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Cismas, Ioana orcid.org/0000-0002-1897-7317 and Heffes, Ezequiel (2020) Not the Usual Suspects: Religious Leaders as Influencers of International Humanitarian Law Compliance. *Yearbook of International Humanitarian Law*. pp. 125-150. ISSN 1389-1359

https://doi.org/10.1007/978-94-6265-399-3_6

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Ioana Cismas and Ezequiel Heffes, "Not the Usual Suspects: Religious Leaders as Influencers of International Humanitarian Law Compliance", *Yearbook of International Humanitarian Law* Vol. 22: *70 Years Geneva Conventions: Past, Present and Future* (forthcoming 2020).

Chapter X

Not the Usual Suspects: Religious Leaders as Influencers of International Humanitarian Law Compliance

Ioana Cismas and Ezequiel Heffes*

Abstract It is undeniable that the effectiveness of international humanitarian law (IHL) faces challenges from different quarters. To address these, humanitarian organizations have, in the main, pursued a direct engagement strategy with the parties to a conflict. Although this has remained the dominant strategy to date, in the last two decades the humanitarian sector has, on an *ad hoc* basis and without the benefit of a solid evidence base, engaged other societal actors identified as having the potential to influence parties to armed conflict, and among them religious leaders. This chapter addresses the role of these leaders in influencing compliance (or lack thereof) with IHL by States and non-State armed groups. In particular, two issues are explored: 1) what makes religious leaders influential among their constituencies?, and 2) how can they be useful actors to increase respect for IHL in armed conflict?

Contents

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Keywords Religious Leaders • Compliance • International Humanitarian Law • Legitimacy • Humanitarian Engagement

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Research for this chapter was conducted as part of the project 'Generating Respect for Humanitarian Norms: The Influence of Religious Leaders on Parties to Armed Conflict'. The authors gratefully acknowledge the support of the Economic and Social Research Council (UK). The opinions expressed in this publication are those of the authors. They do not purport to reflect the opinions or views of the organizations with which the authors are affiliated or of the funder. The authors are grateful to the two anonymous reviewers for their constructive comments.

X.1 Introduction

That the effectiveness of international humanitarian law (IHL) faces challenges from different quarters is not news. Seventy years after the adoption of the 1949 Geneva Conventions, the enforcement and, more generally compliance with treaty and customary IHL remain the Achilles heel of this legal regime.¹ Difficulties related to respect for IHL can be linked to a number of circumstances, such as the unwillingness of States to acknowledge that a situation of violence amounts to an armed conflict,² the absence of an incentive for the parties to abide by humanitarian rules,³ or non-State armed groups' (NSAGs) lack of an appropriate structure and resources allowing them to acknowledge, understand, and implement some of their obligations.⁴ Moreover, despite the proliferation of international criminal tribunals and United Nations (UN) commissions of inquiry, IHL relies on relatively weak enforcement mechanisms, which may not induce the parties to comply with the applicable legal framework.⁵ Whilst violations of IHL occur on a daily basis, enforcement mechanisms are rarely known by fighters on the ground,⁶ and they largely depend on the parties' capacity and willingness to implement them.⁷ These features are a tall order in many of the current conflict settings, which are characterized by fragmented NSAGs fighting each other or governmental forces representing the 'remainders of collapsed State structures'.⁸

These realities disclose the importance of implementing strategies specifically aimed at generating respect for the law. The humanitarian sector—an umbrella term covering a variety of actors such as the International Committee of the Red Cross (ICRC), Geneva Call and other non-governmental (NGO) humanitarian organizations, and the UN through its different

¹ Krieger 2015, p 1.

² ICRC 2003, p 20; Clapham 2006, p 12.

³ Krieger 2015, pp 4-5 (affirming 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”).

⁴ Bangerter 2011; ICRC 2003, pp 20-21; Heffes 2018.

⁵ States acknowledged this weakness during the 31st International Conference of the Red Cross and Red Crescent, emphasizing in a resolution “the importance of exploring ways of enhancing and ensuring the effectiveness of mechanisms of compliance with IHL, with a view to strengthening legal protection for all victims of armed conflict”. ICRC 2011, p 2.

⁶ Geneva Academy of International Humanitarian Law and Human Rights 2014, p 22 (affirming that in the context of a study in which the reaction to international norms of more than thirty groups were explored, some NSAGs “were not aware of the prohibition of child recruitment and their potential exposure to prosecution by the International Criminal Court and other tribunals”).

⁷ As Weinstein has correctly identified when dealing with NSAGs, international criminal tribunals, as mechanisms of deterrence of IHL violations, depend “on the fact that individuals care about the future”. Weinstein 2007, p 350. For discussions related to the deterrent effect of international criminal justice, see Cryer 2015; Jenks and Acquaviva 2014.

⁸ Krieger 2015, p 1. See also Chinkin and Kaldor 2017, p 11 (noting that while “[o]ld wars were fought by regular armed forces wearing uniforms and those recruited by the state through conscription or payment [...] the participants in the new wars are often loose and fluid networks of state and non-state actors that cross borders”).

agencies and bodies—are engaging with State and non-State parties to armed conflicts in an attempt to positively influence their behavior and to generate greater compliance with IHL and international human rights law (IHRL). These interactions, which are multi-layered and take place both formally and informally, have mainly relied on the direct humanitarian engagement with those participating in hostilities. Despite some success, violations of IHL persist,⁹ showcasing the importance of reflecting on novel approaches to increase the respect for this legal regime. A complementary strategy to the one undertaken by the abovementioned organizations focuses on the engagement of powerful societal actors that might influence the parties’ behaviors.

It is in this context that the chapter examines one aspect that has remained largely underexplored: the role of religious leaders in influencing compliance with IHL. In particular, two issues are addressed: 1) what makes religious leaders influential? and 2) how can they be useful actors to increase the level of respect of IHL in armed conflict? These are not theoretical queries—they respond to specific gaps identified by the ICRC in a recent study, when underscoring the acute need for a solid knowledge base to inform the humanitarian engagement of societal actors, including religious leaders.¹⁰ The study’s findings posit that some of these entities are capable of significantly influencing the behavior of States and NSAGs in as far as the humanitarian norms receive “greater traction” by “[l]inking the law to local norms and values”.¹¹ This scenario, indeed, allows for individual members of the parties to a conflict to better internalize the standards, which in turn promotes restraint in war in a more durable manner.¹² It is at this juncture where this chapter takes shape. It intends to enhance the understanding of the role(s) of religious leaders in armed conflict.

X.2 Compliance with International Humanitarian Law: Setting the Scene

⁹ This was explicitly confirmed by the UN Special Representative of the Secretary General for Children in Armed Conflict in 2018 who noted that despite “[d]irect engagement with both government forces and armed groups has brought significant commitment and results to better protect conflict affected children”, grave violations against them continue “in every conflict situation—from the Central African Republic to Iraq, Somalia and Yemen”. UN Office of the Special Representative of the Secretary General for Children and Armed Conflict 2018.

¹⁰ ICRC 2018.

¹¹ *Ibid.*, p 9.

¹² *Ibid.*

Generally, compliance has been defined as “behavioural conformity with existing norms and regulations.”¹³ For States and NSAGs, this implies that their behaviors are in accordance with IHL.¹⁴

It is important to complexify our understanding of compliance: parties to an armed conflict should not be seen as entities that either violate or respect IHL *in toto*, without exception. Instead, they often follow certain rules while disregarding others.¹⁵ For instance, a NSAG may respect the prohibition on hostage-taking, while violating the prohibition on using and recruiting children in hostilities.¹⁶ Similarly, a State may deliberately attack health care facilities and transports in breach of IHL, while avoiding the forcible displacement of civilians. Parties also often modify their behaviors *during* an armed conflict, reflecting an increase or decrease in their level of compliance with humanitarian provisions. This variation is evident, for instance, during peace processes, when NSAGs or States seek political recognition before local or international constituencies. They might adopt a very different attitude when they are actively engaged in hostilities, a moment in which they may attempt to show their military strength.¹⁷

Compliance, therefore, should be understood as a spectrum, rather than an on/off switch.¹⁸ States and NSAGs’ behaviors in armed conflict are better conceptualized as “a matter of degree varying with the circumstances of the case.”¹⁹ Parties should be conceived as dynamic actors,

¹³ Jo 2017, p 65.

¹⁴ The ICRC has defined ‘compliance’ as the observance and implementation of IHL. ICRC 2015a. This, of course, does not deny in any way the application of IHRL in times of armed conflict, which has been recognized by the International Court of Justice (ICJ) on several occasions. See ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996, [1996] ICJ Rep 226; ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, [2004] ICJ Rep 136. The ICJ also confirmed that IHRL is applicable in situations of armed conflict in a case concerning armed activities in the territory of the Congo. ICJ, *Case concerning Armed Activities on the territory of the Congo (Democratic Republic of the Congo v Uganda)*, Judgment, 19 December 2005, [2005] ICJ Rep 168. The application of IHRL to NSAGs has also gained a momentum in the last few years. See in this sense, Clapham 2006; Murray 2016; Fortin 2017; Rodenhäuser 2018.

¹⁵ Gross 2015, p 74 for this analysis with respect to NSAGs.

¹⁶ Different explanations have been provided by NSAGs for their refusal to uphold the prohibition of recruiting and using child soldiers: children may be seen as an important resource for NSAGs’ survival; the fact that international standards do not match with local custom and norms about adulthood; and that children are seen as easily influenced and recruited. Other explanations are related to NSAGs’ lack of capacity to actually determine when an individual is a child or an adult, at least according to international law, and the lack of socio-economic alternatives for children. Furthermore, international law includes different standards for this prohibition. While IHL refers to 15 years old as the minimum age for recruitment, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict affirms that “[a]rmed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years”.

¹⁷ This was clearly seen during the peace negotiations between the Colombian government and the Revolutionary Armed Forces of Colombia (FARC-EP), when the latter agreed to release children from its ranks at the final stage of the conflict. Casey N (2016) Colombia and FARC Rebels Reach a Deal to Free Child Soldiers. <https://www.nytimes.com/2016/05/16/world/americas/colombia-and-farc-rebels-reach-a-deal-to-free-child-soldiers.html>. Accessed 23 September 2019.

¹⁸ Falk 1964, p 5. See also Chayes and Chayes 1995, p 17.

¹⁹ Falk 1964, p 5.

weighing the costs against the benefits of complying with international law. In turn, the costs and benefits analyses involve an evaluation of material facts as well as ideatic aspects. In this sense, the results will vary depending on the parties' goals and the moment when the behavior takes place.²⁰ Understanding such a variation is crucial for humanitarian actors when determining a strategy of direct engagement with the parties *and* of engagement with their possible influencers, including religious leaders.

The above-discussed behavioral variation ties into, and needs to be considered in association with, systemic and institutional challenges to the effectiveness of IHL. Systemic challenges include the unwillingness of States to acknowledge that a situation of violence amounts to an armed conflict which therefore triggers the application of IHL.²¹ A related problem is the rejection of IHL by NSAGs because they were not involved in the international law-making process and regard domestic law (incorporating IHL norms) as belonging to the opponent and thus not something that they wish to obey.²² Some NSAGs identify international law “as biased and privileging States”.²³ In a similar vein, these non-State entities may perceive some humanitarian norms as prohibiting 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.”²⁴

Institutional challenges stem from the lack of appropriate organizational structures and resources allowing States and NSAGs alike to acknowledge, understand, and implement their humanitarian obligations.²⁵ This challenge is faced particularly in those conflicts occurring in areas where the State has limited control over territory and the rule of law system is very fragile.²⁶ The increasing fragmentation of NSAGs, which has contributed to conflicts that are “more violent, longer lasting and harder to resolve”,²⁷ is a reflection of acute institutional challenges. Furthermore, non-State entities may not be aware of their international obligations. As Bangerter correctly notes, “only a relatively small circle of persons are aware of legal concepts in any given society, and it is unlikely that leaders of armed groups will be recruited in this particular circle.”²⁸ NSAGs may not know, for instance, what medical ethics and triage

²⁰ Fazal 2018, p 59.

²¹ ICRC 2003, pp 20-21.

²² Jo 2015, p 256. See also Heffes and Kotlik 2014, p 1202 (arguing that “[f]rom a practical point of view, it seems unlikely that [NSAGs] will accept any set of rules merely by the fact that it has been previously agreed upon by States, be it customary or treaty law”); Henckaerts 2003.

²³ Geneva Call 2016, p 25.

²⁴ Jo 2015, p 6. For further reasons, see Bangerter 2011; Jo 2017.

²⁵ Cismas and Heffes 2017.

²⁶ Krieger 2015.

²⁷ Blakke et al. 2015.

²⁸ Bangerter 2015, p 113.

imply or how to deal with humanitarian access, key principles for the delivery of health care by humanitarian organizations.²⁹ In a recent study, Geneva Call found that several NSAGs felt that they did not have a complete understanding of the rules governing some of these issues and consequently were “not able to elaborate on what they entail”.³⁰

These difficulties reinforce the importance of developing and implementing strategies aimed at generating respect for IHL. Key humanitarian organizations have traditionally relied on direct engagement with the parties to a conflict to generate compliance.³¹ This approach prioritizes the incorporation of humanitarian norms in the parties’ internal rules, in their training and accountability mechanisms, and excludes—in the main—reliance on underlying values to underpin humanitarian norms.³² While this has remained the dominant strategy, in the last two decades the humanitarian sector has, on an *ad hoc* basis, engaged other societal actors that have the potential to influence parties to armed conflict, and among them religious leaders.³³ Certain ICRC initiatives have sought to build the capacity of religious leaders and faith-based organizations with the aim to achieve greater understanding of IHL.³⁴ Recent reflection within the ICRC has led to greater concern on how different mechanisms—beyond legal norms and direct engagement—can “influence—or at least generate gradual changes in—the behavior of NSAGs”.³⁵ The *Roots of Restraint in War* study, for example, seeks to understand the impact

²⁹ Heffes 2019, p 234.

³⁰ Geneva Call 2016, p 14.

³¹ Schneckener and Hofmann 2015; Quintin and Tougas 2020. In the last few years, there has also been an increasing intervention of UN bodies on issues related to compliance for IHL and IHRL. For instance, through its child protection framework, States and NSAGs can engage with UN agencies and sign ‘action plans’, which could lead to delisting them from the UN Secretary-General’s list of actors that commit one or more of the five grave violations of children’s rights. For more information, see UN Office of the Special Representative of the Secretary-General for Children and Armed Conflict (<https://childrenandarmedconflict.un.org/>) and Kotlik 2020. For the reference to both IHL and IHRL, see UN Office of the Special Representative of the Secretary-General for Children and Armed Conflict (2013), p 10.

³² ICRC 2004. Recently, the ICRC has begun a process of reflection indicating a greater openness to less formal mechanisms of influence. Following the 2004 study *Roots of Behaviour in War*, the ICRC asserted that “legal arguments were more durable than moral arguments when seeking to convince combatants to respect humanitarian norms during warfare”. In contrast, the 2018 *Roots of Restraint in War* study explores the formal and informal sources of influence on the development of norms of restraint in State armed forces and NSAGs. Terry and McQuinn 2018.

³³ Quintin and Tougas 2020, p 371. Interestingly, this is seen with caution by the authors, who explain that engaging other societal actors “may also mean opening a Pandora’s box of sensitive issues for a neutral organization [...]. [L]ooking at sources of influence will include examining not only the role played by local communities and cultural or religious leaders, but also the role played by donors, economic partners, political powers, etc.”. Quintin and Tougas 2020, pp 370-371.

³⁴ ICRC 2015a. See also ICRC 2019b (stating that “[t]he crucial role of religious leaders and faith-based organisations and in times of conflict and humanitarian crisis is now increasingly appreciated, and the ICRC has striven over recent years to engage influential religious circles more systematically”).

³⁵ Quintin and Tougas 2020, p 370.

of formal processes on vertically-organized NSAGs and the formation and impact of informal processes on more horizontally structured groups.³⁶

The engagement of religious leaders has attracted attention in UN fora as well. For example, UN bodies with a development remit have established strategy frameworks and guidelines on engaging with faith-based organizations and religious leaders in recognition of the roles which these entities play in development work in various countries.³⁷ The UN Development Programme notes that “[i]n addition to providing spiritual and traditional guidance, [faith-based organizations] and [religious leaders] are part of the social fabric of communities and some may have greater access, scale and legitimacy than local governments. In fragile states, [faith-based organizations] and [religious leaders] may be the only actors offering basic social services.”³⁸ Engagement in the development context is geared less towards influencing respect for norms—whether IHL or IHRL norms—and more towards establishing “partnerships in the context of humanitarian aid projects, development programmes, public education activities, and interreligious dialogue initiatives”.³⁹ A common denominator, largely flowing from the mandates of these organizations, seems to be the insistence on “shared values, objectives and commitments”.⁴⁰

Closer to the aim of this chapter, that of exploring modalities for inducing norm-compliance, is the Fez Process, and the *Plan of Action for Religious Leaders and Actors to Prevent Incitement to Violence that Could Lead to Atrocity Crimes* released in 2017 by the UN Office on Genocide Prevention and the Responsibility to Protect.⁴¹ Another important initiative which seeks to advance freedom of religion and other human rights through inter-faith dialogue and cooperation is the Faith for Rights framework.⁴² These instruments reflect an acknowledgment of the strong potential of religious leaders to influence followers of their faith towards compliance with international law.

X.3 Religious Leaders: Interpreters and Influencers

The analytical category of religious actors can be empirically delineated to include those States and non-State entities that grant religion a central place in their functioning by means of

³⁶ Ibid.

³⁷ UN Population Fund 2009; UN Aids 2009; UN Development Programme 2014; UN High Commissioner for Refugees 2014; UN Environment Programme 2018.

³⁸ UN Development Programme 2014, p 5.

³⁹ Wiener 2012, p 37.

⁴⁰ See UN Development Programme 2014, pp 3, 6, 12. See also a discussion in Wiener 2012.

⁴¹ UN Office on Genocide Prevention and the Responsibility to Protect 2017.

⁴² See, generally, UN Office of the High Commissioner for Human Rights 2017.

adopting a religious organizational structure, religious doctrine, religious motivations, or by espousing a predominantly religious discourse.⁴³ Whereas their religions, goals, and indeed the forms they take differ—and therefore we can distinguish between individual religious leaders, non-State religious associations, NSAGs, religious States of various denominations and even an inter-governmental organization⁴⁴—what unites religious actors is a common claim that they are legitimate interpreters of religion.

It is evident that an empirical method which offers *indicia* as to whether an actor can be considered to be a religious one relies on observation and social perception. The process involves prior experience, motivations, expectations, and the filtering of information through such lenses.⁴⁵ In the case at hand, this may entail that the definition of a leader as a religious actor will be affected by an assessment of what a specific religion is understood to be, or should be. Such an outcome goes against the intention of this chapter, and the use of religious leaders as an analytical category. In this sense, the examples enumerated in the following pages have been chosen intentionally so as to expound different religions. The intention was therefore not to pass value judgement in relation to religion(s) but instead to “operationalize an analytical category of actors with certain common functional or operational characteristics of which shared values are not one”.⁴⁶

Based on this empirical approach, this chapter will further argue that religious leaders are individuals who assume the role of interpreters of religion and in doing so they sometimes ‘speak’ about IHL (Sect. X.3.1). In putting forward their interpretations, they draw on a ‘special’ legitimacy which demands obedience from their followers and may influence the parties’ compliance—or lack thereof—with IHL (Section X.3.2).

Two further caveats should be addressed. First, whilst the examples of religious leaders examined in this chapter concern in the main *individual* religious leaders, we recognize that these individuals can, and often do, act as part of wider networks or formalized institutional structures or, indeed, that religious leadership can be exercised by an informal/formal group⁴⁷

⁴³ Cismas 2014, pp 50-55.

⁴⁴ Cismas argued that the intergovernmental Organization of Islamic Cooperation falls within the analytical category of religious actors. Cismas 2014, pp 239-304.

⁴⁵ *Ibid.*, p 52.

⁴⁶ *Ibid.*

⁴⁷ For an example of women exercising religious leadership collectively through a church group in an effort to mediate between the parties to the Solomon Islands conflict, see discussion in Cismas 2017, pp 317-318; Snyder 2009. Note that the ‘Generating Respect for Humanitarian Norms’ project seeks to explore a larger spectrum of religious leadership (individual, collective, institutionalized) informed by the realities of our case study countries: Colombia, Libya, Mali, Myanmar. For more information about the project, see <https://gtr.ukri.org/projects?ref=ES%2FT000376%2F1>.

or institution.⁴⁸ Second, the term religious leaders may overlap with ‘religious personnel’ as defined in IHL, but is not restricted to the latter, as the study is also concerned with actors that may not be *stricto sensu* “attached to a party to the conflict, to its medical units or transports or to a civil defence organization”.⁴⁹

X.3.1 Do Religious Leaders ‘Speak’ about International Humanitarian Law?

Over the past decades, on numerous occasions, priests, ministers, imams or rabbis have ‘spoken’ about international rules and have attempted to influence the behaviors of parties to an armed conflict.⁵⁰ This section will provide four examples of religious leadership reflecting different armed conflicts, religions, and relationships to armed actors. The rationale of the section is twofold. On the one hand, the empirical reality of religious actors’ involvement in armed conflict, whilst non-uniform, will emerge as a key reason why religious actors as interpreters of humanitarian norms should be studied by researchers and considered by the humanitarian sector. On the other hand, the illustrations will allow us to preliminary point to some factors that may shape the influence of religious leaders in times of conflict.

Israel offers the first example of religious leadership, which we shall explore here. Rabbi Shlomo Goren, the first Chief Rabbi of the Israel Defense Forces (IDF), is said to be the architect of “the modern corpus of Jewish law and ethics relating to war and the military” by both shaping the role of the IDF Rabbinate and issuing a number of *halakhic* (religious) rulings on military conduct.⁵¹ Some rabbis have transferred principles that were not originally intended for the military context to the latter to account for the fact that references in the Bible to ‘collateral damage’ and the prohibition of use of certain types of weapons were missing altogether.⁵² As a result of subsequent military rabbis’ interpretations of religion, and specifically the establishment of institutional arrangements that enabled the service of religious soldiers—to the point that they now represent a significant number in multiple combat units⁵³—

⁴⁸ The IDF Rabbinate and Islamic State (IS) examples, respectively, which are developed *infra*, offer illustrations of institutional religious leadership.

⁴⁹ Henckaerts and Doswald-Beck 2005, p 90, Rule 27.

⁵⁰ The role of religious leaders as interpreters of humanitarian values should not be seen to exclude other potential roles that these individuals may have in conflict settings. For instance, they have been related to faith-based diplomacy and the full panoply of transitional justice mechanisms. See Brudholm and Cushman 2009; Vinjamuri and Boesnecker 2008; Cismas 2017. Furthermore, while in the Central African Republic, priests, imams and missionaries worked to reduce tensions between armed actors, sheltered people fleeing violence in their compounds, and aided, in Myanmar they created ‘zones of tranquility’ and gave protection for their followers. Fast 2018, pp 9-10.

⁵¹ Edrei 2006, p 255.

⁵² Cohen 2007, p 19.

⁵³ Levy 2014, pp 277-279. See also Kornalian and Zaim 2011, pp 9-13.

“[r]eligion does not exist as a segmented subculture within the overall Israeli military fabric. Rather, it constitutes one of the IDF’s integral components”.⁵⁴ Cohen, writing in 1999, argued that what had been achieved was “a symbiosis between religion and military service that, even if not altogether unique, is certainly more pervasive than that experienced in other modern armed forces”.⁵⁵ Over a decade later, Levy describes the Israeli military’s “theocratization”,⁵⁶ despite the formal control retained by civilian authorities. His study shows that military rules

gradually conformed to principles of religious doctrine as can be inferred from the empowerment of the military rabbinate, restrictions imposed on women’s service and the manner by which the military deployed its troops to deal with religious commands; and most importantly [...] religious authorities operated in tandem with the civil-sanctioned military system, whose opinions and jurisprudence carried a notable symbolic weight.⁵⁷

A second illustration comes from the Philippines. In 2017, Sheikh Abuhuraira Abulrahman Udasan, the Bangsamoro mufti, issued a *fatwa* against radical extremism in the context of clashes between the government and certain groups that had pledged allegiance to the Islamic State (IS).⁵⁸ This document was later endorsed by the Moro Islamic Liberation Front (MILF), which “supported such edict without fear and reservation”.⁵⁹ The *fatwa* is reported to have eroded support for the Maute group, including among members’ of the leader’s family.⁶⁰ The close relationship between the Muslim legal expert and the MILF can be observed from previous interactions; in 2015, Sheikh Abuhuraira Abulrahman Udasan is reported to have headed a MILF delegation welcoming Pope Francis on his visit to the Philippines.⁶¹

The above examples reveal two relevant aspects. First, shared religion, religious affinity or religious alignment between a religious leader and an armed actor appear to translate into a certain influence of the former upon the later. Second, the embedding of the religious entity within the structure of the armed actor, or a very close relationship between the two, may further potentiate the former’s influence.

⁵⁴ Cohen 1999, p 389.

⁵⁵ Ibid.

⁵⁶ Levy 2014.

⁵⁷ Specifically, Levy describes the refusal of some religious soldiers, supported or encouraged by religious institutions to carry out orders to evacuate illegal settlements in the West Bank. Ibid., pp 285-286.

⁵⁸ Fonbuena C (2017) MILF commits to implement fatwa vs radical extremism. <https://www.rappler.com/nation/174775-milf-support-fatwa-radical-extremism>. Accessed 18 January 2020.

⁵⁹ Ibid.

⁶⁰ International Crisis Group 2019, pp 15-16.

⁶¹ Pangco Panares J (2015) Muslim leaders unite for Pope, seek blessing. <https://manilastandard.net/news/-main-stories/168243/muslim-leaders-unite-for-pope-seek-blessing.html>. Accessed 17 January 2019.

A third case to examine here is the Islamic State group (IS), which is active (predominantly) in parts of Iraq and Syria and notoriously co-founds religious leadership and armed structures. In 2014 and 2015, the IS' Research and Fatwa Department and *Dabiq*, IS' English language propaganda magazine, published several manuals and articles seeking to justify enslavement, sexual slavery and rape of girls and women⁶² “as religiously meritorious: not just acceptable but a positive good. Rather than grudgingly grant its permissibility, or merely matter-of-factly assume its legality as most premodern texts do, IS proclaims enslavement a triumphalist reflection of its own legitimacy.”⁶³

The manual titled *Questions and Answers on Taking Captives and Slaves* stipulates that taking “unbelieving women”, such as “[women from among the People of the Book, i.e. Jews and Christians] and polytheists’ captive is permissible due to their ‘unbelief’” and that “[i]t is permissible to have sexual intercourse with the female captive”, citing in support a verse from the Koran.⁶⁴ It permits the buying, selling or gifting of “female captives and slaves, for they are merely property, which can be disposed of as long as that doesn’t cause [the Muslim *ummah*] any harm or damage” and lays down a number of rules governing “intercourse”, including with minors, and beating.⁶⁵ Yazidi girls who had escaped IS, reported that fighters engaged in prayer before and after raping them and justified the rape along the lines laid out in the IS manual.⁶⁶

In response, 126 (male) religious leaders and scholars from around the world—subsequently joined by others⁶⁷—published an open letter to Abu Bakr Al-Baghdadi and fighters and followers of IS,⁶⁸ providing a different reading of koranic verses and asserting that “[t]he re-introduction of slavery is forbidden in Islam. It was abolished by universal consensus”.⁶⁹ Interestingly, they note that Muslim states are parties to anti-slavery conventions and cite *Al-Isra*’, 17:34 (“And fulfil the covenant. Indeed the covenant will be enquired into.”) to insist that Muslims must uphold their obligations.⁷⁰

⁶² On the international crimes committed by ISIS against Yazidis girls and women, see UN Human Rights Council (2016) International Independent Commission of Inquiry on the Syrian Arab Republic: “They Came to Destroy”: ISIS Crimes Against the Yazidis, UN Doc. A/HRC/32/CRP.2. See also Cetorelli and Ashraph 2019.

⁶³ Ali 2016, p 6.

⁶⁴ IS Research and Fatwa Department, ‘Questions and Answers on Taking Captives and Slaves’, cited in Roth 2015. See also Chertoff 2017, p 1062.

⁶⁵ IS Research and Fatwa Department, ‘Questions and Answers on Taking Captives and Slaves’, cited in Roth 2015.

⁶⁶ Callimachi 2015.

⁶⁷ For an overview of all signatories, see <http://www.lettertobaghdadi.com/new-signatories/>.

⁶⁸ Letter to Baghdadi 2015.

⁶⁹ Letter to Baghdadi 2015, pp 1 and 12. For a comparative analysis of the IS publications and the Open Letter focusing on their respective interpretation of history and the relevance of notions of authority, see Ali 2016.

⁷⁰ Letter to Baghdadi 2015, p 12.

The IS example serves to portray—what one reviewer of this chapter has aptly termed—“the elephant in the room”: religious leaders may and do also put forward religious interpretations which justify and encourage the breach of parties’ humanitarian obligations. The enslavement, sexual slavery and rape perpetrated by IS fighters are particularly horrific and their justification by appeal to religious interpretation is chilling to the bone; yet, they are by no means unique, nor are they the apanage of any one religion. Suffice to recall here that the International Criminal Tribunal for Rwanda had convicted clerics of various Christian denominations for committing or aiding and abetting genocide and crimes against humanity.⁷¹

The example invites reflection on another ‘elephant’. Ali has observed that both the IS interpretations and the counter-narrative put forward in the Open Letter raise questions about gendered authority, because in all these documents “women are absent as authorities: the scholars, whether religious authorities or Western secular academics, are all male. Girls and women appear instead as objects of enslavement or of rescue.”⁷² Her observation can be extended to all the illustrations of this chapter, in as far as the religious leaders discussed here are men in authority.

Two other reflections are in order. First, the IS example reinforces our previous observation that the enmeshment of the religious and military structures holds great potential for the former to influence—in this case negatively—the latter. Second, religious narratives may be put forward that seek to counter negative—or indeed positive—influence on parties to a conflict; whether these achieve their goal may depend less on the accuracy of the religious interpretation, and more on the perceived legitimacy among fighters of the interpreter, or on external factors unrelated or only marginally related to religion.⁷³

The final example draws on Pope Francis’ recent reassurance of the Holy See’s support for IHL.⁷⁴ While noting the relevance of the Additional Protocols to the Geneva Conventions of 1977 and the importance which the Holy See attaches to these treaties, the Pope observed that “humanitarian law presents hesitations and omissions”.⁷⁵ He has encouraged combatants and humanitarian aid workers to find a place in their conscience to “acknowledge the moral duty to

⁷¹ See ICTR, *Prosecutor v Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Judgment and Sentence, 21 February 2003, Case Nos. ICTR-96-10 and ICTR-96-17-T; ICTR, *Prosecutor v Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Judgment, 13 December 2004, Case Nos. ICTR-96-10-A and ICTR-96-17-A; ICTR, *Prosecutor v Athanase Seromba*, Judgment, 12 March 2008, Case No. ICTR-2001-66-A; ICTR, *Prosecutor v Athanase Seromba*, Judgment, 13 December 2006, Case No. ICTR-2001-66-I. See also Fast 2018, p 11; Cismas 2017, pp 314-316.

⁷² Ali 2016, p 12.

⁷³ On the issue of foreign fighters, see Borum and Fein 2016.

⁷⁴ Holy See 2017.

⁷⁵ Ibid.

respect and protect the dignity of the human person in every circumstance, especially in those situations where it is most endangered”.⁷⁶ This is, by all accounts, a religious leader’s attempt to enhance compliance with IHL and supplement the law’s shortcomings by appeal to moral sources.

The papal message finds strong echoes in—or possibly reflects—the repeated calls for a ‘*respeto a la vida*’ (respect to life) espoused by numerous religious leaders throughout the hierarchy of the Catholic Church in Colombia and addressed to all parties to (previous and current) armed conflicts in the country.⁷⁷ In Colombia, we find several examples of priests acting as mediators in hostage-situations and the Government’s explicit claim that the Catholic Church was “the only valid intermediary”.⁷⁸ It is also worth noting that in the past numerous religious leaders were killed in relation to the various Colombian conflicts.⁷⁹

Whilst it goes beyond the ambit of this chapter to unpack the complex relations between the Catholic Church, the Government, armed groups such as the Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia–Ejército del Pueblo*; FARC-EP), the National Liberation Army (*Ejército de Liberación Nacional*; ELN), and paramilitaries over the past five decades, preliminary research suggests that a shared religion or religious affinity is, on its own, insufficient in some contexts to ensure a religious leader’s influence on parties to conflict. The parties’ perception of the religious entity—of partisanship, for example, or aspects which are entirely extraneous, such as the goals of the armed actors themselves which, as we argued previously, are mutable during the course of a long conflict—are factors that may increase or decrease a religious leader’s influence in times of armed conflict.

The above illustrations provide an emphatic answer to this section’s question: religious leaders have indeed put forward interpretations of religion which have a bearing on humanitarian norms. Not only have they had an effect on the parties’ (non-)compliance with these same rules, but religious leaders’ roles have been publicly recognized in the internal decision-making processes of States and NSAGs—such as in the cases of Israel and the IS. While an in-depth, critical assessment of the interpretations themselves goes beyond the scope of this chapter, we recognize that whether a religious interpretation seeks to reinforce,

⁷⁶ Ibid.

⁷⁷ Zaragoza 2020.

⁷⁸ ForumLibertas (2007) Rehenes de las FARC: la Iglesia, único intermediario válido para el Gobierno colombiano [Hostages of FARC: the Church, the only valid intermediary for the Colombian Government]. <https://www.forumlibertas.com/hemeroteca/rehenes-de-las-farc-la-iglesia-unico-intermediario-valido-para-el-gobierno-colombiano/>. Accessed 23 September 2019. See also Patterson E (ed) 2013; Zaragoza 2020.

⁷⁹ El Universal (2013) Desde 1984 han sido asesinados 83 sacerdotes en Colombia [Since 1984, 83 priests have been murdered in Colombia]. <https://www.eluniversal.com.co/mundo/desde-1984-han-sido-asesinados-83-sacerdotes-en-colombia-107440-MYEU193690>. Accessed 23 September 2019.

contradict or modify humanitarian norms is certainly not inconsequential.⁸⁰ The answer may have very real implications for understanding the direction of the influence of religious leaders on parties' IHL compliance, as well as on whether and how a humanitarian organization may wish to engage with a certain religious actor. Before discussing these aspects, we shall first explore what makes religious actors societally influential.

X.3.2 Why Might States and Non-State Armed Groups Follow Religious Leaders' Interpretations on International Humanitarian Law?

Identifying an individual as a religious leader is related to the underlining question as to why followers, including members of NSAGs and States' armed forces, might obey their interpretations. Why would and do they act upon legal norms advocated or otherwise shaped by these leaders? Sociological insights may shed light on what it is about religious leaders' claims to have the legitimate authority to interpret religion that sets them apart from similar claims by non-religious leaders and institutions.

To begin with, the relationship between religious leaders and their adherents can be identified as one of command-obedience between an authority and individuals, that is, between a *power-holder* and a *power-subject*.⁸¹ Authorities, whether they take the form of religious or non-religious actors, seek to convince power-subjects that their commands are legitimate or 'rightful' so that the latter will obey them; in doing so, authorities appeal to various sources of legitimation.⁸² Before addressing those sources, however, it should be recalled that legitimate authority is not the only form of command. It is, however,

a less 'costly' form of authority than either coercive or reward-based authority. In the case of coercive authority, only constant surveillance and supervision can ensure that subordinates completely comply with commands, for subordinates will comply only when they face the prospect of punishment for non-compliance. In the case of reward-based authority, obedience has to be 'purchased' through the offer of rewards for compliance. Legitimate authority obviates the need for surveillance and rewards, since subordinates feel obliged to obey no matter whether there is a 'reward' for compliance or not.⁸³

⁸⁰ A number of works engage in-depth with the study of religion(s) and IHL, and how substantive interpretations of the former can reinforce, or on the contrary frustrate, the latter. For an important recent study, see Al-Dawoody 2011. See also Evans 2006; Cockayne 2002.

⁸¹ Cismas 2014, p 55.

⁸² Matheson 1987, 200.

⁸³ Ibid.

Dogan observes that reality can rarely be described in terms of legitimacy or illegitimacy and concludes that it must come in degrees.⁸⁴ This is an observation shared by legal scholars in relation to norms of international law.⁸⁵ Nevertheless, there seems to be an agreement that a rule is illegitimate if a majority believes it to be so.⁸⁶ What needs to be recalled is that any authority, including religious leaders when they issue religious interpretations on IHL, strives to justify or to legitimate its commands. As such, legitimacy provides a sense of duty or an ‘oughtness’ towards rules or legal norms issued by an authority.⁸⁷ The power-subjects, either States or NSAGs, feel obliged to obey these rules or legal norms because of the legitimate character of the command-obedience relation, and their ‘belief’ that the authority’s conduct is rightful.⁸⁸ Of interest for this chapter are the sources of legitimacy on which religious leaders draw to legitimate their authoritative interpretations.

Drawing on Max Weber’s work—but adapting it according to the scope of this research—scholars have highlighted the legitimacy of the law, or of the authority enforcing the law, as the central aspect which determines compliance.⁸⁹ This observation does not negate that individuals follow commands for a variety of complex reasons determined, for example, by historical, social, and political conditions,⁹⁰ and that rewards or coercion may play a role in their decision to comply with a rule. To clarify this complex reality, we refer to a religious leader’s ‘claim to legitimacy’ or ‘claim to be a legitimate authority’ to interpret religion. These expressions suggest that the claim of religious leaders may or may not be validated by power-subjects. When followers validate such claims to legitimacy, they obey the religious interpretations. In the absence of a validation by power-subjects, the commands may still be followed because of fear of punishment or interest in rewards.⁹¹

When reviewing the different sources of legitimacy, it shall be noted that religious leaders draw primarily on traditional and charismatic sources. Rational-legal features, while certainly present, are not primarily emphasized for the purpose of convincing power-subjects to follow religious interpretations.⁹² The relation between religious leaders and their adherents is no different than the one between a secular (as in non-religious) democratic parliament and citizens. However, whereas in the latter case it is the legal-rational aspect of the law that confers

⁸⁴ Dogan 2004, p 114.

⁸⁵ Franck 1990, Chapter 3.

⁸⁶ Dogan 2004, p 117.

⁸⁷ Spencer 1970, p 126.

⁸⁸ Dogan 2004, pp 116-117.

⁸⁹ Jo 2015, p 27.

⁹⁰ Krieger 2015, pp 4-5.

⁹¹ Cismas 2014, p 57.

⁹² *Ibid.*

legitimacy and generates compliance, in the former case, the legitimate authority of religious leaders is predominantly grounded in tradition and/or charisma. This entails that adherents will follow a specific command, including one relating to IHL, not primarily because it has been derived in a legal-rational way and is fair, or because they participated (indirectly) through democratic processes in creating that rule, but because the religious leader is perceived to have the authority by virtue of tradition or charisma to issue that command. In other words, the special legitimacy of religious leaders may address—to a certain extent—some of the systemic challenges to the effectiveness of IHL outlined earlier.

X.4 The Humanitarian Sector: Reasons for Engagement

Humanitarian actors have engaged with religious leaders, as noted earlier, on an *ad hoc* basis. Their primer motivations—although not fully articulated—appear to center around three interrelated aspects: raising awareness about humanitarian norms among religious leaders themselves and their communities, strengthening the legitimacy of IHL in various local contexts, and facilitating the delivery of humanitarian assistance and access to those affected by armed conflict.

When engaging with States and NSAGs in a humanitarian dialogue, it is generally difficult to pinpoint their incentives for complying with IHL. Interpretations of religious leaders, as explained, do not draw their legitimacy primarily from rational-legal processes, as do laws adopted by parliaments or international fora. The former, instead, are grounded in tradition or charisma, and it is these sources which make them particularly relevant influencers in contexts where IHL remains largely unknown or is perceived as foreign or belonging to the opponent. Religious leaders, therefore, can be messengers of IHL's values, using local religious texts and interpretations as a basis for the parties' obligations.⁹³ They can raise awareness of the importance of respecting humanitarian norms and mobilizing their communities and others.⁹⁴ The specific role that religious actors can play in facilitating the delivery of humanitarian assistance and in accessing those affected by armed conflict “by addressing misconceptions about international humanitarian organizations and building understanding for their work and

⁹³ ICRC 2015b. See also Aly 2014a (arguing that “aid and advocacy agencies have increasingly tried to understand Islamic law in order to use its humanitarian provisions as tools of negotiation with armed groups in the Muslim world”).

⁹⁴ ICRC 2016, p 36. Interestingly, the ICRC institutionalized this by creating in 2004 a specific unit tasked with developing its relations with, and understanding of, the Muslim world. Its work has focused on “forging links and interactions with Muslim scholars and on initiating a dialogue with them on the commonalities between IHL and the relevant rules of Islamic law and jurisprudence”. Quintin and Tougas 2020, pp 372-373.

mandate”⁹⁵ should be emphasized. Effectively, what is sought through the engagement with religious leaders is a transfer of their special legitimacy onto humanitarian norms and organizations.

With the above-considerations in mind, we note that the ICRC has engaged with religious leaders in respect to specific humanitarian activities. For example, when Islamist NSAGs took control of northern Mali in 2011, limiting access for humanitarian organizations, the ICRC had already established a relationship with Muslim scholars, including the High Islamic Council. It has been reported that through that dialogue, two groups “discussed access, humanitarian ethics and protection issues, and the ICRC was able to work with the Council at times as a go-between with the armed groups”.⁹⁶ Ultimately, the Council issued a paper on the rules of engagement in *jihad* and the application of Sharia law. There, it advised against the use of corporal punishment.⁹⁷ In Gaza, the ICRC involved imams in workshops organized together with the Ministry of Health to address the overcrowding of emergency departments, a serious problem under usual circumstance and an acute one during conflicts when medical personnel find themselves unable to provide timely and effective care. As a result of the workshops, religious leaders used key messages during their sermons and promoted them on regular radio spots on the Al Quraan Al Kareem station, which has hundreds of thousands of listeners.⁹⁸

More recently, experts in Islamic Law have provided the ICRC with a set of recommendations which envisage a more systematic engagement with religious leaders and scholars.⁹⁹ These recommendations, and the flurry of humanitarian engagement with actors of various religions, may reflect the ICRCs more general openness for exploring less or informal mechanisms of influence, an openness signaled by the *Roots of Restraint in War* study.

It is noteworthy that in September 2019, the ICRC gathered 120 individuals, including religious leaders, to discuss about the interface between Buddhism and IHL. The Head of the ICRC delegation in Sri Lanka noted that “dialogue between humanitarian organizations and religious leaders and academics can build solid common ground and can pass powerful messages to communities, arms carriers, and decision-makers”.¹⁰⁰ In December 2019, experts in Islamic studies and IHL participated in a workshop jointly organized by the Al-Azhar

⁹⁵ ICRC 2019a.

⁹⁶ Aly 2014b.

⁹⁷ Ibid.

⁹⁸ ICRC 2016, p 36.

⁹⁹ ICRC 2019c, p 76 (The ICRC was asked to “[i]ncrease cooperation and coordination with influential religious scholars/leaders during armed conflict”, to include “front-line negotiators and influential religious leaders” in IHL discussions, and to “[u]se all the forums academics and religious leaders have to communicate pertinent messages to the general public”).

¹⁰⁰ ICRC 2019b.

University in Cairo and the ICRC, which aimed “at reinforcing universal acceptance of IHL and highlighting the humanitarian values and provisions of protection enshrined in Islamic jurisprudence”.¹⁰¹ These and other events appear to place the engagement of religious leaders as a humanitarian priority on the ICRC agenda.¹⁰²

Geneva Call has undertaken a similar approach. In 2014, for instance, it discussed issues related to the protection of civilians in conflict settings with 10 senior Sunni leaders in Lebanon, including the five Muftis and the Head of the Higher Islamic Shari’a Council.¹⁰³ The aim of the meeting was to secure support for the organization’s work in engaging NSAGs in the region on humanitarian norms.¹⁰⁴ The leaders “welcomed Geneva Call’s initiatives and expressed their readiness to facilitate the organization’s humanitarian work in Lebanon”.¹⁰⁵ In 2019, Shia religious leaders from Iraq, Lebanon, Iran, Yemen, and Bahrain convened in Najaf (Iraq) under the auspices of Geneva Call, and committed to certain rules regarding the prohibition of forced displacement under IHL.¹⁰⁶ These include, among others, the prohibition to forcibly displace civilians, to launch indiscriminate attacks on internally displaced people (IDP) or against their camps, the use of displaced people as human shields or as hostages, and the use of IDP camps for military purposes.¹⁰⁷ They also affirmed their commitment “to provide the greatest protection to the displaced” in terms of “health, hygiene and nutrition”, by providing and facilitating the delivery of humanitarian assistance to IDPs.¹⁰⁸

The fundamental advantage of engaging with religious leaders may appear theoretical at first, but can prove to be of great practical relevance. By highlighting that religious interpretations supporting IHL exist (or can be crafted) and that they can be relied upon to induce the parties’ compliance with the law, religious leaders, and those actors engaging with them, dispel the myth of an unavoidable conflict between religion and law. Clearly, religious interpretations can and do conflict with humanitarian norms—but engagement with these actors can highlight areas of tension and incrementally, over time, may contribute to changes in

¹⁰¹ ICRC 2019d.

¹⁰² Other recent examples include Iran, where in 2016 the ICRC gathered 500 Islamic scholars, representatives of other faiths, and IHL experts from over 20 countries to discuss “humanitarian values common to world religions; the protection due to civilians, including patients and medical workers; the plight of missing persons and their families; proper human remains management; and environmental conservation and management”. ICRC 2017, p 466. For similar examples in Mali, p 160; in Niger, p 173; in Uganda, p 209; in Burkina Faso, p 214; in Tunisia, p 248; in Afghanistan, p 317; in Bangladesh, p 323; in Pakistan, p 340; in Indonesia, p 357; in Jordan, p 485.

¹⁰³ Geneva Call 2014.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Geneva Call 2019.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

interpretation. The effectiveness of this engagement—the measure of which is ultimately the generation of greater compliance with humanitarian norms—will largely depend on articulating and pursuing a future agenda of research that provides an empirical evidence base for understanding: which religious actors should be engaged, under what circumstances, and how. We propose the contours of such an agenda in the concluding section of this chapter.

X.5 Conclusion: An Agenda for Further Research

The theoretical and analytical framework which this chapter begins to outline draws on the existing body of literature devoted to understanding the reasons why subjects obey domestic or international law, including the factors that may generate or limit compliance. Traditionally, theories of compliance largely adopted an instrumental perspective, emphasizing the influence of deterrence or coercive measures, such as the imposition of sanctions for violations of the law¹⁰⁹ or the risk of reputational damage that would result from non-compliance.¹¹⁰ However, the relevance and effectiveness of these factors for IHL (and to a certain extent IHRL in armed conflict), is limited by the regime’s weak enforcement mechanisms. The normative perspective, on the other hand, emphasizes the importance of factors that generate voluntary compliance, such as the perceived legitimacy of relevant laws,¹¹¹ or the interpreter of the laws, and the sense of ownership for norms generated by acculturation/internalization processes.¹¹²

Drawing on Max Weber’s work, scholars have highlighted the importance of legitimacy as a mechanism for generating compliance. In line with this view, where there is a lack of compliance-inducing mechanisms, voluntary compliance with the law may be generated by the perceived legitimacy of the law itself or the emitter/interpreter.¹¹³ Franck posits that the perceived legitimacy of a norm of international law may be generated by factors such as the symbolic validation of a rule or of a rule-making institution.¹¹⁴ In the vernacularization paradigm—developed by Sally Merry in the context of human rights ideas¹¹⁵—religious leaders can be seen to assume the role of ‘brokers’ that negotiate and adapt humanitarian norms to specific cultural settings and therefore act towards the symbolic validation of the rule. Two main questions arise which need to be addressed by future research endeavors.

¹⁰⁹ Tyler 2006.

¹¹⁰ Chayes and Chayes 1995.

¹¹¹ Franck 1988.

¹¹² Koh 1997; Goodman and Jinks 2013.

¹¹³ Franck 1988.

¹¹⁴ Ibid.

¹¹⁵ Merry 2006.

First, what motivates religious leaders to put forward interpretations of religion which seek to further the compliance with humanitarian norms? Acculturation theories suggest that subjects of the law can individually or collectively internalize a norm, therefore generating a sense of ownership of the norm.¹¹⁶ Norm acculturation or internalization may occur as a result of the participation of actors in making, interpreting, and enforcing law. Their role as ‘brokers’ may lead religious actors to feel a sense of ownership over these norms (or the underlying values), and in turn transfer the special legitimacy which they enjoy onto the norms. Those factors that can engender this sense of ownership among religious leaders may include religious values, local laws—including but not restricted to religious law—, norms and custom, protections entailed by IHL in respect to religious personnel, religious sites, and the right to religious freedom.

Second, there are factors that may maximize the special legitimacy of religious leaders in times of armed conflict and therefore their influence on generating compliance with—or, as the IS case study revealed, violations of—humanitarian norms. Relevant factors may include the type of armed conflict, the organization of the armed actor (integrated State’s armed forces; centralized NSAG; decentralized NSAG; or community-embedded NSAG),¹¹⁷ the proximity, relationship and role of the religious leader with or within the structure of the armed actor, the armed actors’ perception of the religious leader, the latter’s societal position/perception, the shared (or not) religion, religious alignment or affinity with the parties, the security situation faced by the religious leader, their means of accessing parties and affected communities (e.g. direct, mediated through media), their participation (or readiness to participate) in interfaith dialogue and forums. Whilst the examples of religious leaders discussed in this chapter provided some preliminary information on some of these factors, (comparative) case studies, combining desk-based research with more qualitative methods, such as interviews with relevant stakeholders, are needed for an in-depth exploration.

A caveat revealed by transitional justice scholarship refers to the position of a religious leader during conflict as victim, accomplice or perpetrator of violations, which presents very different opportunities for the actor’s engagement in post-conflict justice mechanisms and initiatives.¹¹⁸ A variable that will have to be considered by humanitarian organizations when evaluating whether the involvement of religious leaders can result in a transfer of legitimacy onto humanitarian norms is the religious leaders’ own record of compliance with IHL and their

¹¹⁶ Koh 1997; Goodman and Jinks 2013.

¹¹⁷ ICRC 2018.

¹¹⁸ Cismas 2017.

accountability. Be that as it may, one can very well envisage situations where a religious leader that had put forward interpretations of religion, which conflict with IHL norms, nonetheless, retains influence among followers. Unlike UN bodies operating in the field of development, which seek to partner with religious actors in order to ensure access to local communities on the basis of shared values, humanitarian organizations are mandated to engage with all parties to a conflict, compliant and non-compliant ones. Indeed, their interest may lay precisely in engaging the influencers of non-compliant parties seeking thereby to establish a humanitarian dialogue.

Finally, an agenda for research on the role of religious leaders in generating compliance with IHL must also address the behavior of humanitarian organizations while engaging these actors. Considerations must include aspects relating to the separation of law and religion and specifically the impartiality/neutrality of humanitarian organizations, to the stark—if the examples discussed in this chapter are in any way indicative—possibility that humanitarian engagement may reinforce gendered structures, roles and narratives, and to the necessary means to ensure genuinely participatory parameters of engagement.

References

Articles, Books and Other Documents

- Al-Dawoody A (2011) *The Islamic Law of War: Justifications and Regulations*. Palgrave Macmillan, New York
- Ali K (2016) Redeeming Slavery: The ‘Islamic State’ and the Quest for Islamic Morality *Mizan. Journal of Interdisciplinary Approaches to Muslim Societies and Civilizations* 1(1):1-22
- Aly H (2014a) Can Islamic law be an answer for humanitarians? <http://www.thenewhumanitarian.org/analysis/2014/04/24/can-islamic-law-be-answer-humanitarians>. Accessed 31 March 2020
- Aly H (2014b) Jihadi jurisprudence? Militant interpretations of Islamic rules of war. <http://www.thenewhumanitarian.org/analysis/2014/04/24/jihadi-jurisprudence-militant-interpretations-islamic-rules-war>. Accessed 31 March 2020
- Bangerter O (2011) Reasons why armed groups choose to respect international humanitarian law or not. *International Review of the Red Cross* 93(882):353-384
- Bangerter O (2015) Comment – persuading armed groups to better respect international humanitarian law. In: Krieger H (ed) *Inducing Compliance with International Humanitarian Law: Lessons from the African Great Lakes Region*. Cambridge University Press, Cambridge, pp 112-124

- Blakke K, Gallagher Cunningham K, Seymour L (2015) The problem with fragmented insurgencies. https://www.washingtonpost.com/news/monkey-cage/wp/2015/05/13/the-problem-with-fragmented-insurgencies/?noredirect=on&utm_term=.7c8f0edbf751. Accessed 31 March 2020
- Borum R, Fein R (2016) The Psychology of Foreign Fighters. *Studies in Conflict & Terrorism* 40(3):248-266
- Brudholm T, Cushman T (2009) Introduction: The Religious in Responses to Mass Atrocity. In: Brudholm T, Cushman T (eds) *The Religious in Responses to Mass Atrocities*. Cambridge University Press, Cambridge, pp 1-18
- Callimachi R (2015) ISIS Enshrines a Theology of Rape. <https://www.nytimes.com/2015/08/14/world/middleeast/isis-enshrines-a-theology-of-rape.html>. Accessed 31 March 2020
- Cetorelli V, Ashraph S (2019) A demographic documentation of ISIS's attack on the Yazidi village of Kocho. http://eprints.lse.ac.uk/101098/1/Cetorelli_Demographic_documentation_ISIS_attack.pdf. Accessed 31 March 2020
- Chayes A, Handler Chayes A (1995) *The New Sovereignty: Compliance with International Regulatory Agreements*. Harvard University Press
- Chertoff E (2017) Prosecuting gender-based persecution: The Islamic State at the ICC. *Yale Law Journal* 126(4):1050-1117
- Chinkin C, Kaldor M (2017) *International Law and New Wars*. Cambridge University Press, Cambridge
- Cismas I (2014) *Religious Actors and International Law*. Oxford University Press, Oxford
- Cismas I (2017) Reflections on the Presence and Absence of Religious Actors in Transitional Justice Processes: On Legitimacy and Accountability. In: Duthie R, Seils P (eds) *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies*. International Center for Transitional Justice, New York, pp 302-343
- Cismas I, Heffes E (2017) Can religious leaders play a role in enhancing compliance with IHL? <http://blogs.icrc.org/law-and-policy/2017/12/20/can-religious-leaders-play-a-role-in-enhancing-compliance-with-ihl-2/>. Accessed 31 March 2020
- Clapham A (2006) *Human Rights of Non-State Actors*. Oxford University Press, Oxford
- Cockayne J (2002) Islam and international humanitarian law: From a clash to a conversation between civilizations. *International Review of the Red Cross* 84(847):597-626
- Cohen S (1999) From Integration to Segregation: The Role of Religion in the IDF. *Armed Forces & Society* 25(3):387-405
- Cohen S (2007) The Re-Discovery of Orthodox Jewish Laws Relating to the Military and War (Hilkhot Tzavah U-Milchamah) in Contemporary Israel: Trends and Implications. *Israel Studies* 12(2):1-28
- Cryer R (2015) The role of international criminal prosecutions in increasing compliance with international humanitarian law in contemporary African conflicts. In: Krieger H (ed) *Inducing Compliance with International Humanitarian Law: Lessons from the African Great Lakes Region*. Cambridge University Press, Cambridge, pp 188-216
- Dogan M (2004) Conceptions of Legitimacy. In: Hawkesworth M, Kogan M (eds) *Encyclopedia of Government and Politics*, Volume I, 2nd edn. Routledge, London, pp 110-120

- Edrei A (2006) Divine Spirit and Physical Power: Rabbi Shlomo Goren and the Military Ethic of the Israel Defense Forces. *Theoretical Inquiries in Law* 7(1):255-297
- Evans C (2006) The Double-Edged Sword: Religious Influences on International Humanitarian Law. *Melbourne Journal of International Law* 6(1):1-32
- Falk R (1964) On Identifying and Solving the Problem of Compliance with International Law. *Proceedings of the American Society of International Law and Its Annual Meeting* 58:1-9
- Fast L (2018) Crossing boundaries in protecting civilians. Mapping actors, insights and conceptual spaces. <https://www.odi.org/sites/odi.org.uk/files/resource-documents/12334.pdf>. Accessed 31 March 2020
- Fazal T (2018) *Wars of Law: Unintended Consequences in the Regulation of Armed Conflict*. Cornell University Press, Cornell
- Franck T (1988) Legitimacy in the International System. *American Journal of International Law* 82(4):705-759
- Franck T (1990) *The Power of Legitimacy Among Nations*. Oxford University Press, New York
- Fortin K (2017) *The Accountability of Armed Groups under Human Rights Law*. Oxford University Press, Oxford
- Geneva Academy of International Humanitarian Law and Human Rights (2014) Reactions to Norms: Armed Groups and the Protection of Civilians. https://www.genevacall.org/wp-content/uploads/dlm_uploads/2014/04/Geneva-Academy-Policy-Briefing-1_Amed-Groups-and-the-Protection-of-Civilians.pdf. Accessed 31 March 2020
- Geneva Call (2014) Dialogue on the protection of civilians with 10 senior Sunni Muslim leaders in Lebanon. <https://www.genevacall.org/dialogue-protection-civilians-10-senior-sunni-muslim-leaders-lebanon/>. Accessed 23 September 2019
- Geneva Call (2016) In Their Words: Perceptions of Armed Non-State Actors on Humanitarian Action. https://www.genevacall.org/wp-content/uploads/2019/05/WHS_Report_2016_web.pdf. Accessed 31 March 2020
- Geneva Call (2019) Shia Religious Leaders set precedents and agree on IDP Protection in Najaf/Iraq. <https://www.genevacall.org/humanitarian-dialogue-shia-religious-leaders-set-precedents-and-agree-on-idp-protection-in-najaf-iraq/>. Accessed 31 March 2020
- Goodman R, Jinks D (2013) *Socializing States: Promoting Human Rights Through International Law*. Oxford University Press, Oxford
- Gross M (2015) *The Ethics of Insurgency: A Critical Guide to Just Guerrilla Warfare*. Cambridge University Press, Cambridge
- Heffes E (2019) Armed Groups and the Protection of Health Care. *International Law Studies* 95:226-243
- Heffes E (2018) Administration of justice by armed groups: Some legal and practical concerns. <https://blogs.icrc.org/law-and-policy/2018/11/22/administration-of-justice-armed-groups-some-legal-practical-concerns/>. Accessed 31 March 2020
- Heffes E, Kotlik M (2014) 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* 96(895/896):1195-1224
- Henckaerts J-M (2003) Binding Armed Opposition Groups through Humanitarian Treaty Law and Customary Law. In: Vuyilsteke M, Reh C, Reynolds C (eds) *Proceedings of the Bruges Collegium: Relevance of International Humanitarian Law to Non-State Actors* 27:123-138

- Henckaerts JM, Doswald-Beck L (2005) Customary International Humanitarian Law, Volume I: Rules. Cambridge University Press, Cambridge
- Holy See (2017) Address of His Holiness Pope Francis to the Participants in the Conference on International Humanitarian Law. https://w2.vatican.va/content/francesco/en/speeches/2017/october/documents/papa-francesco_20171028_diritto-internazionale-umanitario.html. Accessed 31 March 2020
- ICRC (2003) ICRC Expert Seminars: Improving Compliance with International Humanitarian Law. https://www.icrc.org/eng/assets/files/other/improving_compliance_with_international_report_eng_2003.pdf. Accessed 31 March 2020
- ICRC (2004) The Roots of Behaviour in War: Understanding and Preventing IHL Violations. ICRC, Geneva
- ICRC (2011) 31st International Conference of the Red Cross and Red Crescent: Strengthening legal protection for victims of armed conflict. Resolution 1. https://rcrcconference.org/app/uploads/2019/03/R1_Strengthening_IHL_EN.pdf. Accessed 31 March 2020
- ICRC (2015a) Strengthening compliance with international humanitarian law (IHL): The work of the ICRC and the Swiss government. <https://www.icrc.org/en/doc/what-we-do/other-activities/development-ihl/strengthening-legal-protection-compliance.htm>. Accessed 31 March 2020
- ICRC (2015b) Faith-based organizations and religious leaders: Essential partners in humanitarian action. <https://www.icrc.org/en/document/faith-based-organizations-and-religious-leaders-essential-partners-humanitarian-action>. Accessed 31 March 2020
- ICRC (2016) Protecting Health Care: Key Recommendations. ICRC, Geneva
- ICRC (2017) Annual Report 2016. <https://www.icrc.org/data/files/annual-report-2016/ICRC-2016-annual-report.pdf>. Accessed 18 January 2020
- ICRC (2018) The Roots of Restraint in War. ICRC, Geneva
- ICRC (2019a) Partnering with community and religious leaders to help people affected by conflict. <https://www.icrc.org/en/document/partnering-community-and-religious-leaders-benefit-people-affected-conflict>. Accessed 23 September 2019
- ICRC (2019b) Sri Lanka: Global Conference on the Interface between Buddhism and IHL. <https://www.icrc.org/en/document/sri-lanka-global-conference-interface-between-buddhism-and-ihl>. Accessed 31 March 2020
- ICRC (2019c) Experts' Workshop: IHL and Islamic Law in Contemporary Armed Conflicts. https://www.icrc.org/en/download/file/109967/expert_workshop_on_ihl_and_islamic_law.pdf. Accessed 31 March 2020
- ICRC (2019d) Islamic and humanitarian law experts discuss preservation of human dignity in armed conflict. <https://www.icrc.org/en/document/islamic-and-humanitarian-law-experts-discuss-preservation-human-dignity-armed-conflict>. Accessed 31 March 2020
- International Crisis Group (2019) The Philippines: Militancy and the New Bangsamoro. <https://d2071andvip0wj.cloudfront.net/301-the-new-bangsamoro.pdf>. Accessed 31 March 2020
- Jenks C, Acquaviva G (2014) Debate: The role of international criminal justice in fostering compliance with international humanitarian law. *International Review of the Red Cross* 96(895/896):775-794
- Jo H (2015) Compliant Rebels: Rebel Groups and International Law in World Politics. Cambridge University Press, Cambridge

- Jo H (2017) Compliance with International Humanitarian Law by Non-State Armed Groups: How Can It Be Improved? *Yearbook of International Humanitarian Law* 19:63-88
- Koh H (1997) Why do Nations Obey International Law? *The Yale Law Journal* 106:2599-2659
- Kornalian M, Zaim S (2011) Religion & Refusal in the IDF: Prospects for a West Bank Withdrawal. George Washington University Institute for Middle East Capstone Paper Series
- Kotlik M (2020) Compliance with Humanitarian Rules on the Protection of Children by Non-State Armed Groups: The UN's Managerial Approach. In: Heffes E, Kotlik M, Ventura, M (eds) *International Humanitarian Law and Non-State Actors: Debates, Law and Practice*. Asser Press/Springer, The Hague/Berlin, pp 387-425
- Krieger H (2015) Introduction. In: Krieger H (ed) *Inducing Compliance with International Humanitarian Law: Lessons from the African Great Lakes Region*. Cambridge University Press, Cambridge, pp 1-10
- Levy Y (2014) The Theocratization of the Israeli Military. *Armed Forces & Society* 40(2):269-294
- Matheson C (1987) Weber and the Classification of Forms of Legitimacy. *The British Journal of Sociology* 38(2):199-215
- Merry S (2006) *Human Rights & Gender Violence: Translating International Law Into Local Justice*. University of Chicago Press, Chicago
- Murray D (2016) *Human Rights Obligations of Non-State Armed Groups*. Hart Publishing, Oxford
- Letter to Baghdadi (2015) Open Letter to Dr. Ibrahim Awwad Al-Badri, alias 'Abu Bakr Al-Baghdadi', to the fighters and followers of the self-declared 'Islamic State' (2015), <http://www.lettertobaghdadi.com>. Accessed 31 March 2020
- Patterson E (ed) (2013) *Colombia: Religious Actors Inspiring Reconciliation*. https://berkeleycenter.georgetown.edu/publications/colombia-religious-actors-inspiring-reconciliation/pdf_download/en. Accessed 31 March 2020
- Roth K (2015) Slavery: The ISIS Rules. <https://www.hrw.org/news/2015/09/05/slavery-isis-rules>. Accessed 31 March 2020
- Quintin A, Tougas M-L (2020) Generating Respect for the Law by Non-State Armed Groups: The ICRC's Role and Activities. In: Heffes E, Kotlik M, Ventura, M (eds) *International Humanitarian Law and Non-State Actors: Debates, Law and Practice*. Asser Press/Springer, The Hague/Berlin, pp 353-386
- Rodenhäuser T (2018) *Organizing Rebellion: Non-State Armed Groups under International Humanitarian Law, Human Rights Law, and International Criminal Law*. Oxford University Press, Oxford
- Schneckener U, Hofmann C (2015) The power of persuasion. The role of international non-governmental organizations in engaging armed groups. In: Krieger H (ed) *Inducing Compliance with International Humanitarian Law: Lessons from the African Great Lakes Region*. Cambridge University Press, Cambridge, pp 79-111
- Snyder E (2009) Waging Peace: Women, Restorative Justice, and the Pursuit of Human Rights in the Solomon Islands. *Refugee Watch* 32:67-79
- Spencer M (1970) Weber on Legitimate Norms and Authority. *The British Journal of Sociology* 21(2):123-134
- Terry F, McQuinn B (2018) Behind the scenes: The Roots of Restraint in War study. <https://blogs.icrc.org/law-and-policy/2018/06/18/roots-of-restraint-armed-groups/>. Accessed 31 March 2020
- Tyler T (2006) *Why People Obey the Law*. Princeton University Press, Princeton

- UN Aids (2009) Partnership with Faith-based Organizations: UN AIDS Strategic Framework.
https://www.unaids.org/sites/default/files/media_asset/20100326_jc1786_partnership_fbo_en_0.pdf.
 Accessed 31 March 2020
- UN Development Programme (2014) UNDP Guidelines on Engaging with Faith-Based Organizations and Religious Leaders. http://www.undp.org/content/dam/undp/documents/partners/2014_UNDP_Guidelines-on-Engaging-with-FBOs-and-Religious-Leaders_EN.pdf. Accessed 31 March 2020
- UN Environment Programme (2018) Engaging with Faith Based Organizations. UN Environment Strategy. <https://wedocs.unep.org/bitstream/handle/20.500.11822/25989/UNEP%20Strategy%20Engaging%20FBOs.pdf?sequence=1&isAllowed=y>. Accessed 31 March 2020
- UN High Commissioner for Refugees (2014) Partnership Note on Faith-based Organizations, Local Faith Communities and Faith Leaders. <https://www.unhcr.org/539ef28b9.pdf>. Accessed 31 March 2020
- UN Human Rights Council (2016) International Independent Commission of Inquiry on the Syrian Arab Republic: “They Came to Destroy”: ISIS Crimes Against the Yazidis, UN Doc. A/HRC/32/CRP.2
- UN Office of the High Commissioner for Human Rights (2017) Beirut Declaration and its 18 commitments on “Faith for Rights”. <https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/FaithForRights.aspx>. Accessed 31 March 2020
- UN Office of the Special Representative of the Secretary-General for Children and Armed Conflict (2013) The Six Grave Violations Against Children During Armed Conflict: The Legal Foundation. https://childrenandarmedconflict.un.org/publications/WorkingPaper-1_SixGraveViolationsLegalFoundation.pdf. Accessed 31 March 2020
- UN Office of the Special Representative of the Secretary General for Children and Armed Conflict (2018) Human Rights Council Report: Direct Engagement with Parties to Conflict Brings Progress but Grave Violations Against Children Continue. <https://childrenandarmedconflict.un.org/direct-engagement-parties-conflict-brings-progress-grave-violations-children-continue/>. Accessed 31 March 2020
- UN Office on Genocide Prevention and the Responsibility to Protect (2017) Plan of Action for Religious Leaders and Actors to Prevent Incitement to Violence that Could Lead to Atrocities Crimes. <https://www.un.org/en/genocideprevention/documents/Plan%20of%20Action%20Advanced%20Copy.pdf>. Accessed 31 March 2020
- UN Population Fund (2009) Guidelines for Engaging Faith-based Organisations (FBOs) as Agents of Change. https://www.unfpa.org/sites/default/files/resource-pdf/fbo_engagement.pdf. Accessed 31 March 2020
- Vinjamuri L, Boesnecker A (2008) Religious Actors and Transitional Justice. In: Banchoff T (ed) *Religious Pluralism, Globalization, and World Politics*. Oxford University Press, Oxford, pp 155-88
- Weinstein J (2007) *Inside Rebellion: The Politics of Insurgent Violence*. Cambridge University Press, Cambridge
- Wiener M (2012) Engaging with Religious Communities. *Oxford Journal of Law and Religion* 1(1):37-56
- Zaragoza J (2020) Colombia: Mapping of armed conflicts and religious leaders’ activities (on file with the authors)

Cases

ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996, [1996] ICJ Rep 226

ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, [2004] ICJ Rep 136

ICJ, *Case concerning Armed Activities on the territory of the Congo (Democratic Republic of the Congo v Uganda)*, Judgment, 19 December 2005, [2005] ICJ Rep 168

ICTR, *Prosecutor v Athanase Seromba*, Judgment, 13 December 2006, Case No. ICTR-2001-66-I

ICTR, *Prosecutor v Athanase Seromba*, Judgment, 12 March 2008, Case No. ICTR-2001-66-A

ICTR, *Prosecutor v Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Judgment and Sentence, 21 February 2003, Case Nos. ICTR-96-10 and ICTR-96-17-T

ICTR, *Prosecutor v Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Judgment, 13 December 2004, Case Nos. ICTR-96-10-A and ICTR-96-17-A