia. Wherever war crimes in non-international armed conflict are not codified domestically, the criminal pathways identified in this article exist in international law but lack a national forum. Codifying war crimes in non-international armed conflict, including attacks directed against civilians, indiscriminate attacks, acts whose primary purpose is to spread terror, and a form of superior responsibility, would allow domestic courts to close a gap that the diffusion of drone technology has made more pressing. For the several Muslim-majority States that are not party to the Additional Protocols, Article 3 of the Cairo Declaration on Human Rights in Islam, which commits members of the Organisation of Islamic Cooperation to protect non-combatants in armed conflict and which the OIC revised in 2020 as the OIC

[71] Law of the Republic of Indonesia No. 59 of 1958 on the Participation of the Republic of Indonesia in All the Geneva Conventions of 12 August 1949; Law of the Republic of Indonesia No. 1 of 2023 on the Criminal Code, arts. 598–599; Law of the Republic of Indonesia No. 26 of 2000 on Human Rights Courts, art. 7.

[72] Law of the Republic of Indonesia No. 5 of 2018 on the Amendment to Law No. 15 of 2003 on the Stipulation of Government Regulation in Lieu of Law No. 1 of 2002 on the Eradication of Criminal Acts of Terrorism into Law.

[73] Kitab Undang-Undang Hukum Pidana Militer (Military Criminal Code), Staatsblad 1934 No. 167, as amended by Law No. 39 of 1947.

[74] "Indonesia Declares Papuan Rebels Terrorists," *The Jakarta Post*, April 29, 2021.

[75] Majelis Ulama Indonesia, Fatwa No. 3 of 2004 on Terrorism; Abou El Fadl, *Rebellion and Violence*.

Declaration on Human Rights, offers an additional normative basis for such codification.[76]

**A Multi-Level Evidentiary Model**

The pathways above can operate only if evidence is organized around their distinct elements. The model proposed here separates each pathway and then links categories of drone evidence to its specific requirements. Wreckage, components, serial numbers, and supply records speak primarily to the State's own conduct and to diversion. Flight logs, telemetry, and mission data speak to control over the specific operation under Article 8 and to the individual operator's conduct. Command communications, orders, and internal reports speak to effective control and knowledge under Article 28. Claims of responsibility, propaganda, and recurring operational patterns speak to attribution to the group and, where strikes are filmed and disseminated, to the purpose of spreading terror. Victim documentation and damage assessments speak to the remedial consequences of each pathway. The model is not a new rule of attribution. It is an analytical tool that prevents indicia of support from being mistaken for evidence of control, and evidence sufficient for one pathway from being treated as decisive for another.

These findings refine the existing literature. They confirm that the limits of attribution identified by Lanovoy are real, but show that those limits do not amount to impunity. They complement the work of Zegveld and of Heffes and Frenkel by giving armed-group responsibility technology-specific evidentiary content, and they extend Herman's analysis of armed-group reparations to attacks in which the responsible actor is hardest to identify. They also bring the literature on Islamic law and IHL, represented by Al-Dawoody, Shah, and Abou El Fadl, to bear on drone warfare and on the doctrines of attribution and responsibility. The findings carry practical implications. Risk-based monitoring of transfers of modifiable drones and sensitive components, consistent with Resolution 2370 and the Abu Dhabi Guiding Principles, addresses the supply-side pathway, and the doctrine of *sadd al-dharāʾiʿ* gives such controls a basis recognizable to OIC States; forensic protocols that preserve the chain of custody serve the attribution and criminal pathways; and structured humanitarian engagement can embed target verification, proportionality assessment, and authorization procedures in armed groups' internal rules, as the ICRC has urged in its call for a culture of compliance.[77] With groups that invoke Islam, such engagement is most effective when it is framed in their own normative language and shows that distinction, restraint in weapons of uncertain aim, the limits of *tatarrus*, and the duty of compensation are rooted in the law they profess. The ICRC's dialogue with Islamic scholars, Geneva Call's Deeds of Commitment, armed groups' own codes of conduct such as the Taliban's *Layha*, and the 2014 Open Letter to al-Baghdadi, signed by more than 120 scholars, provide models.[78]

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[76] Cairo Declaration on Human Rights in Islam, August 5, 1990, art. 3; OIC Declaration on Human Rights (2020).

[77] International Committee of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Building a Culture of Compliance for IHL to Protect Humanity in Today's and Future Conflicts* (Geneva: ICRC, 2024).

[78] Muhammad Munir, "The *Layha* for the Mujahideen: An Analysis of the Code of Conduct for the Taliban Fighters under Islamic Law," *International Review of the Red Cross* 93, no. 881 (2011): 81–102; Geneva

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## Conclusion

International humanitarian law and Islamic law of war do not categorically prohibit modified commercial drones. Their lawful use depends on whether the operating group can verify targets, assess incidental harm, authorize attacks, and maintain control. When detection and attack occur in one cycle and in-flight control is limited, lawful use is substantially narrower.

Attribution may attach to an armed group based on its organization and converging evidence, and to a supporting State only if it instructed, directed, or effectively controlled the specific operation—or, retrospectively, if the movement becomes the new government. But failure to attribute an attack to a State does not create an accountability vacuum: State wrongdoing, armed-group responsibility, and individual and command criminal liability remain independent bases for accountability and reparation. State-funded schemes can supplement these where no responsible party is identifiable.

Armed-group responsibility and remedies remain underdeveloped, while the Rome Statute's omission of disproportionate attacks and terror in non-international armed conflict limits criminal accountability. If domestic law, as in Indonesia's new Criminal Code, does not codify war crimes, national courts also lack a criminal pathway. Islamic law and IHL converge on protecting non-combatants, restricting weapons of uncertain aim, and compensating wrongful harm; armed groups' expansive interpretations of tatarrus and tabyit depart from the classical law they invoke. The systems differ on rebels' liability for harm in fighting and the classification of unintended harm, affecting how reparation and armed-group responsibility should be designed.

Five measures follow. States should codify war crimes committed in non-international armed conflict, including acts whose primary purpose is to spread terror, together with superior responsibility, in their domestic criminal law. They should adopt risk-based controls on the diversion of modifiable drones and components while preserving legitimate civilian access, controls that the doctrine of *sadd al-dharaʾiʿ* also supports. Investigative bodies should apply unified forensic protocols that match each category of drone evidence to the elements of a specific pathway. Peace agreements and transitional justice mechanisms should, where appropriate, include provisions on armed-group contributions to reparation and on State-funded reparation where perpetrators cannot be identified, without prejudice to State obligations. Humanitarian engagement with groups that invoke Islam should be framed in the law they profess. The study is limited by its reliance on open-source documentation; future research should test the evidentiary model against forensic case files, against emerging practice on armed-group reparations, and against the internal rules of armed groups.

### CRediT Authorship Contribution Statement

**Huda Tariq Hussein**: Conceptualization, Methodology, Investigation, Writing – original draft, Writing – review & editing. **Bashir Sabhan Ahmadz:** Writing – original draft, Writing – review & editing.

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Call, *Deeds of Commitment* (Geneva: Geneva Call, n.d.); Al-Dawoody, "Islamic Law and International Humanitarian Law"; Open Letter to al-Baghdadi (2014).

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The author declares no competing financial interests or personal relationships that could have influenced the work reported in this paper.

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The author(s) used **Claude** to tabulate survey responses and prepare the charts in Figures 1 & 2 from the authors' data; the authors then reviewed and edited the output and took full responsibility for the content. The author(s) verified every entry against the original sources and took full responsibility for the content.

### Data Availability

Not applicable. This doctrinal study relies on published primary and secondary sources cited in the article; it generated and analyzed no new dataset.

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