

BOOK REVIEW



Compliant Rebels: Rebel Groups and International Law in World Politics

Hyeran Jo*

Book review by Ezequiel Heffes, Thematic Legal Adviser, Geneva Call; LLM, Geneva Academy of International Humanitarian Law and Human Rights; Lawyer, University of Buenos Aires School of Law.

: : : : : :

In the last few years, the role and status of rebel groups¹ have become essential topics of analysis and discussion for a better understanding of current international dynamics. Although contemporary public international law still seems to be predominantly State-oriented, it is undeniable that over the last few decades the increasing participation of rebel groups in the international realm has led to many discussions and complex debates. One of the primary concerns has been how to increase respect for humanitarian rules by rebel groups. Generally, difficulties related to compliance can be linked to various circumstances, such as 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 humanitarian rules,² or rebels' lack of an appropriate structure or resources.³ In *Compliant Rebels: Rebel Groups and International Law in World Politics*, Hyeran Jo meticulously addresses some of these issues, taking into consideration the role of rebel groups in the international realm and focusing on the reasons as to why they might choose to comply with international norms.⁴ This topic is not merely a matter of legal theory, and has an impact on the everyday reality of international humanitarian law (IHL). As inquired by the author at an early stage of the book,

* Published by Cambridge University Press, Cambridge, 2015.

“why do some rebel groups comply with international standards of conduct in warfare, while others do not? Are rebel groups aware of international standards? When and why do they make conscious efforts to abide by international rules?”⁵

Running in parallel with an exponential increase of academic literature on the subject,⁶ the author took upon herself the task of putting together a detailed analysis of some of the most transcendental difficulties that affect legal compliance by rebel groups. The book’s central thesis is that “legitimacy-seeking” rebels are more likely to comply with international law than those which are “legitimacy-indifferent”.⁷

At this stage, it shall be noted that the number of studies – books and articles – on this issue has been growing for some time, both in the international law and international relations literature.⁸ Although this is probably the first time

- 1 Although the international law literature normally refers to “non-State armed groups”, “armed opposition groups”, “armed groups” or “armed non-State actors” indistinctively, this book review will use the term “rebel groups”, as chosen by Jo. According to her, this term is used to highlight “the fact that these groups are fighting government forces inciting rebellion, and to remind us that they usually ‘rebel’ against a set of existing norms, potentially including international rules”. *Compliant Rebels*, p. 37.
- 2 Krieger, for instance, affirms that “[a]ctual decisions to obey a legal norm result from a complex mixture of diverse motivations. Power relations as well as historical, political, social and anthropological conditions determine these motivations so that compliance is context-dependent.” Heike Krieger (ed.), *Inducing Compliance with International Humanitarian Law: Lessons from the African Great Lakes Region*, Cambridge University Press, Cambridge, 2015, pp. 4–5.
- 3 Olivier Bangerter, “Reasons Why Armed Groups Choose to Respect International Humanitarian Law or Not”, *International Review of the Red Cross*, Vol. 93, No. 882, 2011, p. 357. See also International Committee of the Red Cross (ICRC), *Improving Compliance with International Humanitarian Law – ICRC Expert Seminars*, October 2003, pp. 20–21, available at: www.icrc.org/eng/assets/files/other/improving_compliance_with_international_report_eng_2003.pdf (all internet references were accessed in August 2017); Ezequiel Heffes and Marcos Kotlik, “Special Agreements as a Means of Enhancing Compliance with IHL in Non-International Armed Conflicts: An Inquiry into the Governing Legal Regime”, *International Review of the Red Cross*, Vol. 96, No. 895/896, 2014, p. 1201.
- 4 Due to the potential vastness of the subject, Jo cleverly narrows her analysis to rebel groups active in civil conflicts between 1989 and 2009. This is deliberate, and reflects the increasing amount of conflicts in which rebel groups have played a role in the last few decades.
- 5 *Compliant Rebels*, pp. 4–5.
- 6 See, among others, H. Krieger, above note 2; Sophie Rondeau, “Participation of Armed Groups in the Development of the Law Applicable to Armed Conflicts”, *International Review of the Red Cross*, Vol. 93, No. 883, 2011; Marco Sassöli, “Taking Armed Groups Seriously: Ways to Improve their Compliance with International Humanitarian Law”, *Journal of International Humanitarian Legal Studies*, Vol. 1, No. 1, 2010; O. Bangerter, above note 3, p. 357; Olivier Bangerter, “Internal Control: Codes of Conduct within Insurgent Armed Groups”, *Small Arms Survey*, Occasional Paper No. 31, November 2012, pp. 4 ff., available at: www.smallarmssurvey.org/fileadmin/docs/B-Occasional-papers/SAS-OP31-internal-control.pdf; Geneva Call, *In Their Words: Perceptions of Armed non-State Actors on Humanitarian Action*, 2016, available at: genevacall.org/wp-content/uploads/dlm_uploads/2016/09/WHS_Report_2016_web.pdf.
- 7 *Compliant Rebels*, p. 5.
- 8 See, for instance, the issue on “Generating Respect for the Law” of the *International Review of the Red Cross*, Vol. 96, No. 895/896, 2014; Anna Arjona, Nelson Kasfir and Zachariah Mampilly (eds), *Rebel Governance in Civil War*, Cambridge University Press, Cambridge, 2015; Katharine Fortin, *The Accountability of Armed Groups under Human Rights Law*, Oxford University Press, Oxford, 2017; Konstantinos Mastodorimos, *Armed Non-State Actors in International Humanitarian and Human Rights Law: Foundations and Framework of Obligations, and Rules on Accountability*, Routledge, London, 2016. Also, in 2011 the *International Review of the Red Cross* published two standing issues on the role of armed groups in the international sphere: see *International Review of the Red Cross*, Vol. 93, Nos 882 and 883, 2011. For further literature, see Ezequiel Heffes, “Armed Opposition Groups”, in Anthony Carty (ed.), *Oxford Bibliographies in International Law*, Oxford University Press, New York, 2016.

an exhaustive project on compliance of humanitarian norms by rebel groups has been undertaken, Jo's book should be viewed as part of this trend of publications. Based on a thorough practical analysis and a novel combination between political science and international law, it fills an important gap in the literature – and this is probably its most distinguishing feature, setting it apart from other relevant books on armed groups and international law.⁹ Jo has done a commendable job that is certainly welcome.

The analysis of rebel groups' compliance is organized into nine chapters, all of which offer a good amount of academic literature and practice. As the book offers an extensive theoretical framework as well as empirical evidence, a detailed review of each chapter is indeed impossible given the inherent limitations of a book review. Therefore, the present reviewer has selectively engaged with specific theoretical topics identified in the first four chapters.

The main challenges are presented in the general introduction. According to Jo, the first of these lies in rebel groups' strategic and military considerations, since IHL and human rights rules "prohibit the sort of actions that often serve the strategic interests of rebel groups – the sort of actions that may, at times, give them a competitive advantage over government forces".¹⁰ The second difficulty is related to the lack of participation of rebels in international law-making processes:

Nor have they ever been signatories to international treaties and conventions, such as the Geneva Conventions. Why would rebel groups follow rules they neither created nor signed on to? Although rebel groups do have obligations under international law even without consent, it is intriguing to observe that some groups voluntarily submit themselves to those rules.¹¹

In order to resolve these issues, Jo refers to rebel groups' pursuit of legitimacy in the eyes of political audiences that care about values consistent with international law at the domestic and international levels.¹² As she interestingly suggests, if rebels seek legitimacy "in the eyes of key audiences with preferences for rules consistent with international standards, then we are likely to see rebel compliance".¹³ In this sense, rebel legitimacy is defined as "support and recognition that a rebel group is a viable political authority".¹⁴

9 Zakaria Daboné has also recently explored the role of rebel groups, but addresses this topic exclusively within the international law realm. See Zakaria Daboné, *Le droit international public relatif aux groupes armés non étatiques*, Schulthess, Geneva, 2012.

10 *Compliant Rebels*, p. 6

11 *Ibid.* Although the lack of participation in the creation of customary international law is not particularly explored in the book, Jo refers later to the benefits of including rebel groups in the drafting of rules and laws. According to her, "[f]rom the rebel perspective, an opportunity to participate in this drafting process may serve as a powerful incentive and rationale to change behavior. The basic idea is that rights and obligations under the law must be balanced: if armed groups are to be subjected to certain obligations and responsibilities under international humanitarian law, then they should have rights to participate in law-making too." *Ibid.*, p. 256.

12 *Ibid.*, p. 13.

13 *Ibid.*, p. 19.

14 *Ibid.*, p. 27.

The second chapter of the book addresses whether these non-State actors are aware of international law and asks whether they are actually bound by this legal regime, and if so, why.¹⁵ With respect to the former question (do rebels know about international law?), Jo takes as an indicator certain formal commitments made by rebels.¹⁶ According to her, these can materialize in three possible ways: (1) participation in international negotiations as observers; (2) public expressions of willingness to abide by international law; and (3) the conclusion of agreements with international organizations, such as with the United Nations bodies, or with non-governmental organizations, such as Geneva Call. Regarding the latter question (are rebel groups bound by international law, and if so, why?), Jo differentiates between those rebel groups that explicitly consent to international norms, which are “without a doubt bound by international law”, and those that even without consent still “carry obligations to abide by humanitarian law” due to the customary nature of certain rules.¹⁷ Although the possibility of having rebel groups directly consenting to their international obligations is an interesting proposal, it is not further addressed in the book, even when it could be used as a tool to enhance their respect for humanitarian rules.¹⁸ Two additional points shall also be noted in this regard. Firstly, the author deals indistinctively with IHL and international human rights obligations, but these legal regimes present different features when dealing with rebel groups,¹⁹ and a more extensive analysis could have been useful.²⁰ Secondly, despite Jo initially affirming that “rebel groups without consent are bound by international law in a customary sense”, she then states:

The prevention of genocide, now accepted as a global norm, for example, clearly applies to rebel groups. The nature of international law-making restricts the participatory rights of rebel groups. Rebel groups do not take part in negotiating international laws and do not have institutional means to ratify the laws. Their obligations derive from being under the authority of a state party or by issue of the laws being natural laws applicable to all subjects of international politics.²¹

In these lines, Jo makes a distinction in the application of *jus cogens* rules and the rest of international norms. It remains unclear, however, why one framework

15 *Ibid.*, p. 36.

16 *Ibid.*, p. 48.

17 *Ibid.*, p. 46.

18 For an analysis of the participation of non-State armed groups in the conclusion of special agreements, see E. Heffes and M. Kotlik, above note 3.

19 For instance, in an excellent contribution, before discussing whether non-State armed groups are subject to direct international obligations, Daragh Murray has thoroughly explored whether they can possess international legal personality to be bound by these rules. Daragh Murray, *Human Rights Obligations of Non-State Armed Groups*, Hart Publishing, Oxford and Portland, OR, 2016, pp. 23–81.

20 *Compliant Rebels*, p. 39. There, Jo affirms that “[a] rebel group’s organizational structure will have implications for behavior regarding human rights in rebel groups. Depending on its level of authority, rebel leadership can order and incite rebel soldiers to commit violations of the laws of war.” For a similar approach, see *ibid.*, p. 45.

21 *Ibid.*, pp. 46–47.

would apply directly upon the non-State entity, while others would have to be accepted beforehand by the State fighting against the rebel group. Additionally, how these scenarios interplay with the abovementioned proposal on rebels directly consenting to their international obligations could have been further explored.

The third chapter is the most important theoretical part of the book. Here, Jo proposes her legitimacy-based theory of rebel compliance, according to which rebel groups with “legitimacy-seeking” features are more likely to comply with international norms than their “legitimacy-indifferent counterparts”. In the words of the author, for most rebels there is something to be gained by complying with international law: recognition, legitimacy and reputation. As she explains:

Recognition provides international credibility around the world, and thus a stronger strategic position for groups in their struggle against an opposing government at home. Legitimacy also gives rebel groups greater authority compared with their national government, especially in instances where the government itself lacks legitimacy to govern. Having a reputation as a complier with international law can earn rebel groups a medal of good citizenship in the long run.²²

In examining the constituencies of rebel groups, Jo interestingly suggests that both the government and international society play a role in making or breaking rebel compliance. This is the reason why a comprehensive analysis of rebel groups’ behaviour must take into account relevant interactions among rebels, governments and international actors.²³ The author affirms in this vein that these non-State actors do consider international law as legitimate when they have some expected political advantages to be gained by complying. Therefore, decisions to comply or not are mostly driven by the need to obtain legitimacy in order to ensure group survival.

The fourth chapter represents the bridge between this theoretical framework and empirical evidence. Since legitimacy-seeking motivations of rebel groups are, according to Jo, the most important determinants of their possible compliance, she underlines three possible indicators to understand their level of respect: (1) the existence of a political wing within a rebel organization; (2) a secessionist aim with clear governance objectives in an autonomous region; and (3) foreign support under the influence of human rights groups.²⁴ These elements serve to provide an indication that the group is “legitimacy-seeking”, and constitute a novel argument as to why rebels comply with international rules.

Although this proposal seems helpful towards having more respected legal regimes, the author also refers to the link between the non-State entity and the domestic law of the State against which it is fighting. In this sense, when dealing with the first indicator, Jo recognizes that if opposing governments allow rebel

22 *Ibid.*, pp. 64–65.

23 *Ibid.*, p. 70.

24 *Ibid.*, p. 93.

groups to enter the political sphere, “rebels will then have less incentive to resort to violence unnecessarily”.²⁵ The practical consequences of considering this, however, are not thoroughly envisaged. To that end, certain real-world scenarios are difficult to solve under this proposal. For instance, it is unclear how recognition by governmental authorities might operate in complex conflicts that take place in the territory of a given State between a rebel group and a third State. Which opposing government should recognize the rebel group as a political party to enhance its compliance? Moreover, even if this theory could apply to certain contexts, it is difficult to imagine that every State will recognize a rebel group as having some sort of legitimacy under its domestic legal system; and during an armed conflict, would a rebel group be allowed to present candidates for an election while hostilities are still active? Finally, would this political acceptance also recognize as lawful certain acts that naturally challenge the sovereignty of States, such as the establishment of courts by rebel groups or their provision of education in the territories under their control?²⁶

In any case, based on the abovementioned indicators, Jo presents three hypotheses that are worth noting. Firstly, that rebel groups with political wings are more likely to comply with international norms; according to Jo, this prospect would be stronger if these political wings had a firmer control over the groups’ military sections. Secondly, that rebel groups with secessionist aims are more likely to comply with international law. Since these non-State entities can establish social relations with civilians because of family or ethnic ties, the expectation is that groups with social relations are more likely to refrain from violence against civilians. Thirdly, Jo argues that rebels who rely on foreign sponsors with human rights organizations are more likely to comply with international norms. Those groups that open themselves to organizations such as the International Committee of the Red Cross (ICRC) or Geneva Call, according to Jo, are more likely to make commitments to international law, and therefore positively change their behaviours.²⁷

Since there is a vast number of humanitarian rules that could be studied in light of these hypotheses, Chapters 5, 6 and 7 narrow the empirical analysis of the book to three main humanitarian issues: the killing of civilians, the use of child soldiers, and rebel groups’ decisions with regard to granting the ICRC access to their detention facilities.²⁸ At the centre of Jo’s inquiry is the source from which the book draws its information: the Rebel Groups and International Law database, which was exclusively built for the book project and includes both qualitative and quantitative information about rebel groups’ institutional “and

25 *Ibid.*

26 Jan Willms, “Courts of Armed Groups – a Tool for Inducing Higher Compliance with International Humanitarian Law?”, in H. Krieger, above note 2, p. 150. For a practical approach to the provision of education by non-State armed groups, see PEIC/Geneva Call, *Workshop on Education and Armed Non-State Actors: Towards a Comprehensive Agenda*, 2015, available at: www.genevacall.org/wp-content/uploads/dlm_uploads/2015/12/Geneva_Call_Paper1.pdf.

27 *Compliant Rebels*, pp. 110–111.

28 *Ibid.*, p. 24.

organizational profiles, and their humanitarian and human rights behaviors”.²⁹ The study of these issues is well researched and structured, and every chapter thoroughly combines a general factual approach with a specific case study in which the author shows how the abovementioned indicators influenced the group’s respect for the law.³⁰ Chapter 8 compares and contrasts these three topics, highlighting as a common finding that achieving strategic legitimacy influences rebel groups’ decisions to comply with international norms in specific ways. The final chapter serves as a conclusion.

As can be seen from Jo’s research, some rebel groups actually care about international law, and compliant rebels should not be seen as a rare phenomenon. Groups complying with international law are indeed numerous, specifically among those legitimacy-seeking groups with articulated norms and ties to domestic populations. Contrary to the conventional thinking that rebel groups are violent and constantly breach humanitarian rules, the present book argues that some rebel groups are not only aware of international law but are also committed to adhering to its rules, and often try to “advance their rebellion by exploiting the normative structure of international law”.³¹ Although a more detailed analysis on the legal framework would have been useful (particularly on the reasons why rebels are bound by this legal regime), *Compliant Rebels* still represents an excellent addition to the literature dealing with generating respect for humanitarian rules, and one that is unique in its scope and fresh in its approach. For the purpose of better protecting victims in conflict situations, rebel groups should not be ignored, but should rather be further studied and engaged.

29 *Ibid.*, pp. 83 ff. When building her database, it shall be noted that Jo takes different sources into account. For instance, as explained by her, “Their Words”, the database of Geneva Call that compiles the commitments made by rebels, “was essential in the analysis of rebel commitment to international law”, see p. 279.

30 Jo also acknowledges the possible lack of information related to some specific issues, such as detention access. As she recognizes, “[s]everal difficulties complicate accurate observation and measurement of detainee treatment. Some rebel groups rarely detain, opting instead to kill or conduct hit-and-run operations; others detain, but do so in remote places.” *Ibid.*, p. 188.

31 *Ibid.*, p. 238.