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PART I

PUZZLE OF COMPLIANT REBELS

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I

Introduction

Bearing in mind that the Frente Farabundo Martí para la Liberación Nacional has the capacity and the will and assumes the commitment to respect the inherent attributes of the human person . . .

San José Agreement between El Salvador and the Farabundo Martí National Liberation Front (FMLN), 26 July 1990¹

First, kill your family.

A unit commander of the Lord's Resistance Army (LRA)²

I hacked the woman on the back of her neck and on her breast with a machete. I hacked the child on his neck and on his side. One of them begged me not to do it, but Kabila told me to do it or he would kill me, so I hacked him as well and cut off his head.

A Revolutionary United Front (RUF) child soldier as a witness at the Special Court for Sierra Leone³

During a decade of armed struggle between 1981 and 1991, the Farabundo Martí National Liberation Front (FMLN) in El Salvador maintained good relations with civilians, refrained from using child soldiers, and did not mistreat enemy government soldiers. Nor was this the result of mere happenstance. In *Legitimacy of Our Methods of Struggle*,⁴ published in 1988, the Salvadoran rebel political–military organization described their ways of waging warfare against the government as being consistent with international humanitarian norms. In 1990, the group then signed the San José Agreement

¹ The San José agreement between El Salvador and the Frente Farabundo Martí para la Liberación Nacional, signed by both sides on July 26, 1990. UN Doc. A/44/971-S/21541 (August 16, 1990), Annex.

² Re-quoted from Eichstaedt (2009).

³ Sesay, Alpha, “Former Child Soldier Describes the Atrocities Committed by the RUF and the AFRC,” Summary from Charles Taylor at the Special Court for Sierra Leone (May 5, 2008).

⁴ FMLN (1988).

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with the government, reiterating their commitment to human rights, and laying the groundwork for the peace agreement in 1992.⁵ The rebel group subsequently developed itself into a viable political party – a party that exists to this day.⁶

To be sure, during the years of armed struggle, the FMLN *did* commit a number of human rights violations, and these were documented in the Truth Commission Report to the United Nations published in March 1993. The list of violations includes kidnappings, abductions, and extra-judicial killings of government sympathizers. However, this list pales when compared with the long list of massacres and other grave human rights violations perpetrated by government forces. In the UN Commission's report it is clearly noted that the vast majority of abuses during El Salvador's civil war were committed by members of the Salvadoran military.⁷

The FMLN's largely compliant behavior is in stark contrast to the behavior of other notoriously violent rebel groups, such as the Revolutionary United Front (RUF) in Sierra Leone, known for killing and maiming civilians and government soldiers between 1991 and 1999.⁸ During its three-week "Operation No Living Thing" in January 1999, for example, the RUF captured Freetown, the capital of Sierra Leone, and brutally massacred 6,000 people using axes, machetes, and knives.⁹ The Lord's Resistance Army (LRA) in Uganda, one of the continent's "oldest, most violent, and persistent armed groups,"¹⁰ recruited children by abduction and used girl soldiers as sex slaves.¹¹

Neither of these groups fared well once fighting ended. The RUF participated in post-conflict elections held in 2001, but garnered just 2 percent of the popular vote. In 2009, three senior RUF commanders, Issa Hassan Sesay, Morris Kallon, and Augustine Gbao, were found guilty of war crimes and crimes against humanity by the Special Court for Sierra Leone, an international tribunal established in 2002.¹² For his part, the LRA's leader, Joseph Kony, has been indicted by the International Criminal Court (ICC), but is still at large, refusing to surrender. After several military offensives by the Ugandan Government, the LRA lost its base in northern Uganda and now roams the Central African Republic (CAR) in small numbers, still committing atrocities.

These contrasting cases encapsulate the puzzle of this book. Why is it that the FMLN made a formal commitment to "respect human persons," while the LRA and the RUF showed such extreme disrespect for human life? More

⁵ Acuña (1995); Doyle *et al.* (1997); and Clapham (2006). ⁶ Alvarez (2010).

⁷ Betancur *et al.* (1993).

⁸ The atrocities of the RUF have been extensively documented, including by the Truth and Reconciliation Commission of Sierra Leone, available at: www.sierraleonetr.org. See also Reno (2011); Scheffer (2013).

⁹ Gberie (2005). ¹⁰ US Department of State (2012). ¹¹ Allen and Vlassenroot (2010).

¹² Special Court for Sierra Leone (2009); and Iliopoulos (2009).

generally, 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? These are the series of questions this book seeks to answer.

I provide an explanation for why compliant rebels sometimes emerge amid the brutality of civil conflicts. The central thesis of the book is that legitimacy-seeking rebel groups are more likely to comply with international law than legitimacy-indifferent groups. Rebel groups that have a focus on political programs, groups that forge deep social relations, and groups that have human rights-conscious external sponsorship are those that are likely to exhibit international law compliance. In contrast, rebel groups that privilege military gains, have no social ties with their domestic constituencies, or have human rights-disregarding external sponsors will show little respect for international standards of warfare. In the pursuit of political legitimacy during armed struggles, some rebel groups come to know and care about international standards of behavior in making their political survival strategies. They then favor relatively humane methods of warfare, and avoid methods that are considered to be inhumane.

The task of this introductory chapter is to explicate this puzzle of *rebel compliance* and to give a short answer to the puzzle. I explain why we want to investigate the phenomenon of rebels conforming to international humanitarian and human rights rules. I then lay out the logic of rebel compliance – detailing the underlying assumptions and expectations about the nature of civil war and rebellion that lead legitimacy-seeking rebels to comply. The next section provides the conceptual terrain of this book. It explores the key concepts – legitimacy and compliance – in greater depth, along with the operational measures used to ascertain and quantify rebel compliance. I end the chapter with a brief summary of the book's central findings, together with a discussion of the potential impacts that these findings may have in academic research and policy circles.

THE PUZZLE OF REBEL COMPLIANCE

This book will present a study of contemporary rebellion. Specifically, it is about rebel groups and their decision to conform to existing norms of restraint in warfare. International law is generally considered *weak*, whereas rebel groups' incentives to violate rules and norms are usually *strong*. International law differs in significant ways from domestic law. For one thing, there is no world police and no world court. The presence and reach of Interpol are minimal, and the jurisdictional reach of the International Court of Justice or the ICC is limited.

In contrast to the fragile force of international law, the incentives of rebel groups to violate the rules of war seem powerful. It is not apparent why any rebel

group would want to abide by – let alone genuinely care about – international law when taking up arms to fight against a government opponent. In what is often an asymmetric conflict facing a strong opponent (i.e., national army), how and why would a compliant rebel group emerge? That is the central question I wish to unravel in this book. Its central exploration will be to find the conditions in which rebel groups try to conform to international norms and their motivations to do so.

The puzzle of rebel compliance comes in several layers. One layer lies in the strategic and military considerations of rebel groups. What is not obvious about law-abiding rebels is that, even as they rebel against the national government, they choose to abide by international rules, at least in some respects. Yet international humanitarian or human rights norms often contradict the logic of violence to which rebel groups usually adhere. These norms 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.

For instance, rebels may want to respond to troop shortages by recruiting child soldiers to their ranks, or they might feel the need to kill civilians to root out government sympathizers. Also, in some cases “international standards” may be against the rebels’ ideological or religious stance whereby they consider some civilians as enemies. Extremist jihadist groups may see adherents of other religions as enemies, and groups subscribing to extreme versions of Marxism may see wealthy civilians as enemies. Given these military or ideological constraints, how can we make sense of rebel compliance? Why would rebels ignore military incentives and/or ideological considerations and comply with international rules and norms?

The other layer of the puzzle comes from the fact that rebel groups have played little role in creating international law. 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,¹³ it is intriguing to observe that some groups voluntarily submit themselves to those rules. Also, international law governing non-state actors, including rebel group members, is less precise than laws governing states. With weakly binding rules without much consent, little precision in rules, and weak enforcement power behind these rules, rebel compliance provides a hard test of international law. This inherent limitation by design creates a theoretical puzzle. Again: why do some rebel groups comply?

I want to note that this question regarding rebel compliance is slightly different from the question of why some groups denounce or renounce violence, although the two are connected. History has witnessed some groups

¹³ See Clapham (2010) and Sivakumaran (2012) on the rebel groups’ obligations in international law.

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publicly vowing to reject the use of violence. A famous example is the case of Al Gama'ah al-Islamiyah in Egypt. The leadership denounced violence in 1997 – the very violence they had relied on for a decade – and issued a fatwā (a formal judgment stemming from Islamic law) to this effect from prison.¹⁴ This abrupt shift from violence to non-violence may sometimes be one part of the story of compliant rebels, as some groups decide to comply and then move to seek political solutions by abandoning violence altogether. However, from the perspective of armed groups' general strategy, exercising restraint while continuing an armed struggle is a different sort of commitment than the wholesale rejection of violent methods. The difference between “constrained violence” and “no violence” is a subtle one, but the former allows the use of violence, while the latter does not allow it. For its part, this book will focus on the question of rebel compliance and leave the task of researching the non-violence question to other scholars.¹⁵

At a more fundamental level, the question of compliance is central to political science, and specifically to questions of authority, norms, regulations, and violence. Why do political actors accept and respect certain forms of political authority? Why do political actors follow norms? How do political actors respond to regulations and laws? What makes political actors resort to violence with or without restraint? With this puzzle of rebel compliance in mind, this book will also touch upon these fundamental questions of law and order.

RELEVANCE

Solving the puzzle of rebel compliance is important because of its practical relevance for international peace. If we can understand the conditions under which rebels respect humanitarian and human rights law, then we can leverage this knowledge to reduce the number of instances of unconstrained violence. Since the very foundation of humanitarian law is based on human dignity, rebels changing their behavior to conform to international standards of restraint would mean less unchecked violence in the world and less civilian suffering.

In formulating foreign policy and designing interventions, the large volumes of policy-related works focus on military interventions, but little attention has been given to the diplomacy dimension of rebel engagement, such as having dialog, persuasion, and negotiation. This book will make the point that a proper understanding of which armed groups can be successfully engaged and how we

¹⁴ See the group's writing translated in al-Gama'ah al-Islamiyah (2014). Also see discussions on the group in Bukay (2004); Blaydes and Rubin (2008); Jackson (2009).

¹⁵ Whether non-violence pays is a heated debate. Chenoweth and Stephan (2012), for instance, find that non-violence is an effective strategy of civil movements, while Thomas (2014) finds that terrorist tactics are more effective in extracting concessions out of governments (at least in the African conflicts she studied).

can make sense of their motivations could play a crucial role in helping to devise effective foreign policy in conflict zones.

Rebel violence is one of the pressing issues of our time. By definition, rebel groups are perpetrators of violence. Rebel groups are armed organizations that fight against a government in an internal armed conflict in order to advance their political and/or military agenda.¹⁶ They resort to violence to attain their objectives in opposing central governments. When the violence is directed toward civilians, it causes a tremendous amount of suffering to civilian populations. Some 17 million people worldwide have perished in the crossfire of governments and rebels over the past five decades.¹⁷ About 60 out of 300 rebel groups around the world are still using child soldiers.¹⁸ And only 30 percent of rebel groups have opened themselves to allow the International Committee of the Red Cross (ICRC) to monitor their detention centers at some point during their armed struggle.¹⁹ As for the detainees held by other rebel groups, their fates are unknown. Reporting on human rights abuses is improving over time with the growth of human rights monitors such as the Human Rights Watch. However, in some cases, rebel violence becomes even more intractable and complex because of rebel group rivalries, the degeneration of rebels into criminal gangs, and long-running rebellions that continuously fail to reach stable and peaceful solutions.

The examination of rebel compliance has implications for contemporary foreign policy, especially with regard to the possibility of engaging rebel groups constructively in talks and negotiations of various kinds. Rebel engagement has always been a foreign policy option. However, this option has almost always languished under a cloud of uncertainty and skepticism. Skeptics may argue that there is no science to deciding which groups are worth engaging with, or to predicting the likelihood of success. Going a step further, some might even suggest that brutal, unconstrained wars that violate norms and laws may actually shorten the overall length of conflicts. Also, rebel engagement is a highly unpopular option for some political regimes that are loathe to confer any legitimacy on rebel groups. This is especially the case when advocates of engagement are unable to provide any solid guidance or reassurance regarding the likelihood of success. All of which explains why, in most situations, hardline policies such as military offensives or economic sanctions tend to be preferred by policymakers.

Yet this is precisely where a study such as this of rebel compliance can make a significant contribution. If we know which rebel groups are predisposed to

¹⁶ For a taxonomy of rebel groups and discussion of terminology, see Clapham (2006: 288); also see Sobek and Payne (2010). This definition excludes paramilitary groups (e.g., Autodefensas Unidas de Colombia, Kamajors in Sierra Leone, Ninjas in Congo Brazzaville) from the scope of my study.

¹⁷ This is an approximate figure that appears in Laitin (2007) and Regan (2008).

¹⁸ de la Sabliere (2012).

¹⁹ Jo and Thomson (2013). This amounts to forty-seven rebel groups out of 251 groups.

comply with international rules, we can target these groups and selectively engage them for the purpose of reducing human suffering in conflict zones. With new information and insights in play, it certainly becomes harder to reject out-of-hand the option of talking to rebel groups, especially when there appears to be a real possibility of lessening civilian suffering. From the perspective of civilians and many conflict victims, a rebellion adhering to the principles of international humanitarian law may be far better than a short but extremely brutal war. Taking on the question of how best to intervene in cases of egregious human rights abuses in civil conflicts, this book will demonstrate that international law matters to some rebel groups, and that nurturing this interest in international law can be a catalyst for change.

REBEL GROUPS MEET INTERNATIONAL LAW

Rather than being wars between states, most wars today are internal conflicts where a government is fighting a single rebel group or multiple groups.²⁰ In 2012, there were thirty-two active armed conflicts worldwide, all of which were internal conflicts.²¹ Today about 300 rebel groups are operating worldwide. And yet, while ample research exists regarding violence committed by governments, research on rebel violence and their compliance behaviors related to international law is relatively scant and unhelpful in answering the important foreign policy questions of our day.

This book's inquiry focuses on rebel groups active in civil conflicts between 1989 and 2009. This period is marked by the end the Cold War, the rise of human rights movements, and the normative changes that have unfolded since the fourth Geneva Convention and the Additional Protocol. The end the Cold War is important as it connects with significant changes in the nature of rebellions. During the Cold War period, most rebel groups were characterized by their commitment to the anti-colonial struggle, to liberation movements in the 1950s and 1960s, and then to Marxist–Leninist movements in the 1970s and 1980s.²² The rise of human rights movements is important due to the fact that human rights norms became global.

The post-Cold War period has observed the proliferation of new norms and legal codifications, arising partly out of the brutal experiences of many conflicts and massacres. During this period, more and more rebel groups have actively sought to interact with humanitarian and human rights organizations to vie for resources or to de-list themselves from the list of shame. At the same time, some rebel group leaders have been indicted or sentenced by international courts

²⁰ Under international law, civil wars are called “armed conflicts not of an international character.” Armed conflicts were traditionally between or among states. *Internal conflicts*, *civil wars*, and *armed conflicts not of an international character* – all three terms will be used interchangeably in this book.

²¹ Themner and Wallenstein (2012).

²² See Reno (2011) for the history of rebel groups, especially in the African context.

under new accountability norms.²³ In this way, international law is developing to take into account the consequences of violence in internal conflicts.²⁴ These are the legal, political, and normative environments in which contemporary rebel groups are operating.

International law, as related to the context of civil conflicts, has undergone developments over time. The Geneva Conventions and the Additional Protocol of 1977 advanced the consensus on laws pertaining to conflicts of a non-international character.²⁵ In addition to these legal instruments, the institutional landscape for international law has changed too. Several ad hoc international war crimes tribunals have been operating in the world's most atrocious conflicts in Cambodia, Rwanda, Sierra Leone, and Yugoslavia for the past two decades. In 1998, the Rome Statute established the ICC, a permanent international judicial body that can prosecute war crimes, crimes against humanity, and genocide. These institutional landmarks were accompanied by normative changes on the global level. International humanitarian organizations provided services for victims of conflicts and promoted international humanitarian law. Human rights organizations around the world named and shamed perpetrators of violence and atrocities. These humanitarian and human rights workers, which I would call "agents of international law," brought about the normative changes on the international legal scene.

Among many topics of international law, three areas – humanitarian law, human rights law, and criminal law – are particularly relevant to rebel groups or the members of rebel groups.²⁶ Note that I mention "members of rebel groups" here. As rebel groups are armed organizations, most of the accountability rests with the superior command, according to the command responsibility principle. So, in most cases, rebel group leaders would be responsible for inciting unconstrained violence.

The first relevant body of law is international humanitarian law. This body of law, sometimes called *the law of war* or *jus in bello*, regulates conduct in warfare. In international humanitarian law, legal instruments such as Common Article 3 of the Geneva Conventions²⁷ are particularly applicable. These

²³ Sikkink (2011) terms this "justice cascade."

²⁴ See Sivakumaran (2012) for a comprehensive review of law pertaining to non-international armed conflicts.

²⁵ The term "conflicts of non-international character" is often used in the legal literature. The term is equivalent to "civil conflicts" in this book.

²⁶ See in particular Zegveld (2002); Clapham (2006); Sassoli (2010); and Sivakumaran (2012) for discussion of international law applicable to rebel groups. Scheffer (2013) calls for collecting the common areas of these three laws and calling it "atrocious law" as it is applicable to civil conflict situations. Atrocious law would be the collection of laws that cover war crimes or crimes against humanity during wartime and peacetime, in addition to a legal means for justice in those cases. I agree that atrocious law is a useful category, but in this book I follow the traditional classification of the topical issues in international law.

²⁷ The Geneva Conventions specify prescriptions and proscriptions of the laws of war (Roberts and Guelff 2000).