

# **Yearbook of International Humanitarian Law**

Volume 20

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# Yearbook of International Humanitarian Law 2017



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Cover picture: Aleppo. This street is one of several in the city that remains riddled with unexploded mines that threaten the lives of pedestrians.

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# Editorial

Despite an enduring perception that the rules of International Humanitarian Law need to be adapted to changing circumstances of warfare, States do not rely on formal procedures to conclude new treaties or amend existing ones. While formalised multilateral negotiations seem to have become the exception, the development of International Humanitarian Law currently relies first and foremost on interpretative processes. Even though States also remain the main actors in such processes, there is a widespread perception that in the contemporary geopolitical environment they are reluctant to clearly express their positions or any kind of *opinio iuris*. As a result, other actors step in. Not only courts but also different non-State actors, such as expert groups, NGOs and even armed groups, bring forward interpretations of relevant treaties or rules of customary international law. How far does the impact of these interpretations reach? Have States lost or are they about to lose hold of the development of International Humanitarian Law? Is International Humanitarian Law being developed adequately in this manner?

Part of the 2017 Yearbook of International Humanitarian Law is devoted to such interpretative processes. *Heleen Hiemstra* and *Ellen Nohle* look into “The Role of Non-State Armed Groups in the Development and Interpretation of International Humanitarian Law”, demonstrating that even violent non-State actors might belong to the interpretative community of International Humanitarian Law, although this claim is often met with criticism and rejection by States. In his contribution “A Fine Line Between Protection and Humanisation: The Interplay Between the Scope of Application of International Humanitarian Law and Jurisdiction over Alleged War Crimes Under International Criminal Law”, *Rogier Bartels* analyses the impact of International Criminal Law on the development of International Humanitarian Law. The contributions by *Samit D’Cunha*, “The Notion of External NIACs: Reconsidering the Intensity Threshold in Light of Contemporary Armed Conflicts”, and *Valentina Azarova*, “Towards a Counter-Hegemonic Law of Occupation: On the Regulation of Predatory Interstate Acts in Contemporary International Law”, demonstrate the need for an interpretative development of the law in the face of States’ reluctance to tackle any of the politically underpinned legal uncertainties and biases in the law.

The second part of the Yearbook considers the law of targeting. This particular focus exemplifies the need for developing and adapting International Humanitarian Law through interpretation to changing realities of warfare. *Jeroen C. van den Boogaard* and *Arjen Vermeer* demonstrate how the rules on precautions in attack need to be adapted to the challenges of urban and siege warfare. *Till Patrik Holterhus* elaborates on the challenges arising for the law of targeting from the allegedly religious context in which the armed conflict against the so-called Islamic State takes place. *Héctor Olasolo* and *Felipe Tenorio-Obando* ask if and under which limitations “[a]re the Targets of Aerial Spraying Operations in Colombia Lawful under International Humanitarian Law?”

As is customary, the Yearbook concludes with “The Year in Review”, this year authored by *Beier Lin*, *Marie Wilmet* and *Charlotte Renckens*.

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# Contents

## Part I The Development and Interpretation of International Humanitarian Law

- 1 **The Role of Non-State Armed Groups in the Development and Interpretation of International Humanitarian Law** ..... 3  
Heleen Hiemstra and Ellen Nohle
- 2 **A Fine Line Between Protection and Humanisation: The Interplay Between the Scope of Application of International Humanitarian Law and Jurisdiction over Alleged War Crimes Under International Criminal Law** ..... 37  
Rogier Bartels
- 3 **The Notion of External NIACs: Reconsidering the Intensity Threshold in Light of Contemporary Armed Conflicts** ..... 75  
Samit D’Cunha
- 4 **Towards a Counter-Hegemonic Law of Occupation: On the Regulation of Predatory Interstate Acts in Contemporary International Law** ..... 113  
Valentina Azarova

## Part II Targeting in Armed Conflicts

- 5 **Precautions in Attack and Urban and Siege Warfare** ..... 163  
Jeroen C. van den Boogaard and Arjen Vermeer
- 6 **Targeting the Islamic State’s Religious Personnel Under International Humanitarian Law** ..... 199  
Till Patrik Holterhus



<b>7 Are the Targets of Aerial Spraying Operations in Colombia Lawful Under International Humanitarian Law?</b> .....	229
Héctor Olasolo and Felipe Tenorio-Obando	
<b>Part III Other Articles</b>	
<b>8 Year in Review 2017</b> .....	255
Beier Lin, Marie Wilmet and Charlotte Renckens	
<b>Table of Cases</b> .....	329
<b>Index</b> .....	339

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