

by the Prosecutor. These questions are discussed in the outstanding chapter by Chaitidou, Eckelmans and Roche on the Pre-Trial Division.<sup>29</sup> These are detailed procedural and institutional questions that may seem overly technical, but if the crime of aggression is to become operative, they are ultimately as essential as the deep philosophical queries and the political considerations.

It is the great merit of this book to bring all those different issues together, and to do so in such an impressive fashion. The two magnificent volumes, rich in perspective and thorough in analysis, are therefore without any doubt among the most authoritative works on the crime of aggression.

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Heike Krieger (ed.), *Inducing Compliance with International Humanitarian Law. Lessons from the African Great Lakes Region*, Cambridge, Cambridge University Press, 2015, 557 pp., ISBN 978-1-107-10205-7  
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Although contemporary international humanitarian law (IHL) has existed for more than 60 years, only recently have international lawyers and scholars focused their attention on how to enhance IHL compliance.<sup>1</sup> In today's armed conflicts, the effectiveness of this legal regime faces challenges from different quarters. This can be linked to several circumstances – for example, the unwillingness of the parties to acknowledge that a situation of violence amounts to an armed conflict, the absence of an incentive for the parties to abide by IHL, or their lack of appropriate structure or resources to acknowledge, understand and implement their international obligations.<sup>2</sup> The particular features of these scenarios reveal the importance of implementing strategies specifically aimed at achieving IHL compliance. While the importance of the subject is certainly undisputed, how to actually achieve protective outcomes has led to a variety of proposals.

In *Inducing Compliance with International Humanitarian Law*, Heike Krieger offers an opportunity to explore some of these issues through the lens of some of the most

<sup>29</sup> E. Chaitidou, F. Eckelmans and B. Roche, 'The Judicial Function of the Pre-Trial Division' (Ch. 22).

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<sup>1</sup> See, for instance, the project carried out by the ICRC and Switzerland on how to enhance compliance in armed conflicts, available at [www.icrc.org/en/document/strengthening-compliance-international-humanitarian-law-ihl-work-icrc-and-swiss-government](http://www.icrc.org/en/document/strengthening-compliance-international-humanitarian-law-ihl-work-icrc-and-swiss-government) (accessed 16 March 2018). For other studies on the topic, see the *Generating Respect for the Law* issue of the International Review of the Red Cross published in December 2015, (2014) 95/96 *International Review of the Red Cross* 684; and ICRC, 'Improving Respect for International Humanitarian Law in Non-International Armed Conflicts', 2008, available at [www.icrc.org/sites/default/files/topic/file\\_plus\\_list/0923-increasing\\_respect\\_for\\_international\\_humanitarian\\_law\\_in\\_non-international\\_armed\\_conflicts.pdf](http://www.icrc.org/sites/default/files/topic/file_plus_list/0923-increasing_respect_for_international_humanitarian_law_in_non-international_armed_conflicts.pdf) (accessed 16 March 2018).

<sup>2</sup> E. Heffes and M. Kotlik, 'Special agreements as a means of enhancing compliance with IHL in non-international armed conflicts: An inquiry into the governing legal regime', (2014) 96 *International Review of the Red Cross* 1201. See also ICRC, *Improving Respect for International Humanitarian Law in Non-International Armed Conflicts*, *supra* note 1, at 11–12.

highly qualified contributors in a collection of 21 topical essays. Running in parallel with an exponential increase of academic literature on the subject,<sup>3</sup> the editor took upon herself the task of putting together an interdisciplinary analysis of different compliance mechanisms which have been ‘in the foreground of international efforts in recent years’.<sup>4</sup> The book focuses on war-torn areas of limited statehood in the African Great Lakes Region. There, ‘[f]ragmented armed groups fight each other or armed forces of a government, which represents only the remainders of collapsed State structures’.<sup>5</sup> Considering that governmental authorities would not be able to enforce the law, it remains unclear who may replace the state and how this replacement would take place. Unraveling these issues is not merely an intellectual exercise, and the examples provided in the book validate their importance, in particular for individuals living in those territories. Based both on its geographical scope and on the inclusion of legal and political sciences pieces, *Inducing Compliance with International Humanitarian Law* fills an important gap in the literature.

The book organizes the various topics that it covers in an introduction and four parts, all of which are subject to vigorous academic debate. Published in 2015, the volume was conceived as an edited collective because improving respect for IHL requires an exchange of ideas, reflections and experiences between international lawyers, political and social scientists and practitioners. Together, the chapters give a good overview of the efficiency and legitimacy of IHL *vis-à-vis* the parties to armed conflicts, be they non-state armed groups (NSAGs) or states.

In the introduction, Krieger identifies some of the main difficulties of addressing compliance with IHL in the African Great Lakes Region. In particular: i) the possible asymmetry between states and NSAGs in terms of national criminal prosecution, which ‘directly affects the classically most important motive for compliance in international law – reciprocity – and seems to diminish the prospect of compliance based on the norm’s legitimacy’;<sup>6</sup> ii) the unlawful nature of NSAGs’ action, which may affect their lack of willingness to voluntarily comply with the law; and iii) the fragmentation of NSAGs and states, whose collapsing structures make any internalization, enforcement and dissemination of humanitarian norms highly unlikely.

Part I addresses certain conditions for IHL compliance, focusing specifically on non-hierarchical instruments. Understanding the reasons why this legal regime is violated is a necessary step to persuade those responsible to respect the law.

<sup>3</sup> See, for instance, H. Jo, *Compliant Rebels. Rebel Groups and International Law in World Politics* (2015); M. Sassòli, ‘Taking Armed Groups Seriously: Ways to Improve their Compliance with International Humanitarian Law’, (2010) 1 *Journal of International Humanitarian Legal Studies* 5; O. Bangerter, ‘Reasons why Armed Groups Choose to Respect International Humanitarian Law or Not’, (2011) 93 *International Review of the Red Cross* 353. The ICRC is also currently undertaking certain initiatives with the goal of reaffirming the relevance of IHL in armed conflicts. In this sense, J. Garcia Ravel and V. Bernard, ‘Changing the narrative on international humanitarian law’, 4 November 2017, *ICRC Humanitarian Law & Policy Blog*, available at [blogs.icrc.org/law-and-policy/2017/11/24/changing-the-narrative-on-international-humanitarian-law/](https://blogs.icrc.org/law-and-policy/2017/11/24/changing-the-narrative-on-international-humanitarian-law/) (accessed 16 March 2018).

<sup>4</sup> H. Krieger, ‘Introduction’, in H. Krieger (ed.), *Inducing Compliance with International Humanitarian Law. Lessons from the African Great Lakes Region* (2015), 1 at 4.

<sup>5</sup> *Ibid.*, at 1.

<sup>6</sup> *Ibid.*, at 2. Asymmetry between NSAGs and states can take a variety of forms, such as balance of power, level of commitment, scale of organization and degree of legitimacy. J. Hazen, *What Rebel Want. Resources and Supply Networks in Wartime* (2013), 29–33.

Traditionally, international legal compliance theories have addressed why states follow international rules, claiming that contrary to the popular belief, they do observe international law and breaches are actually rare.<sup>7</sup> As the book under review shows, in armed conflicts involving failed or failing states and fragmented or decentralized NSAGs,<sup>8</sup> the reality can be different. Incentives to comply with international law can indeed be weak.<sup>9</sup> Wood, precisely, explores the motives for insurgent violence against the civilian population. According to him, this is a rational action, as ‘it helps insurgents stave off collapse and denies victory to the government’.<sup>10</sup> In order to induce NSAGs to respect the law, Part I includes a variety of proposals, such as the inclusion of rebel governance into IHL-promotion efforts with the goal of maintaining services and stability for the population living in those territories. Furthermore, it is proposed to directly engage these non-state entities on humanitarian norms, as certain international non-governmental organizations (for instance the ICRC and Geneva Call) have done; and to persuade their leaders, who will then replicate this internally. Finally, it is suggested to recognize that NSAGs have ‘some sort of role in the creation, translation and enforcement of humanitarian norms in order to foster a sense of ownership and therefore improve levels of compliance’.<sup>11</sup> Although some important challenges by non-state armed groups are addressed throughout the five chapters, it remains unclear why strategies on how to improve compliance by failed or failing states are not similarly explored. As the book has geographical and thematic scopes (the African Great Lakes Region and IHL), the analysis of governmental structures should have also been included.

Part II deals with judicial procedures and hierarchical enforcement on different levels, focusing in particular on different aspects of prosecutions. Unlike Part I, it is noteworthy that two chapters specifically refer to a state’s response to IHL

<sup>7</sup> M. Shaw, *International Law* (2008), 6. Various explanations have been used to justify this assertion. One of these argues that because states participate in the international-law making processes, they have little incentive to break the rules they create. Another reason focuses on the role of legitimacy. When a norm is perceived as useful and legitimate, states would want to adhere to it, as it would be the right thing to do. Finally, Klabbers has suggested, contrary to the conventional thinking, that international law is not completely devoid of sanctions. Despite not having an international police force or international prison, the social sanction of becoming a ‘pariah’ state could be quite strong. J. Klabbers, *International Law* (2013), 10–11. See also J.D. Ohlin, *The Assault on International Law* (2015), 23.

<sup>8</sup> The ICRC has defined decentralized groups as those ‘with semi-autonomous or splinter factions, operating under an ill-defined leadership structure’. ICRC, *Improving Respect for International Humanitarian Law in Non-International Armed Conflicts*, *supra* note 1, at 11.

<sup>9</sup> Thürer has explained that respect for IHL depends on the existence of both ‘a military chain of command and a compulsion to comply with international law obligations as required by orders and discipline. This does not apply in the case of an anarchic conflict involving loosely organized clans and other “units”, which may be parts of a “private army” or perhaps just bands of plundering, pillaging killers, none of them bound by any professional code of discipline or honour. Where group structures have completely broken down and the fighting atomized, every combatant is his own commander and the traditional mechanisms for the implementation of international humanitarian law are wholly ineffective’. See D. Thürer, ‘The “failed State” and international law’, 31 December 1999, 836 *International Review of the Red Cross*, available at [www.icrc.org/eng/resources/documents/article/other/57jq6u.htm](http://www.icrc.org/eng/resources/documents/article/other/57jq6u.htm) (accessed 18 March 2018). See also Jo, *supra* note 3, at 60, focusing exclusively on NSAGs.

<sup>10</sup> R. Wood, ‘Understanding strategic motives for violence against civilians during civil conflict’, in Krieger, *supra* note 4, at 15.

<sup>11</sup> S. Sivakumaran, ‘Implementing humanitarian norms through non-State armed groups’, in Krieger, *supra* note 4, at 146.

violations, focusing on the Congolese legal system.<sup>12</sup> Kumbu and Kahombo provide in this sense some insights into the difficulties the Democratic Republic of Congo faces when attempting to effectively prosecute war crimes. Interestingly, Willms' chapter explores NSAGs' courts as an alternative for law enforcement, taking into account a basic dilemma:

[o]n the one hand, States are usually unwilling to accept the operation of an armed groups' court on their territory because the administration of justice is considered to be a very important aspect of their sovereignty. On the other hand, the international community has a strong interest in the enforcement of international humanitarian law, in which such courts may play a role.<sup>13</sup>

He then concludes that '[i]f the leadership of an armed group is genuinely willing to enforce humanitarian law, courts of that armed group have a relatively high potential to be successful in inducing compliance'.<sup>14</sup> This topic is later addressed by Fleck, who recognizes that even if these organs were unconstitutional and illegal under national frameworks, they may well be legitimate and lawful under IHL.<sup>15</sup> However, Fleck concludes that the practice, still rudimentary, has not provided a clear picture on this issue. The possibility of armed groups creating judicial bodies and passing sentences has real life practical utility. For instance, the *Bemba Gombo* Pre-Trial Chamber addressed the lack 'of a functional military judicial within the [Mouvement de Libération du Congo] through which [Bemba Gombo] could have punished crimes committed and prevented their future repetition during the period of intervention'.<sup>16</sup> More recently, a former member of a Syrian NSAG was sentenced to life imprisonment by a Swedish court for violating IHL through his participation in the killing of seven individuals. The defence argued that this was, in fact, the enforcement of a death sentence by a NSAG's court following a trial.<sup>17</sup>

Part III includes six chapters on the role of international organizations for ensuring compliance. Steiger begins by arguing that enforcement of IHL by human rights bodies 'is a development that cannot be turned back but will continue and intensify in the future. It serves justice and the protection of human beings and thus serves human rights'.<sup>18</sup> He, indeed, suggests that these institutions fill a gap

<sup>12</sup> It does not remain sufficiently clear, however, why other states also located in the African Great Lakes Region are not also analyzed.

<sup>13</sup> J. Willms, 'Courts of armed groups – a tool for inducing higher compliance with international humanitarian law', in Krieger, *supra* note 4, at 150.

<sup>14</sup> *Ibid.*, at 179.

<sup>15</sup> D. Fleck, 'Comment – perspectives on courts established by armed opposition groups', in Krieger, *supra* note 4, at 182.

<sup>16</sup> *Prosecutor v. Bemba Gombo*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, ICC-01/05-01/08-424, Pre-Trial Chamber II, 15 June 2009, para. 501.

<sup>17</sup> 'Swedish court hands life sentence to Syrian for war crimes', *The Local*, 16 February 2017, available at [www.thelocal.se/20170216/swedish-court-hands-life-sentence-to-syrian-for-war-crimes](http://www.thelocal.se/20170216/swedish-court-hands-life-sentence-to-syrian-for-war-crimes) (accessed 18 March 2018). See also J. Somer, 'Opening the Floodgates, Controlling the Flow: Swedish Court Rules on the Legal Capacity of Armed Groups to Establish Courts', *EJIL: Talk!*, 10 March 2017, available at [www.ejiltalk.org/opening-the-floodgates-controlling-the-flow-swedish-court-rules-on-the-legal-capacity-of-armed-groups-to-establish-courts/](http://www.ejiltalk.org/opening-the-floodgates-controlling-the-flow-swedish-court-rules-on-the-legal-capacity-of-armed-groups-to-establish-courts/) (accessed 18 March 2018).

<sup>18</sup> D. Steiger, 'Enforcing international humanitarian law through human rights bodies', in Krieger, *supra* note 4, at 297–8.

left by the absence of an individual complaints procedure for IHL violations, and this is done not by choice, but by a mandatory obligation. Klostermann follows this ‘institutional approach’ and deals with the UN Security Council (UNSC) involvement in securing respect with those international norms dealing with children and armed conflict. In 1999, the UNSC passed Resolution 1261, calling the parties to the conflicts to respect their legal obligations on this topic. In addition, it also required the UN Secretary General to submit a report on the implementation of the resolution.<sup>19</sup> In 2001, the UNSC requested that the report includes as an annex a list of parties that recruit and use child soldiers,<sup>20</sup> with the aim of ‘naming and shaming’ the perpetrators.<sup>21</sup> In 2005, after the UN Secretary General suggested the establishment of a mechanism for the monitoring of six grave violations of children’s rights, the UNSC issued Resolution 1612, which created the Working Group of Children and Armed Conflict.<sup>22</sup> As Clapham explains:

[t]he mechanism *vis-à-vis* the non-state actor works not only through naming and shaming but by encouraging the non-state actor to submit an “action plan” to the Security Council, in this way the group can be removed from the list of violators.<sup>23</sup>

Klostermann presents an interesting perspective about the effectiveness of the system installed by the UNSC by discussing the reasons to comply with these rules. According to her, the party in question follows a rule: i) because the actor fears the punishment of rule enforcers (*coercion*); ii) because the actor sees the rule as in its own self-interest (*self-interest*); and iii) because the actor feels the rule is legitimate and ought to be obeyed (*legitimacy*).<sup>24</sup> Interestingly, there have been some successful cases in which armed groups have signed action plans, some of which are still under implementation and others being accomplished and successfully de-listed.<sup>25</sup> On the basis of an interdisciplinary approach, Klostermann concludes that the UNSC’s special compliance system for children in armed conflict is a promising step towards inducing compliance. Part III also includes different chapters addressing alternative views on the role of peacekeepers.

<sup>19</sup> UN Doc. S/Res/1261 (1999) ‘Children and Armed Conflict’ (30 August 1999).

<sup>20</sup> UN Doc. S/Res/1379 (2001) ‘Children and Armed Conflict’ (20 November 2001).

<sup>21</sup> S. Sivakumaran, *The Law of Non-International Armed Conflicts* (2012), 533–4.

<sup>22</sup> The six grave violations are killing and maiming of children; recruitment or use of children as soldiers; sexual violence against children; abduction of children; attacks against schools or hospitals; and denial of humanitarian access for children. Office of the Special Representative of the Secretary General for Children and Armed Conflict, ‘The Six Grave Violations’, available at [childrenandarmedconflict.un.org/effects-of-conflict/six-grave-violations/](http://childrenandarmedconflict.un.org/effects-of-conflict/six-grave-violations/) (accessed 16 March 2018).

<sup>23</sup> A. Clapham, ‘The Accountability of Armed Groups’, in A. Clapham and P. Gaeta (eds.), *The Oxford Handbook of International Law in Armed Conflict* (2014), 801.

<sup>24</sup> R. Klostermann, ‘The UN Security Council’s special compliance system – the regime of children and armed conflict’, in Krieger, *supra* note 4, at 333. For other reasons why armed groups choose to respect UNSC Resolutions, see Jo, *supra* note 3, at 167–81, focusing specifically on the Moro Islamic Liberation Front. See also E. Heffes, M. Kotlik and B. Frenkel, ‘Addressing Armed Opposition Groups Through Security Council Resolutions: A New Paradigm?’, in F. Lachenmann et al. (eds.), (2015) 18 *Max Planck Yearbook of the United Nations* 52–67.

<sup>25</sup> Office of the Special Representative of the Secretary-General for Children and Armed Conflict, ‘Action Plans with Armed Forces and Armed Groups’, available at [childrenandarmedconflict.un.org/our-work/action-plans/](http://childrenandarmedconflict.un.org/our-work/action-plans/) (accessed 18 March 2018).

Finally, Part IV sheds light on several important international law issues, such as the scope of Common Article 1 to the four Geneva Conventions when examining the obligation to ‘ensure respect’ for these treaties. Geiß explains, in this sense, that the wording of this provision can relate not only ‘to violations by other States but also to violations by organized armed groups’.<sup>26</sup> Although this is an interesting argument, which follows the recent ICRC Commentary to Common Article 1,<sup>27</sup> the extent of this obligation remains unexplored. In this sense, what type of measures a state could adopt towards a NSAG? Could this include some sort of capacity-building activity? If one thinks about Willms’ proposal regarding armed groups’ courts, would states be in the position of assisting these entities to enhance their respect in terms of judicial guarantees? Other topics are addressed in this Part. In particular, Schamalenbach deals with the possible international responsibility of armed groups for violations of IHL. According to her, since the international obligations of these entities are well defined, their responsibility under international law:

for the failure to comply with [their] own legal obligations appears to be a self-evident result of logical deduction: where there is an international legal obligation, there is – in the case of a breach – international responsibility (*ubi responsibilitas, ibi ius*).<sup>28</sup>

Although Schamalenbach’s analysis correctly tries to open doors for new paradigms to be explored, her reference to practical cases seems to fail when differentiating primary and secondary rules. For instance, she refers to a ‘refreshingly precise legal assessment of the responsibility of armed groups in the 1997 *Tablada Case*’,<sup>29</sup> which does not recognize the application of any rule invoking the responsibility of these non-state actors. Similarly, the UN General Assembly’s Basic Principles and Guidelines on the Right to Remedy and Reparations of 2006<sup>30</sup> do not seem to confirm the existence of these norms, but merely that if they did, ‘States should provide under their domestic laws effective mechanisms for the enforcement of reparation judgments’.

In her concluding ideas, Krieger affirms that ‘[t]he international community responds to the challenges which conflicts in war-torn areas of limited statehood pose for compliance with international humanitarian law by allocating competences to actors other than the State concerned’.<sup>31</sup> Although international organizations contribute to enforce this legal regime, this task remains dependent on their members, who may be reluctant to engage with armed groups. However, in today’s IHL context in which the majority of armed conflicts include at least one organized NSAG, respect

<sup>26</sup> R. Geiß, ‘Common Article 1 of the Geneva Conventions: scope and content of the obligation to “ensure respect” – “narrow but deep” or “wide and shallow”’, in Krieger, *supra* note 4, at 428.

<sup>27</sup> ICRC, Commentary on Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 2016, available at [ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=72239588AFA66200C1257F7D00367DBD](http://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=72239588AFA66200C1257F7D00367DBD), para. 125 (accessed 16 March 2018).

<sup>28</sup> K. Schamalenbach, ‘International responsibility for humanitarian law violations by armed groups’, in Krieger, *supra* note 4, at 496–7.

<sup>29</sup> *Ibid.*, at 498.

<sup>30</sup> *Ibid.*, at 501.

<sup>31</sup> H. Krieger, ‘Conclusion: where States fail, non-State actors rise. Inducing compliance with international humanitarian law in areas of limited statehood’, in Krieger, *supra* note 4, at 550.

for IHL can only be achieved through their engagement. The need to find solutions for IHL compliance issues has led to the exploration of new paradigms in this regard. This book fulfils its purpose by reviewing practical problems and challenges related to the application of IHL in armed conflicts involving failed or failing states and fragmented or decentralized NSAGs. For the purpose of better protection of the victims, state-centric limits should be challenged in order to solve practical difficulties that arise in contemporary armed conflicts. Despite the shortcomings identified above – particularly the lack of strategies on how to enhance respect by states – this book provides useful tools for those who wish to gain insights into different existing mechanisms used to generate respect for IHL, notably including an understanding of the reasons for its violation and how important the direct engagement with the responsible parties is.

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Moelle's book is a welcome addition to a number of relatively recent studies on the responsibility of international organizations and collective security.<sup>1</sup> With globalization and an increasing number of stakeholders in international relations, international organizations have gained various new competencies, including in relation to collective security.<sup>2</sup> Their work and the manner in which they co-operate among themselves has also become much more complex. These include classic peacekeeping operations, hybrid peacekeeping/peace enforcement operations, and occasionally the full-fledged administration of territories.<sup>3</sup>

The author's *leitmotif* is not uncommon in scholarship today: how to ensure 'an effective administration of justice', transparency and accountability as the competencies of international organizations are increasingly shared? Can international organizations be jointly responsible for any internationally wrongful acts committed in the context of peacekeeping operations?<sup>4</sup> I am not convinced the author

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<sup>1</sup> See, for example, L. Boisson de Chazournes, *Interactions between Regional and Universal Organizations: A Legal Perspective* (2017); A. Delgado Casteleiro, *The International Responsibility of the European Union: From Competence to Normative Control* (2016); G. Wilson, *The United Nations and Collective Security* (2014); N. Tsagourias and N.D. White, *Collective Security: Theory, Law and Practice* (2013); A. Orakhelashvili, *Collective Security* (2011); M. Forteau, *Droit de la sécurité collective et droit de responsabilité de l'Etat* (2006).

<sup>2</sup> M.P. Moelle, *The International Responsibility of International Organisations: Cooperation in Peacekeeping Operations* (2017), 2.

<sup>3</sup> *Ibid.*, at 7.

<sup>4</sup> *Ibid.*, at 10.