

THROUGH REBEL EYES: REBEL GROUPS, HUMAN RIGHTS, AND HUMANITARIAN LAW

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I INTRODUCTION

Non-state armed actors are central to contemporary world politics. The research community has made significant strides in understanding what motivates rebel groups to place some restraints on violence while they also commit human rights and humanitarian violations affecting human security.¹ Less well understood is what rebel groups understand and think about international humanitarian law (IHL) and their obligations for restraints on violence. The progress of human rights will depend on whether scholars and practitioners can understand how perpetrators view and behave with respect to human rights and humanitarian issues. Most critically, if rebels have wildly different understandings of the law from what is normally accepted by the bulk of states and international organizations, then the law ceases to function as a focal point. During wartime, where IHL is applicable, it is important to create a common understanding among belligerents about what the proper behaviors are.² Without this common understanding, the law is less effective, thus undermining both the humanitarian goal of reducing civilian suffering and the human rights goal of preserving human dignity.

This article seeks to examine how rebel groups express their understanding of international humanitarian law and human rights. Glimpsing how rebels understand the law and signal their understanding will have implications for how they judge, interpret, justify, and ultimately how they behave, in practice. Rebel understanding of the law is particularly important, as it has consequences for

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1. See, e.g., Idean Salehyan et al., *External Rebel Sponsorship and Civilian Abuse: A Principal-Agent Analysis of Wartime Atrocities*, 68 INT'L. ORG. 633, 633–661 (2014); Kathleen Gallagher Cunningham et al., *Shirts Today, Skins Tomorrow: Dual Contests and the Effects of Fragmentation in Self-Determination Disputes*, 56 J. CONFLICT RESOL. 67, 67–93 (2012); Lisa Hultman et al., *United Nations Peacekeeping and Civilian Protection in Civil War*, 57 AM. J. POL. SCI. 875, 875–891 (2013).

2. See James D. Morrow, *When Do States Follow the Laws of War?*, 101 AM. POL. SCI. REV. 559, 559–572 (2007).

subsequent compliance. In some cases, lack of rebel compliance with IHL may come from rebels' understanding of the law itself. If rebels understand the law to be legitimate, just, and fair, then their adherence to the law is likely to improve and the possibility of self-enforcement increases.³

Specifically, this article provides a typology of rebel understanding of IHL. The article starts with the assumption that rebels' legal understanding will be influenced by rebels' political incentives, social interactions, historical circumstances, as well as the legal origins of applicable law. From these considerations, this article identifies four types of rebel understanding of human rights and humanitarian law: shared understanding, local understanding, social understanding, and strategic understanding.

Understanding what rebels say about international law will have important implications for policymaking. Knowing when non-state armed groups recognize the value of international humanitarian norms and human rights standards will help policymakers and the research community adequately craft responses to groups' non-compliance with IHL. If rebel groups do not know or value IHL, policymakers and the research community may have to put more effort into re-thinking whether IHL can protect civilians in conflict zones. Recognizing the plurality of legal understanding will expand the horizon of the research community's own understanding about global security issues. As a policy matter, this study will inform constructive dialogue with non-state armed groups,⁴ how to mediate,⁵ and how to potentially engage rebels in the law-making process.⁶

This article begins by setting the boundary of the inquiry, defining the terms employed throughout, and introducing the inquiry's methodology. Then, the article provides the typology of rebel understanding as well as corresponding evidence of such, and concludes with implications, caveats, and future directions.

II

PRELIMINARIES

We begin our study by defining the word rebels, discussing what we mean by understanding the law, and laying out applicable law.

A. Rebel Groups

States are the traditional subjects of international law, but it is recognized

3. This has been argued and substantiated in domestic as well as international law settings. For the domestic setting, see TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* (1990). For the international setting, see Thomas M. Franck, *Legitimacy in the International System*, 82 *AM. J. INT'L L.* 705, 705–59 (1988).

4. See, e.g., Steven R. Ratner, *Law Promotion Beyond Law Talk: The Red Cross, Persuasion, and the Laws of War*, 22 *EURO. J. INT'L. LAW* 459, 459–506 (2011).

5. See, e.g., CHRISTINE BELL, *PEACE AGREEMENTS AND HUMAN RIGHTS* (2003); Desiree Nilsson, *Anchoring the Peace: Civil Society Actors in Peace Accords and Durable Peace*, 38 *INT'L. INTERACTIONS* 243, 243–66 (2012). During peace negotiations and mediation processes, many international mediators are involved and many IHL provisions are inserted into peace agreements.

6. See, e.g., Anthea Roberts & Sandesh Sivakumaran, *Lawmaking by Non-State Actors: Engaging Armed Groups in the Creation of International Humanitarian Law*, 37 *YALE J. INT'L L.* 107, 107–52 (2012).

now that non-state actors, such as rebel groups, are also subject to international law, with duties, obligations, and some rights.⁷ The analytical focus of this article is on members of a rebel group, defined as a politico-military armed group that revolts against national governments. This definition excludes some jihadist groups that might not oppose the central government directly. In this article, rebel refers to group members at the leadership level—such as commanders and spokesmen—as the evidence examined does not permit the investigation of rank-and-file soldiers, but does include leadership-level thinking. The documents normally entail what rebel leaders think, as these documents are often produced by military commanders or spokespersons who are central agenda-setters and public relations agents.

B. Understanding

This article examines both the extent to which rebel groups know international human rights rules and norms, and how they form their beliefs about these rules. In this article, understanding encompasses rebels' knowledge of legal provisions and cases and their broader comprehension of the principles or applications for the purpose of enhancing humanitarian law compliance. This article is concerned with broader rules—including general principles—in addition to narrower ones, such as case holdings and specific treaty provisions. This article does not seek to judge whether said understanding is proper or correct in a legal sense. Rather, it attempts to analyze the patterns of understanding and the political, social and historical roots behind those patterns. Thus, it is irrelevant whether rebel groups are right or wrong in a normative or legal sense. Rather, what is relevant is how rebel groups signal and express what they know through their eyes.

C. Applicable Laws

The scope of international law regarding rebel groups will entail international humanitarian law (IHL) and international human rights law (IHRL). Despite being traditionally separate bodies of law, there is emerging consensus that the overlap between IHL and IHRL is growing⁸ as global conflicts have enormous implications for human security. Figure 1 depicts the relationship between IHL and IHRL. As the body of law governing wartime conduct, IHL covers much more than civilian protection, including issues surrounding the use of weapons such as anti-personnel mines, drones, and chemical weapons. On the other hand, IHRL covers issues besides treatment of ordinary citizens during wartime, including civil and political rights and the rights of certain vulnerable populations in peace time, such as children and women.⁹ Despite the differences, the principle

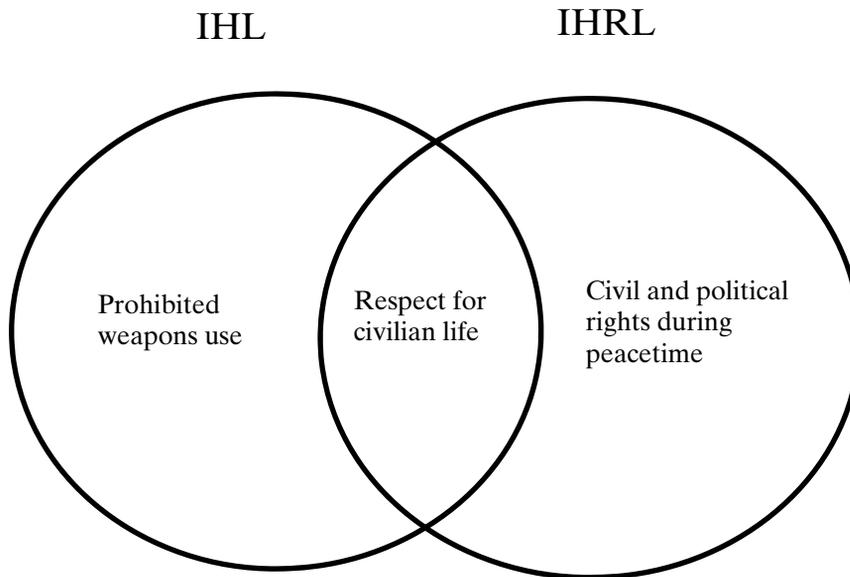
7. PHILLIP ALSTON & RYAN GOODMAN, INTERNATIONAL HUMAN RIGHTS (2012).

8. *Id.* See also ANDREW CLAPHAM, HUMAN RIGHTS OBLIGATIONS OF NON-STATE ACTORS (2006); SANDESH SIVAKUMARAN, THE LAW OF NON-INTERNATIONAL ARMED CONFLICT (2012); ANDREW CLAPHAM, HUMAN RIGHTS AND NON-STATE ACTORS (2013).

9. See DAVID SCHEFFER, ALL THE MISSING SOULS: A PERSONAL HISTORY OF THE WAR CRIMES

of respect for civilian life is the common aspect for both IHL and IHRL.

Figure 1: International Humanitarian Law (IHL) and International Human Rights Law (IHRL)



D. Methodology

This article analyzes rebel understanding by utilizing *Their Words*, a database of humanitarian commitments issued by rebel groups. Commitment is herein defined as some expression of restraint in the conduct of warfare. It should be noted that these rebel commitments are different from states' commitment to international law. In studies of states' commitments to international law, political and legal commitments often take the form of signing a treaty or by going through domestic ratification.¹⁰ IHL is not something rebel groups are initially bound to; therefore, the origin and form of commitment contains fewer formalities and more abstraction compared to the case of states in the international system.

The documents in this analysis have been collected by Geneva Call, a Swiss-based humanitarian non-governmental organization. The archive features documents issued by rebel groups in the form of unilateral declarations or

TRIBUNALS (2011) (demonstrating the overlap among international humanitarian law, international human rights law, and international criminal law).

10. Beth Simmons, *Treaty Compliance and Violation*, 13 ANN. REV. POL. SCI. 273, 273–96 (2010).

bilateral agreements with international organizations or national governments. These are public statements, not private documents such as intercepted cables or emails. Thus, the archive can be said to represent rebel groups' official positions, not private communications by a few in the rebel group. Geneva Call relied on several sources in making the archive: the international humanitarian law collection within the International Committee of the Red Cross and secondary sources related to international humanitarian law and non-state armed groups, such as academic publications on the topic.¹¹ The *Their Words* database covers the period of 1948 to 2014, and contains approximately 500 documents expressed by roughly 170 rebel groups in approximately 50 countries.¹²

Given the construction method of the archive, this article is mindful of the scope of the rebel groups included in the analysis. While the archive is fairly comprehensive, covering all continents and civil wars, the makers of the archive do not claim it to be exhaustive. Therefore, it is possible that some rebel groups have made expressions regarding international humanitarian law but the archive might have missed them. Also, because the archive features the rebel groups that have made public statements, it does not allow for a comparison between rebel groups who expressed these commitments and those who did not. Many of the groups in the archive are relatively strong and well-organized rebel groups, and as such, it does not provide insight into how relatively weak and unorganized groups view IHL.

Some might doubt the value of examining these documents for the purpose of analyzing rebel thinking. Certainly, it is possible that those rebel expressions do not truly reflect what the rebels understand IHL to be, as there is likely an incentive for them to misrepresent their beliefs. To that charge, this article claims to provide only a partial picture of their cognitive map about IHL understanding. Further, this article acknowledges that expressions of understanding may be simple window-dressing for the purposes of garnering international legitimacy or for delegitimizing other parties. With these caveats, the analytical purpose of this article is to examine how rebel groups express what they know and what they think of international norms regarding the wartime conduct.

Some might also argue that these documents may have little relation to how rebel groups behave. It is worth noting that states often fail to follow through on their international legal commitments; rebel groups, with less certain obligations than their state counterparts, may feel even less bound by international law. Nevertheless, these documents are not just cheap talk. Rebel groups pay some *ex ante* price: they have to employ a bureaucratic mechanism to find out what the audience of these documents cares about. Furthermore, if this is cheap talk, then

11. Email from Pascal Bongard, Legal Adviser, Geneva Call (October 29, 2015, 4:25 PM) (on file with author). See also GENEVA CALL, THEIR WORDS: DIRECTORY OF ARMED NON-STATE ACTOR HUMANITARIAN COMMITMENTS, <http://theirwords.org> [<https://perma.cc/37FM-EWFU>] (last visited September 25, 2018).

12. Hyeran Jo and John Niehaus, List of Rebel Groups Contained in *Their Words* Database (on file with authors). The list was compiled based on the *Their Words* database.

every rebel group would publish these documents because there is no cost to doing so. However, usually only strong and capable groups engage in these public announcements. Therefore, these documents are purposeful policy tools of rebel groups amid their political struggle. Issuing these kinds of soft documents is one form of expressing themselves as a member of the international community, as well as a political tool to distinguish groups that do not publish the soft law documents (e.g. Hamas) from those that do (e.g. PLO). For rebel groups that issue these documents, the documents are a medium of communicating with internal and external audiences, including national governments, civilian populations, and the international community.

This article interprets the documents in the *Their Words* database qualitatively to access the historical and social contexts of these expressions. Additionally, this article relies on the *Rebel Commitment Dataset*. The dataset was constructed by the authors to see which rebel groups make commitments to international humanitarian law as documented in the *Their Words* archive, out of the list of all the contemporary rebel groups populated by the Uppsala Conflict Data Program (UCDP). Because silence is a form of expression, this article takes special note of these groups when comparing committers to non-committers. The *Rebel Commitment Dataset* contains information about rebel groups in civil wars that took place between 1989 and 2012, as well as their characteristics (e.g. military strength) and contexts (e.g. ongoing peace talks). This article leverages this dataset to examine the rebel groups that did not express any commitment. Graphs and Figures presented in this article are based on the collection of data.

III

TYOLOGY OF REBELS' IHL UNDERSTANDING

This part delves into four types of rebel understanding of international humanitarian law and human rights. The typology was developed based on both inductive and deductive reasoning. Because the suggested types are drawn mostly from a reading of the texts in the *Their Words* archive, it is inductive. The reasoning is also partly deductive because the typologies were drawn from what the authors know about the rebel environment and the context of civil wars. In developing these typologies, it is necessary to begin with some assumptions. For example, it is assumed that rebel groups need political supporters. Depending on how desperate rebel groups are for social support from international actors, rebel groups will engage in activities such as issuing of soft law documents related to international humanitarian law. This impetus will give rise to the typology of “social understanding” which is later classified as one of the four types of understanding.

The first premise is that rebel understanding of IHL stems from the social and political positions of rebel groups. We cannot assume that rebels think like legal experts or jurists; although some rebel leaders are legally trained, most lack requisite training or knowledge. Rebel understanding is likely informed by history and political struggles of taking up arms against government forces. Rebels are usually considered outlaws, and are sometimes branded as terrorists

or domestic criminals. Rebel understanding is also within the context of the weak reciprocity norm; characterized by strong government forces confronting weak rebels, reciprocity—or tit-for-tat—is bound to be weak in internal armed conflicts¹³ compared to interstate interactions. This lack of a key norm-enforcer and military contest with existing national governments influences how rebels understand IHL. Rebels are likely to speak out about being marginalized and paint governments as rights-violating actors to make up for the groups' inability to adequately reciprocate force.

The law's origin and political struggles also likely influence how rebels understand the authority, bindingness, and value of international law. As international law originates from state-to-state negotiations at the exclusion of rebel groups' participation, rebels usually take international law not as their own, but as something attributed to the state system in the international sphere. Rebels rarely participate in law-making. Non-state armed groups have generally been sidelined throughout the history of international law; their highest level of participation occurred when some rebel groups were admitted to the negotiations of the Geneva Conventions as observers.¹⁴ Rebel groups are thought to participate in the creation of customary international law,¹⁵ but this status in law-making is far from authoritative.¹⁶

The international law-making process, without political representation for rebel groups, has implications for how rebels understand international law. The law is usually thought of as something that binds us, and national governments have mechanisms to incorporate international law into their domestic law.¹⁷ However, rebel groups might not think of international law as a constraint on their behavior, as they had little say in its principal formation. This also means that some groups hoping to integrate with the international community may use IHL as a diplomatic tool for political assimilation. Because rebel groups cannot participate in the formal law-making process of IHL, they instead issue “soft documents” that express their understanding.¹⁸ As such, the origin of international law impacts how localized IHL may be among rebel groups, thereby leaving interpretations of many situations to rebels themselves.

Based both on the legal origin of IHL applicable to rebel groups and the political motivations behind IHL use, four types of rebel understanding of IHL emerge: shared understanding, local understanding, social understanding, and strategic understanding. Rebel groups often reveal a shared understanding of

13. See MARK OSIEL, *THE END OF RECIPROCITY* (2009).

14. See CLAPHAM, *supra* note 8.

15. See JEAN-MARIE HEANCKAERTS & LOUISE DOSWALD-BECK, *CUSTOMARY INTERNATIONAL HUMANITARIAN LAW* (2009), <https://www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf> [<https://perma.cc/526B-GVBW>].

16. See Roberts & Sivakumaran, *supra* note 6.

17. See, e.g., Emilia Powell & Sarah Mitchell, *The International Court of Justice and the World's Three Legal Systems*, 69 *J. POL.* 397, 397–415 (2007); Harold Koh, *Why do Nations Obey International Law?*, 106 *YALE L. J.* 2599, 2599–2659 (1997).

18. See Roberts & Sivakumaran, *supra* note 6.

human dignity and protection of civilians in principle, though their local understanding of who constitutes civilians is sharply curtailed by their religious beliefs and practical concerns in waging rebellion. Social understanding is also found among rebel groups that interact frequently with international humanitarian actors. Lastly, strategic understanding is also prevalent, as rebel understanding of IHL is colored by their political and military purposes. In many cases, for example, rebel groups generate a war of words to disparage governments' repressive actions.

The aforementioned types of understanding are not necessarily mutually exclusive. Purposeful and political motivations in strategic understanding can influence the practical and local understanding of how civilians should be classified. Social understanding stemming from the interactions with international humanitarian or human rights actors can also overlap with a shared understanding of core humanitarian principles. With this interplay of typologies in mind, this article now turns to a discussion of each.

A. Shared Understanding

Because the origin of IHL is such that it covers basic values of humanity and dignity of life, we expect that some rebels express shared understanding of these basic universal principles. Basic IHL principles include: 1) the distinction between civilians and combatants; 2) the prohibition of attacks against those *hors de combat*; 3) the prohibition on the infliction of unnecessary suffering; 4) the principle of necessity; 5) the principle of proportionality; and, 6) the principle of humanity. Some groups understand the law to be in line with their pre-existing norms, beliefs, or values. In such cases, groups may express their beliefs regarding the intrinsic normative value of the law in line with the view of natural law.¹⁹ This shared understanding takes up 17 percent of documents in the database, providing some empirical evidence of such universal understanding of IHL principles.

In the *Their Words* archive, some expressions of IHL understanding reflect shared values. For example, the Free Syrian Army (FSA) released a statement in 2016 condemning the Assad regime's treatment of civilians, which stated that the FSA holds humane treatment of non-combatants to be inherently moral: "Such laws [concerning treatment of civilians] are entirely consistent with the objectives we defend by protecting civilians who demand their rights for freedom, justice, and the rule of law."²⁰ The FSA has also made attempts to refute claims from the international community that the FSA has treated civilians poorly: further

19. This finding is consistent other studies regarding non-state actors' perception about IHL. See Ashley Jackson, *In Their Words: Perceptions of Armed Non-State Actors on Humanitarian Action*, GENEVA CALL (May 2016), <https://www.eisf.eu/wp-content/uploads/2016/06/2078-Geneva-Call-2016-In-their-words-Perceptions-of-armed-non-State-actors-on-humanitarian-action.pdf%20of%20Non-state%20armed%20groups> [https://perma.cc/275H-EV96].

20. Free Syrian Army, *Declaration*, GENEVA CALL (2016), http://theirwords.org/media/transfer/doc/fsa_declaration_2016-1078a35c56fc236e94abb00ac3911717.pdf [https://perma.cc/SFC9-X42T].

evidence of a general understanding of the law.²¹

An additional example of universal understanding is the Palestinian Liberation Organization (PLO)'s release regarding the recruitment of child soldiers. It states, "Our political platforms and organizational mechanisms do not legitimize the targeting or recruitment of children."²² This expression might be taken as evidence that the PLO understands certain laws to embody universally shared values. Lastly, the National Liberation Army (ELN) in Colombia asserts a position suggestive of universal values for treatment of civilians, stating, "Our revolutionary ethic obligates us to be rigorous in avoiding military actions that can harm civilians and our people. This is the essence of our ethics and behavior." These cases show, at the very least, that rebels know what the standards of human rights law are. However, these groups may not have fully internalized human rights standards, instead they replaced those standards with their local understanding. This article turns next to this process of applying universal values to local settings.

B. Local Understanding

Local understanding emerges when rebel groups apply universal values to their local settings. For instance, in understanding who has non-combatant protections under IHL, an Islamist rebel group has to reconcile their religious teachings and military imperatives to determine whether a person should be treated as a civilian or an enemy-combatant. This category of local understanding amounts to approximately 40 percent of documents in the *Their Words* database, indicating the prevalence of rebel attempts to localize their understanding of global norms.

The FARC (Fuerzas Armadas Revolucionarias de Colombia, which translates to the Armed Revolutionary Forces of Colombia) demonstrates rebels' local understanding of IHL. In a document published concerning child soldiering practices, the FARC asserts that they refuse potential child recruits and take steps to ensure that children who are recruited are immediately turned over to the appropriate authorities. However, the FARC also highlights an irony within the law: it states that many children in its ranks have been orphaned by the conflict and would thus be homeless unless they are permitted to join the FARC. The FARC justifies its child soldiering by arguing that it would be immoral to shun children whom they know have nowhere else to go.²³ Despite knowing the

21. Free Syrian Army, *Statement of the Free Syrian Army about the Recruitment of Child Soldiers*, GENEVA CALL (2014), <http://theirwords.org/media/transfer/doc/fsa-280a7e3c5cb7d3512fa8d731dfed53c4.pdf> [https://perma.cc/N3P2-E4J3].

22. Palestinian Liberation Organization in Lebanon, *Declaration Issued by Factions of the Palestine Liberation Organization in Lebanon and the Forces of the Palestinian National Coalition in Lebanon on the Protection of Children from the Effects of Armed Conflict and Violence*, GENEVA CALL (2013), http://theirwords.org/media/transfer/doc/declaration_on_the_protection_of_children_from_the_effects_of_armed_conflict_and_violence-bec802d1b7c3f215a558f17601ac0e81.pdf [https://perma.cc/NLE3-EA6E].

23. Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo, *Announcement on Minors*

regulations surrounding the recruitment of child soldiers, the FARC finds compliance to conflict with local notions of morality, therefore justifying the presence of some children in their ranks.

Ideology and culture play an especially important role in interpreting IHL in practice among rebel groups. In the Islamic world, children are considered to be adults when they are 15. This conflicts with the “Straight 18” rule espoused by international organizations. The Philippines rebel group Moro Islamic Liberation Front (MILF), justifies the use of children in their ranks for “auxiliary roles” like fetching water or moving small things on these grounds.²⁴

Moreover, apostasy—a central concept in Islam—provides a useful illustration of local norms contrasting with IHL.²⁵ The concept of apostasy provides religion as a central dividing line for combatant status among civilians, marking Muslims as non-combatants and non-believers as combatants. For this reason, Quranic verses and the Hadith are often cited by Islamist rebel groups in justification of the execution of targets that would otherwise not be targeted under IHL.²⁶ In a recent example, an ISIS fighter’s mother asked him to denounce and leave ISIS; she was then arrested by ISIS, and the fighter executed her in front of other citizens in the city of Raqqa.²⁷ In some instances, ISIS has crucified those who disobey portions of Islamic Law, arguing that the definition of apostasy generally includes deeds contrary to the religion, thus, warranting execution.²⁸ The enforcement of physical and capital punishment for apostasy by non-state actors is not exclusive to ISIS, although they provide a salient and recent example.²⁹ IHL does not have religion as a qualifier; civilians do not lose their status as non-combatants as a result of having left their religion or otherwise disrespecting it. In this sense, local norms come into conflict with IHL as the two are mutually exclusive with regard to apostasy. By obeying IHL one might be considered as not obeying Islamic Law; in obeying Islamic Law, one cannot obey IHL.

in the Conflict, GENEVA CALL (2015), http://theirwords.org/media/transfer/doc/farc_ep-announcement_on_minors_in_the_conflict-e6c1d31649e5c1560d3487a1740e48c0.pdf [https://perma.cc/R6PR-SS75].

24. *Child Soldiers in Spotlight as Mindanao Battle Rages*, IRIN NEWS, (October 21, 2008), <https://www.irinnews.org/feature/2008/10/21/child-soldiers-spotlight-mindanao-battle-rages> [https://perma.cc/Y6DC-SYB4].

25. See JOHN KELSAY, *ARGUING THE JUST WAR IN ISLAM* (2007).

26. See QURAN 5:33–34, 3:85; 9:66; 16:106 (containing examples of passages referring to apostasy and its punishment).

27. *His Mother Asks Him to Leave the “Islamic State” Organization and Leave the City of Al-Raqqah, so He Executes His Mother in Front of Citizens*, THE SYRIAN OBSERVATORY FOR HUMAN RIGHTS (2016), <http://www.syriahr.com/en/?p=42310> [https://perma.cc/VH64-3DR5].

28. Jonathan Spyer & Aymenn Jawad al-Tamimi, *Butchers: Syria’s ISIS Crucifying Opponents, Justifying Horror with Quran Passages*, PJ MEDIA (May 27, 2014), <https://pjmedia.com/blog/butchers-syrias-isis-crucifying-opponents-justifying-horror-with-quran-passages/?singlepage=true> [https://perma.cc/M73Y-WGXL].

29. For an in depth discussion of how apostasy laws are enforced by local communities more generally, see PAUL MARSHALL & NINA SHEA, *SILENCED: HOW APOSTASY AND BLASPHEMY CODES ARE CHOKING FREEDOM WORLDWIDE* (2011).

As a consequence of this conflict between local law and IHL, some rebel groups in the Islamic world may not express IHL commitments at all. Among 266 groups in the *Rebel Commitment Dataset*, 56 are classified as Islamist groups.³⁰ Of those only 4 express some form of IHL commitment.³¹ Thus, the rest of the 52 Islamic groups do not express any IHL commitment.³² Among 35 jihadist groups, only one jihadist rebel group (Taliban) appears in the *Their Words* archive.³³ Some of these cases of loud silence—where some jihadists loudly reject the western rules of war by keeping silent—may be different from muted silence from weak and obscure groups.

C. Social Understanding

Social understanding results from social interactions between rebel groups and international humanitarian actors. Based on these interactions, some understandings possessed by rebel groups are influenced by what international actors discuss and how international actors interact with rebel groups. For example, when some rebel groups negotiate the United Nations action plans to reduce the number of child soldiers, the voice of the UNICEF and the Special Office of Children and Armed Conflicts will no doubt be incorporated into rebel understanding. Similarly, platforms for human rights commitments are frequently utilized by international mediators as part of drafting peace agreements,³⁴ and this influences how rebel groups see human rights in their ongoing armed struggle. The word “social” denotes that the understanding might not be organically grown by rebel groups themselves, but rather, by the fruits of social interactions. In the *Their Words* database, a large portion of approximately 70 percent of documents express this social understanding at some level, signifying the widespread interaction between non-state armed groups and international actors.

Political and social interactions between international actors and rebel groups have resulted in a new understanding of IHL over the past couple of decades. For instance, the *Their Words* database features about 140 records of rebel groups expressing restraint on the use of minors, most of which are the result of efforts by the United Nations Office on Children and Armed Conflict to sign action plans to reduce child soldiering, and by the Geneva Call in signing the deed of commitments for the protection of children from the effects of armed conflict.

30. In the *Rebel Commitment Dataset*, Islamist groups are the ones that have some Islam related words in their platform or in their professed ideology, and jihadists are ones that had sought to wage a jihadist campaign, the implementation of sharia law, the formation of a strictly Islamist state for the entire country and/or removal of Western or non-Islamist influences on society.

31. These are MILF (Philippines), Taliban (Afghanistan), GAM (Indonesia), and UTO (Tajikistan).

32. Some examples include Abu Sayyaf (Philippines), Supreme Council for the Islamic Revolution in Iraq (SCIRI), Rohingya Solidarity Organization (Myanmar), Al-Qaida (Afghanistan/Pakistan), Hamas (Israel), Hezb-i-Islami (Afghanistan), Ansar al-Islam (Iraq/Syria), Islamic State of Iraq (Iraq), Hezbollah (Israel/Lebanon), Al-Shabaab (Somalia), and Boko Haram (Nigeria).

33. Substantial overlaps exist between the non-committer Islamist groups and non-committer jihadist groups, including Hamas and Hezbollah.

34. See BELL, *supra* note 5.

These documents, drafted with help from international actors, differ in both tone and specificity from unilateral declarations by rebel groups themselves. In a 2014 statement,³⁵ the Free Syrian Army refers to child soldiering as a “despicable practice,” assuring that the “monitoring and reporting” mechanisms under its command ensure compliance with “all international conventions regarding the rights of children, in particular, The Optional Protocol to the Convention on the Rights of the Child of 2003.” The Moro Islamic Liberation Front (MILF) in the Philippines sets specific timelines for monitoring and reporting, as well as specific plans for developing educational programs for former child soldiers, and, “in partnership with UNICEF and its mutually agreed partners, ensure[s] training and advocacy with the BIAF [Bangsamoro Islamic Armed Forces, armed wing of MILF] on child protection and child rights with particular reference to ensuring that using and recruiting children is not acceptable.”³⁶ These examples demonstrate that social understanding is fairly common when internal conflicts often involve mediation and dialogue from external actors in this day and age.

D. Strategic Understanding

The last type of understanding is strategic use of IHL and human rights language. Strategic understanding is demonstrated in documents that mention specific purposes such as bolstering external support or claiming moral high ground vis-à-vis governments. This strategic understanding or use of international law might arise due to rebel groups’ political motivations for waging rebellion—strategic in the sense that it allows them to gain military and political advantages. According to our reading and coding of the documents in the *Their Words* archive, about 20 percent of documents fall into this category of strategic understanding, denoting that rebel groups actually exhibit such understanding in one in five cases.

We specifically expect three strategic purposes for rebel use of IHL. First, rebel groups utilize IHL to achieve foreign and domestic support. Rebel groups need resources to pay for their soldiers and military efforts, so material support from backers is central to sustaining their movements.³⁷ In this line of effort, the pledge to abide by international humanitarian law can enhance rebel groups’ image with potential supporters both at home and abroad. Some rebel groups even try to add international legitimacy to their movements by appearing to comply with IHL.³⁸ For the audience who cares about human rights and civilian

35. Free Syrian Army, *supra* note 21.

36. Moro Islamic Liberation Front/Bangsamoro Islamic Armed Forces (MILF/BIAF), *Action Plan between the Moro Islamic Liberation Front (MILF) and the United Nations in the Philippines regarding the Issue of Recruitment and Use of Child Soldiers in the Armed Conflict in Mindanao*, August 1, 2009, http://theirwords.org/media/transfer/doc/1_ph_milf_biaf_2009_13-d74703efad5c37df5ab9842bc87e67a2.pdf [<https://perma.cc/QVS9-FCSJ>].

37. For example, during the Libyan conflict in 2011, Libyan rebels used tweets to advertise their battle success to attract foreign backers. See Benjamin Jones & Eleonora Mattiacci, *A Manifesto, in 140 Characters or Fewer: Social Media as a Tool of Rebel Diplomacy*, BRIT. J. POL. SCI. 1, 1–23 (2017).

38. HYERAN JO, COMPLIANT REBELS (2015).

protection, the expression of understanding will help groups to score political points. Rebel groups can legitimately claim that they are part of international society by showing that they care about international humanitarian standards.

Second, rebel groups may use IHL as one of their political tools to claim moral high ground vis-à-vis their opponent, the national government. In disparaging their national governments for their poor human rights records and overall repressiveness, rebel groups invoke international law to justify their rebellion and claim the moral high ground.

In the *Their Words* archive, the strategic use of IHL is found in many places and instances of claiming moral high ground are numerous. A statement released by the Karen National Union (KNU) serves as one example. KNU represents the ethnic Karen in southern Myanmar and has waged rebellion against the government for more than 30 years. One of the documents issued in 2011 states, “the Burma Army troops continue to perpetrate widespread and gross human rights violations and crimes against humanity on the ethnic civilian populations.”³⁹ Immediately, one is given the impression that the KNU is a law abiding body that is simply being victimized by an immoral state.

Third, rebel groups have an internal organizational purpose to use IHL: to discipline their soldiers.⁴⁰ The Taliban’s *Layeha*—or internal code of conduct—and Internal Codes by the Moro Islamic Liberation Front (MILF) in the Philippines, are both examples of rebel groups utilizing IHL principles to discipline their soldiers. The Taliban issued three internal codes of conduct titled *Layeha* in 2006, 2009, and 2010. MILF also issued the General Order No. 1 in 2005 and General Order No. 2 in 2006, in which it affirmed its organizational commitment to IHL principles while disciplining its own soldiers.⁴¹

The historical evolution of the Taliban’s *Layeha*⁴²—first published in 2006 and later revised in 2009—also supports the notion of rebels using IHL for internal discipline and group management. The Taliban’s 2006 issue of the *Layeha* is likely a strategic reflection of the Taliban gaining ground after being weakened by the 2001 invasion of Afghanistan by U.S.-led coalition forces.⁴³ As

39. Karen National Union, *KNU Statement on Use of Ethnic Civilians for Forced Labor and as Human Shield by Burma Army Troops*, May 26, 2011, http://theirwords.org/media/transfer/doc/mm_knu_2011_59-e672cac2b674cee2a83e421b9c24b40a.pdf [<https://perma.cc/J3R2-4VJZ>].

40. See Olivier Bangerter, *Control: Codes of Conduct within Insurgent Armed Groups*, SMALL ARMS SURVEY (2012), <http://www.smallarmssurvey.org/fileadmin/docs/B-Occasional-papers/SAS-OP31-internal-control.pdf> [<https://perma.cc/33B5-EAHT>].

41. See Moro Islamic Liberation Front/Bangsamoro Islamic Armed Forces (MILF/BIAF), *General Order Number 1: An order promulgating a code of conducting regulating the affairs of the Bangsamoro Islamic Armed Forces, prescribing its powers, duties and functions, and other related purposes*, 2005; *General Order Number 2: An order amending Articles 34 and 36 of the Code of Conduct of the Bangsamoro Islamic Armed Forces and for other purposes*, 2006, http://theirwords.org/media/transfer/doc/1_ph_milf_biaf_2006_10-dab1e2f6c0a66ae79efc1ba1f39f6077.pdf [<https://perma.cc/WKY8-VH9P>].

42. “Code of Conduct” in Pashto.

43. For several in-depth historical discussions of the Afghan conflict and how it may have informed the Taliban’s code of conduct, see Alia Brahimi, *The Taliban’s Evolving Ideology*, LSE GLOBAL GOVERNANCE (2010), <http://www.lse.ac.uk/globalGovernance/publications/workingPapers/>

the Taliban gained strength, the group required enhanced internal discipline both for the purposes of achieving its goal of winning the conflict, and to ensure that it retained legitimacy in areas where the government was lacking. By 2006, when several historians and military officials agreed that Afghanistan took a turn for the worst, the Taliban had an estimated 17,000 fighters compared to about 20,000 coalition forces.⁴⁴ Thus, the Taliban had sufficient forces to mount an offensive⁴⁵ and accordingly required guidance to coordinate attacks.

Three articles of the 2006 *Layeha* contain restrictions on Taliban treatment of civilians, stating that those soldiers who attack civilians are to be disciplined by their commander. The articles also forbid searches and seizures of civilian property without approval by a commander.⁴⁶ Thus, a chain of command is implemented for the purpose of regulating organizational behavior: particularly, behavior towards civilians. Moreover, the 2006 version details the judicial processes behind handling prisoners and punishments if the chain of command is not followed. Additionally, one provision requires that “[a]ny official can invite any Afghan who is in the infidels’ ranks to accept true Islam.”⁴⁷ This reflects the Taliban’s strategic desire to recruit as many people as possible to their ranks while providing information and local control to the Taliban. Further strategic use of the code for internal discipline is seen in the clauses that forbid fighters from working as a teachers under the Karzai regime, as “this strengthens the system of the infidels,” suggesting motive for using the code to ensure streamlined behavior of their fighting force.⁴⁸ In this fashion, at least 14 of the 30 articles in the 2006 version express limitations on the behavior of troops and commanders, especially regarding the treatment of civilians and prisoners, and also begin to establish guidelines for a chain of command. These guidelines ensure internal control for a force that was quickly taking over the country, while also mandating respect for civilians who felt victimized or otherwise insecure under the Karzai government.

Subsequent versions of the *Layeha* reflect changes in the Taliban’s strategy as a result of largely having gained control over the country, with the expectation of becoming a legitimate governing authority.⁴⁹ Upon taking office in 2008,

WP022010.pdf [<https://perma.cc/DL5P-FY YA>]; ANTONIO GIUSTOZZI, KORAN, KALASHNIKOV AND LAPTOP: THE NEO-TALIBAN INSURGENCY IN AFGHANISTAN (2007); DAVID AUERSWALD & STEPHEN SAIDEMAN, NATO IN AFGHANISTAN: FIGHTING TOGETHER, FIGHTING ALONE (2014); and SETH JONES, IN THE GRAVEYARD OF EMPIRES: AMERICA’S WAR IN AFGHANISTAN (2009).

44. GIUSTOZZI, *supra* note 43.

45. JONES, *supra* note 43. The offensive was with the rate of suicide bombings in Afghanistan quadrupling between 2005 and 2006, insurgent attacks in general increasing by 400 percent between 2002 and 2006, and the number of deaths from the attacks increasing by 800 percent during the same time span.

46. KATE CLARK, *The Layha: Calling the Taliban to Account*, AFGHANISTAN ANALYSTS NETWORK (2011), https://www.afghanistan-analysts.org/wp-content/uploads/downloads/2012/10/Appendix_1_Code_in_English.pdf [<https://perma.cc/Z33H-9C XD>].

47. *Id.*

48. *Id.*

49. *See id.*

President Obama was told by one of his foreign policy advisors, Bruce Riedel, “We are losing the war in Afghanistan, but it is not yet lost.”⁵⁰ General Stanley McChrystal’s report to the president corroborated this statement shortly thereafter. The report stated, “[t]he country was falling apart, the government was corrupt and incompetent, the Taliban were gaining strength and popular favor, ISAF [International Security Assistance Force] had no coherent strategy . . . If nothing changed, defeat was inevitable.”⁵¹ By 2008, the Taliban was on a winning-streak that, if continued, would likely result in their controlling the state of Afghanistan. As such, their Code of Conduct evolved to reflect this prospect, calling for increased internal cohesion, enhanced respect for civilians, and overall reductions on the use of force.

The comparison between the 2006 and 2009 versions of the *Layeha* yields three observations. First, in the 2006 version there is a clear rule that requires foreign-run or funded schools to be burned down if their administrators do not heed warnings to close them.⁵² No such rule appears in the 2009 version, suggesting backlash from the community regarding this behavior, and a consequent endeavor to stop it.⁵³

Second, we see three types of regulations that go virtually unchanged between the 2006 and 2009 versions: 1) prisoners are not to be released for money; 2) protections for civilians; and 3) prohibitions on keeping “youngsters” in Taliban establishments.⁵⁴ The latter two of these continued regulations show a continued effort to curb poor treatment of the civilian and child populations. This differentiation between permissible targets is typically thought of as consistent with IHL norms.

Third, the 2009 version places greater restrictions on the use of force by the Taliban, likely in an attempt to limit historically problematic behavior.⁵⁵ For example, the sections on handling those who surrender contain statements like “compensation shall not be obtained by force,”⁵⁶ and “Taleban [sic] should not kill soldiers and policemen who surrender.”⁵⁷ Also, obtaining confessions by force is considered to have “no credibility,” a stipulation which was never mentioned in the previous version,⁵⁸ and the filming of executions are expressly prohibited in this version, something not found previously.⁵⁹ Moreover, when

50. FRED KAPLAN, *THE INSURGENTS* (2013).

51. *Id.*

52. CLARK, *supra* note 46.

53. See YOSHINOBU NAGAMINE, *THE LEGITIMIZATION STRATEGY OF THE TALIBAN’S CODE OF CONDUCT* (2015).

54. *Id.*

55. For greater detail on these behaviors, see Thomas Johnson & Matthew DuPee, *Analyzing the New Taliban Code of Conduct (Layeha): An Assessment of Changing Perspectives and Strategies of the Afghan Taliban*, 31 *CENTRAL ASIAN SURVEY* 77, 77–91 (2012).

56. CLARK, *supra* note 46.

57. *Id.*

58. *Id.*

59. *Id.*

execution is deemed permissible in the 2009 version, it is typically qualified by requiring permission from the Imam or Nayeb.⁶⁰ From these changes, we see a move towards reduced brutality in newer versions of the *Layeha*, with far more expansive rule sets requiring specific action (or inaction) in particular circumstances.

Lastly, the section regarding treatment of the civilians is more expansive, with clearer delineations of (un)acceptable behavior, stating that civilians are to be safe in their person and possessions. Fighters who violated this safety were to be punished accordingly. Perhaps most importantly, limitations on martyrdom operations as they affect civilians are laid out in the 2009 version but not the 2006 edition, with an explicit rule requiring the avoidance of civilian casualties in suicide attacks.⁶¹

These changes to the 2009 version of the *Layeha*—reductions on the use of violence against those who have surrendered and reductions on violence against civilians—are also likely strategic reforms. Prior to 2009, the Taliban had to ensure a foothold on Afghanistan. This entailed removing teachers (or other forces) that were installed by the current regime. However, after having gained greater control over Afghanistan by 2009, this violence could be scaled back in order to garner a more legitimate image with both the civilian population and those in the international community. Thus, IHL norms were initially neglected out of strategic convenience, and later more fully embraced, potentially for strategic reasons as well.

Rebels' strategic use of IHL is found in many places in the *Their Words* archive. Rebels use IHL to clean up rebel organizations through disciplining their own soldiers; advancing their domestic political goal of fighting government forces by sending messages to international actors that they are the ones that are law-abiding; and conducting public relations with international actors. These purposes—international and domestic political motivation to attract supporters, to disparage their key opponents, and an internal purpose to discipline rank-and-file soldiers—influence how rebels view IHL as part of the political and diplomatic effort to win their war.

E. Comparison Across Four Types

This article has so far examined four types of rebel understanding: shared, local, social and strategic. How common is each type of rebel understanding, and how are the categories related to each other? To examine these patterns empirically, each type of understanding among 718 documents in *Their Words* archive has been coded.⁶² “Shared” was coded if there are indications of the mention of the Geneva Conventions or general principles of international humanitarian law, such as “principle of distinction.” The documents were tagged

60. *Id.*

61. *Id.*

62. This number includes double counts: sometimes one document is signed by multiple groups.

as “local” if the documents specified different understandings tailored to local situations. “Social” was coded if the documents were forged during an interaction with international organizations or external actors. Lastly, “strategic” codes were assigned if the documents mention specific purposes such as bolstering external support, claiming moral high ground vis-à-vis governments, or strengthening internal regulation within its ranks. All four of these codes are binary codes: 0 for absence, and 1 for presence, of such understanding.

Figure 2 displays the absolute frequencies of each rebel understanding type. A sizeable majority of documents meet the criteria for social understanding: of 718 documents analyzed, 515 of them have social elements. This may be due to the fact that many of the documents are not explicitly drafted by the rebel groups themselves, but in concert with international organizations. The prevalence of social understanding relative to other categories, with the motivations of the international community at their origin, is a new finding. Figure 3 plots the number of rebel documents in the four types of rebel understanding over time between 1989 and 2016, yielding a similar message about the prevalence of social understanding. In particular, the documents related to social understanding have exploded after 2000, with many international actors engaged in conflict zones around the world.

Figure 2: Frequencies of Rebel Understanding Types

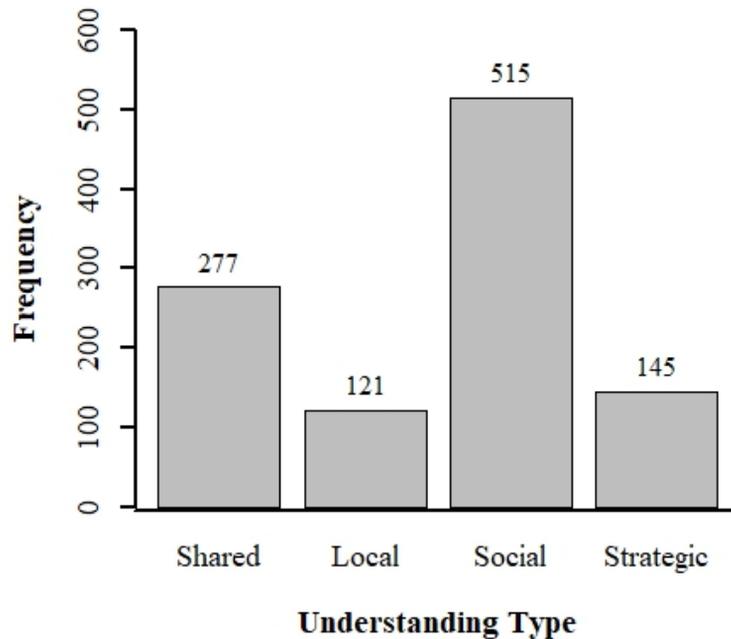
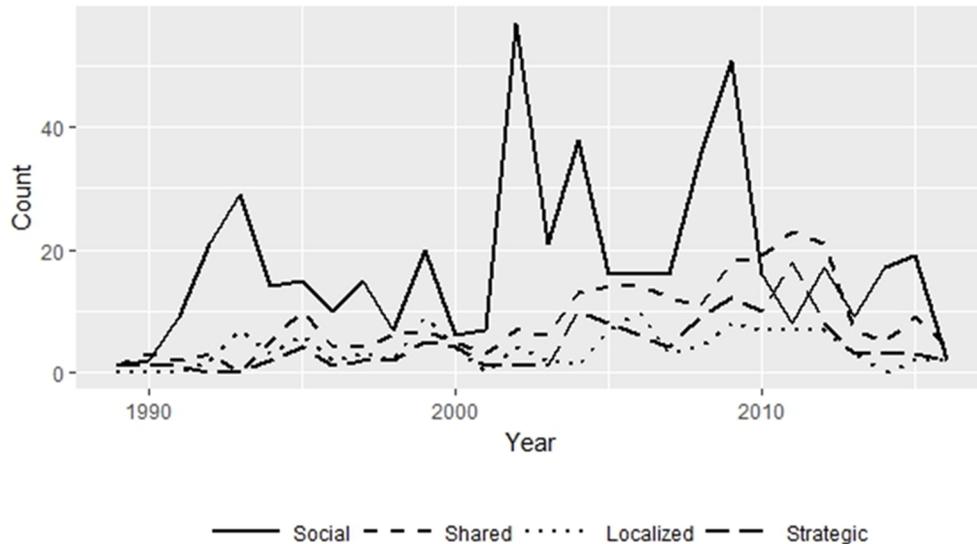


Figure 3: Four Types of Rebel Understanding Over Time



The four types of rebel understanding—shared, local, social and strategic—are not mutually exclusive categories. Each understanding can be expressed together or separately. Table 1 presents the counts of documents related to each type of understanding and the pairwise overlaps across the types.

Table 1: Pairwise Frequencies of Rebel Understanding Types

	Shared Understanding	Local Understanding	Social Understanding	Strategic Understanding
Shared Understanding	277	80	130	126
Local Understanding	80	121	52	43
Social Understanding	130	52	515	74
Strategic Understanding	126	43	74	145

One interesting pattern to note is the following: when social understanding is present, two categories—local and strategic understanding—are somewhat uncommon. Only about half of the documents that have local and strategic understanding also display social understanding. This may be because the ability of actors to express understandings of their own (local) or self-interested understandings (strategic) becomes more difficult when a document is drafted in concert with an international organization, or is otherwise highly formalized.

Another observation concerns shared understanding, expressed roughly in 40% of all documents (see Figure 1). However, of the percentage of documents that show shared understanding, slightly under half (126 of 277) simultaneously express strategic understanding (see Table 1). Thus, although some groups may be sincerely expressing a shared understanding of IHL norms and a desire to come into compliance with these norms, a significant portion of these groups also make statements indicating ulterior motives.

Last, where groups express a shared understanding of IHL, slightly less than half also display localized understandings (130 of 277). This may indicate that groups find it easier to abide by some international norms, while finding other norms to be more difficult to follow due to religious prescriptions or ambiguity across different IHL documents. Interestingly, nearly three-quarters of all documents that display local understanding also display shared understanding (80 of 121). Thus, when understanding is localized, there is often still some semblance of shared understanding with the international community.

IV CONCLUSION

Rebels' understanding of international humanitarian law is part of rebel-craft: heavily influenced by the rebellion's military needs, political purpose, social interactions, and historical junctures. Rebel groups often use these documents as political expressions, and the publication of these documents are political acts. They also frequently use these documents to claim moral high grounds vis-à-vis their governments, disparaging the human rights record of the opposing government and claiming the righteousness of their own movements. Also, in some cases, rebels instrumentally use international law to discipline their own soldiers.

These legal understandings, to a certain extent, are not different from national governments' understanding of international humanitarian law and related human rights. A study by the International Committee of the Red Cross⁶³ shows that governments' understanding of IHL is not uniform, either. Compared to rebels' understanding, governments' understandings are more expressive of

63. See HEANCKAERTS & DOSWALD-BECK, *supra* note 15.

universal understanding given the fact that most countries ratified the Geneva Conventions, although at different rates of the Additional Protocols. Yet government understandings may be replete with local understandings as well, customized to the needs of national army and security objectives, as the recent debates surrounding the newly revised law of war manual published by the U.S. Department of Defense demonstrate.⁶⁴ Social and strategic understandings are also found in governments' expressions, as national governments also engage in extensive interactions with international organizations and NGOs, and the main drivers of law of war documents are to discipline national forces.

More analysis of how government and rebel forces' understandings differ and where they are similar is necessary, as reciprocity hinges on common understanding. These analyses will have implications for how norms are exercised on the battleground.

The research conducted here has implications for global security and international law. The findings about how rebels understand international law will inform third parties—international organizations, humanitarian actors, and other states—who frequently have to interact with rebel elements in conflict zones. This article also provides a picture of rebel group thinking regarding humanitarian and human rights issues, and demonstrates the partial existence of customary international law of rebel groups. The two requirements of customary international law are *opinio juris* and practice,⁶⁵ and rebel concordance in thinking with international rules of war can be considered partial evidence of a widely held belief. Recognizing that rebel groups also know and care about international rules fosters debate about whether rebels' law-making participation might be a good idea for international legal development.

This inquiry has limitations. It has examined how rebel groups understand international humanitarian law and human rights through the investigation of some rebel documents. This examination is only part of the picture, not the whole picture of rebel thinking. *Their Words* rebel groups are clearly within the “expression” set, but the thoughts of rebel groups that did not express themselves are unknown. Another caveat to this research is that rebel expressions might not be sincere. This possibility was accounted for in the assessment of what rebels think, but the link from understanding, to expression, and finally to behavior should be carefully researched. It should be noted that understanding does not necessarily lead to IHL compliance. What kind of understanding might better induce compliance is left for future research.

64. For the manual, see Office of General Counsel of the Department of Defense, *Department of Defense: Law of War Manual* (2015), <http://archive.defense.gov/pubs/Law-of-War-Manual-June-2015.pdf> [<https://perma.cc/467X-UG2T>], and for the debates, see Ryan Goodman, *How to Read the Department of Defense's Revised Law of War Manual*, JUST SECURITY (Dec. 22, 2016), <https://www.justsecurity.org/35786/read-department-defenses-revised-law-war-manual/?print> [<https://perma.cc/J39B-TPUY>].

65. MICHAEL BYERS, *CUSTOM, POWER, AND THE POWER OF RULES: INTERNATIONAL RELATIONS AND CUSTOMARY INTERNATIONAL LAW* (1999).