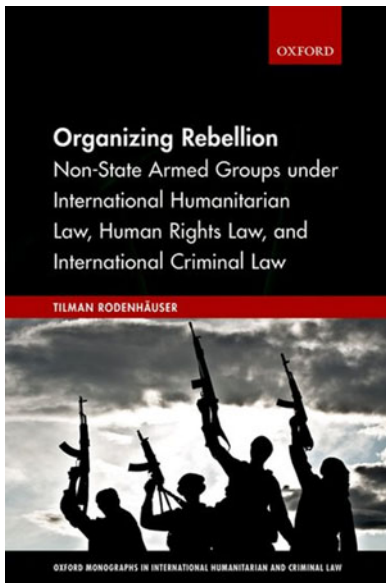


## BOOK REVIEW



# Organizing Rebellion: Non-State Armed Groups under International Humanitarian Law, Human Rights Law, and International Criminal Law

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*Organizing Rebellion: Non-State Armed Groups under International Humanitarian Law, Human Rights Law, and International Criminal Law* makes a key contribution to the scholarship addressing modern situations of conflict and acute crisis. It traces the evolution of international humanitarian law (IHL), international human rights law (IHRL) and international criminal law as relevant to the organization of non-State armed groups, and presents clear and accessible conclusions as to the current state of the law in these areas. The focus on these three interrelated areas of public international law is a key strength of the book. An analysis of contemporary armed conflicts and other situations of violence is unlikely to occur in legal silos, and practitioners will therefore be required to adopt a multidimensional, cross-cutting approach in order to identify armed groups, determine the applicable laws and unpack the legal obligations regulating armed

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groups' behaviour. Dr Rodenhauer's book should be a vital resource for all those working on these issues – the quality of research, the diversity of sources and the author's clarity of thought make it an essential starting point for any legal analysis relating to non-State armed groups.

Modern situations of conflict and acute crisis are increasingly characterized by the emergence and active participation of new and diverse non-State actors. This has led to difficulty in determining the organizational structure of these actors, a factor that is decisive to the legal regulation of the situation as a whole. Relevant questions in this regard include determining who constitutes the membership of a particular non-State actor, how different elements within an armed group interact (or whether they are, in fact, distinct groups sharing a common cause), and which group is responsible for particular acts or outcomes. This was not always the case: traditionally, the participants in an armed conflict were relatively uniform and easy to recognize. State armed forces were the most common parties to an armed conflict, while other relevant actors – such as insurgents and belligerent groups – were largely modelled on State military structures.<sup>1</sup>

This reality began to change in the aftermath of the Second World War, however, and today the actors involved in situations of conflict and crisis – and the ways in which they act – are markedly diverse. This is illustrated through the actions and organizational modes of a number of armed groups active in recent years. In Sri Lanka, the Liberation Tigers of Tamil Eelam exercised stable control over considerable territory in which they established almost State-like governmental structures and institutions. In Afghanistan, the Taliban have established a shadow parallel State, directly competing with government institutions. In the Central African Republic, loosely organized Seleka and Anti-Balaka groups have engaged in widespread violence against the local population. In Mexico, drug cartels have disrupted State authority and now exert direct influence over a significant percentage of the local population. The Islamic State group, primarily headquartered in Iraq and Syria, has affiliated entities in Nigeria, Libya, Afghanistan, the Philippines and Egypt, and has also been involved in, or associated with, attacks in Europe and the United States. In Syria, the Free Syrian Army is a collection of groups united against the Assad regime, while in cyberspace, different collectives such as Anonymous come together to carry out particular attacks, or to conduct longer-term campaigns against organizations such as the Islamic State.

Ultimately, this diversity with respect to both the actors involved in armed conflicts and other situations of violence, and their *modus operandi*, gives rise to significant difficulty in determining what entities qualify as armed groups regulated by international law,<sup>2</sup> which bodies of international law apply to non-State armed groups in different contexts, and what international law expects of

1 Examples in this regard include the Confederate forces during the American Civil War, the Boers fighting British forces in South Africa, and the nationalist forces under General Franco in the Spanish Civil War.

2 This is typically examined by reference to whether an armed group can be considered "organized" as defined in the body of international law under consideration.

those groups. In response, a body of academic literature has emerged to tackle different aspects of this problem. Topics addressed have included the concept of non-international armed conflict,<sup>3</sup> the geographic scope of armed conflict,<sup>4</sup> the law applicable in non-international armed conflict,<sup>5</sup> if and how armed groups can be bound by IHL,<sup>6</sup> the law relevant to cyber operations,<sup>7</sup> and conflict classification.<sup>8</sup>

While these and other works have made valuable contributions and are important in their own right, to date, no single work has looked specifically at the degree of organization required for armed groups to be subject to legal obligations under each of these bodies of international law. This is a particularly important task, as it is precisely this question that must be answered in practice. Practitioners must routinely examine modern conflicts and crises, as they are, in order to identify legally relevant armed groups,<sup>9</sup> and to determine the extent of any international legal obligations imposed on these actors. Dr Rodenhauer's book makes a valuable contribution in this regard. He brings together the above-mentioned academic debates and complements them with extensive research, particularly with respect to the case law of international tribunals and the findings of United Nations (UN) investigative bodies.

The book is divided into three key parts, examining the organization criterion associated with armed groups from the perspective of IHL, human rights law and international criminal law. The key strength of this work is its accessibility and structured approach. Each part is modelled along broadly similar lines, beginning with the particular field of law's conceptual and historical origins, then tracing the evolution of legal principles through case law and practice, before presenting a conclusion as to the current state of the law. This approach ensures that the reader comes away with a rounded understanding of the law as it (currently) is, thereby facilitating the application of the law to contemporary or emerging situations. When combined with the extensive research presented in each part, this makes the book incredibly useful as a starting point for those seeking to apply the law to new and emerging situations.

In Part I, the focus is on the degree of organization required of non-State armed groups in order to bring into play the applicability of IHL. A key proposal,

3 Anthony Cullen, *The Concept of Non-International Armed Conflict in International Humanitarian Law*, Cambridge University Press, Cambridge and New York, 2010; Lindsay Moir, *The Law of Internal Armed Conflict*, Cambridge University Press, New York, 2002.

4 Noam Lubell and Nathan Derejko, "A Global Battlefield? Drones and the Geographical Scope of Armed Conflict", *Journal of International Criminal Justice*, Vol. 11, No. 1, 2013.

5 Sandesh Sivakumaran, *The Law of Non-International Armed Conflict*, Oxford University Press, Oxford, 2012.

6 Daragh Murray, *Human Rights Obligations of Non-State Armed Groups*, Hart, 2016; Katharine Fortin, *The Accountability of Armed Groups Under Human Rights Law*, Oxford University Press, Oxford, 2017.

7 Michael N. Schmitt (ed.), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, Cambridge University Press, Cambridge, 2017.

8 Elizabeth Wilmshurst (ed.), *International Law and the Classification of Conflicts*, Oxford University Press, Oxford, 2012.

9 It may also be important to identify other actors: for instance, looser organizations not typically characterized as armed groups may be relevant in the context of crimes against humanity.

and one with considerable merit, is that the organization criterion (a prerequisite for an armed group to be considered a party to an armed conflict) can not only be understood in terms of a typical military hierarchy (similar to that of State armed forces), but can also be established on the basis of two cumulative criteria: “operational coordination”, which refers to the ability to coordinate military activities and to distribute logistics, and “strategic authority”, which refers to the leadership’s ability to determine the overall military objectives and to promulgate internal rules that are followed by all sub-groups.<sup>10</sup>

This approach appears appropriate in light of the realities of modern conflict, as it can take into account situations where command and control are decentralized, and individual units (etc.) are responsible for internal discipline. In guerrilla warfare, for instance, factors such as geographic dispersal and State counter-insurgency efforts inevitably make continuous communications difficult. This was the situation with respect to the FARC in Colombia, where a centralized command structure (responsible for operational coordination and setting the strategic agenda) exercised authority over decentralized regional Fronts, with each Front being responsible for setting regional objectives and ensuring internal discipline. It also seems an appropriate lens through which to examine complex structures such as the Free Syrian Army, or the relationship between different components of a transnational armed group, such as Al Qaeda.<sup>11</sup> Importantly, while flexible and cognizant of modern realities, this approach does not open the door to becoming a party to an armed conflict too wide by inappropriately applying IHL obligations to actors that are incapable of meeting them. Satisfaction of the organization criterion still requires that fundamental humanitarian principles be fulfilled at all levels of the organization, and that the leadership exercise some form of authority over all the components of the organization.<sup>12</sup>

Part I concludes with a specific focus on transnational armed groups and cyber operations, directly addressing two key challenges vis-à-vis the application of the organization criterion in contemporary IHL. Issues arise as a result of the distributed nature of these entities, and their often loose – or at least uncertain – organizational structure. For instance, armed groups such as Al Qaeda may operate on the basis of distributed franchises. In this context, the actual organizational relationship – beyond a broadly shared ideology – between, for example, Al Qaeda in Afghanistan and Al Qaeda in the Islamic Maghreb is unclear. Equally, cyber operations often occur when individuals come together to perform a particular activity, and as such, while these operations may be incredibly effective, they raise questions as to whether those involved can be considered an “organization” in any legal sense.

10 *Organizing Rebellion*, p. 84.

11 This would facilitate, for example, an analysis of whether Free Syrian Army units in Daraa and Homs – or Al Qaeda branches in Afghanistan, Iraq or the Islamic Maghreb – could be considered to form part of the same organization and thus be considered to be one party to an armed conflict.

12 This requires, for example, that in the event of a conflict, rules promulgated by the central organization will take precedence.

Part II considers the degree of organization required to give rise to obligations under IHRL. It sets out the motivation underpinning the application of human rights law to non-State armed groups, drawing on relevant legal, philosophical and practical considerations. The overview of how human rights law can apply to armed groups is useful as an accessible reference point, and provides a clear elaboration as to why armed groups should be subject to human rights obligations. A notable added value is the detailed discussion regarding the findings of different UN investigative bodies. This analysis traces the evolution of different organizations and groups across recent situations of conflict and crisis, providing a wealth of practical, accessible examples. This provides depth to the legal reasoning and constitutes a valuable resource for future researchers.

Unlike Part I, however, the second part of *Organizing Rebellion* does not apply the legal analysis established therein to contemporary problems in great detail. Whereas Part I considers transnational gangs and cyber operations, Part II does not address specific case studies. There could have been significant added value, for example, in applying the proposals presented in Part II to cases such as that of the drug cartels in Latin America. Equally, given the focus of the book, it would have been interesting to have a more specific examination of the organizational structure of different armed groups, and how this affects their ability to be subject to – or to implement – human rights obligations in practice. For instance, while a three-part approach to the application of human rights obligations is presented, further refinement vis-à-vis the thresholds at which these obligations come into play would be useful.

Part III, entitled “The Required Degree of Organization of Non-State Entities to Commit International Crimes or to Create Contexts in which Individuals Commit Them”, looks at international criminal law, with a focus on crimes against humanity and genocide. It convincingly makes the case that the organization criterion should be determined in light of the ability to commit international crimes, as “derived from the crime’s definition and an assessment of what is functionally needed to create the required context”.<sup>13</sup> This criterion would then take precedence over set but broadly applicable organizational aspects such as a particular command structure or the exercise of governmental authority. This seems a sensible approach given the specific nature of international criminal prohibitions, as distinct from the obligations arising in relation to IHL and IHRL. An example is the distinct difference in organizational structures necessary to commit the crime against humanity of murder, on the one hand, or the crime against humanity of persecution or apartheid, on the other. While the crime against humanity of murder can be committed on the basis of a relatively loose organizational structure, persecution or apartheid are premised upon the widespread or systematic denial of fundamental human rights, and will typically require government-like control over a population.

Altogether, this book is written in a clear and accessible manner, making it easy to engage with and to understand the quite complex legal concepts under

13 *Organizing Rebellion*, p. 303.

discussion. This accessibility is reinforced by the author's decision to break down concepts into easily approachable categories. For example, in the discussion on international criminal law, the different circumstances under which crimes against humanity or genocide may be perpetrated are broken down, making it easier to unpack those factors relevant to the organization requirement and thus to identify the types of organizations capable of committing these international crimes.<sup>14</sup> Ultimately, *Organizing Rebellion* is recommended to all those working on complex modern conflicts, whether as practitioners, academics or students.

14 See, for instance, Sections 9.2 and 10.3.