

International Humanitarian Law and Non-State Actors

Ezequiel Heffes · Marcos D. Kotlik ·
Manuel J. Ventura
Editors

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Debates, Law and Practice



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Foreword

The chapters collected in this volume go beyond the doctrinal debates over whether non-state actors have personality, are subjects or objects of international law, or indeed whether or not they are bound by international obligations. The authors draw on their personal experiences to explain how non-state actors adjust their behaviour in light of international law, how such actors are contributing to the development of international law, and what sort of policies should be adopted towards non-state actors in order to ensure a better framework for the protection of those affected.

An expansive definition of the term non-state actor allows the authors to cover the contemporary interactions between a multiplicity of ‘players’: the ICRC, the United Nations, private military companies, Geneva Call and the rebel groups themselves. There is a focus on the development of the UN through international courts and human rights bodies, but the book does not lose sight of the practices that are developing—often in parallel to the legal doctrine.

Out of this examination of law and practice, the authors manage to point towards the policies that ought to be considered. Some of these require no changes to the legal framework—only new ways of seeing the issues—while others require not just imagination but concrete steps to realise increased possibilities for holding accountable those who transgress fundamental humanitarian and human rights norms.

This collection will be of interest to anyone seeking new ways to enhance the rule of law in armed conflict.

Geneva, Switzerland

Andrew Clapham
Professor of International Law at the
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Preface

In 2016, at the time of this book's conception, all three of us were working within the non-State actor (NSA) field but held quite different positions. Ezequiel was a delegate at the International Committee of the Red Cross (ICRC) in Lashkar Gah, Helmand Province, Afghanistan; Marcos was a researcher at the School of Law of the University of Buenos Aires in Argentina; and Manuel was an Associate Legal Officer in Chambers at the Special Tribunal for Lebanon in The Hague, The Netherlands. Through several exchanges related to our work and academic activities, we realized that no in-depth examination had been undertaken concerning the roles of different NSAs within the context of armed conflicts and international humanitarian law (IHL). We noticed that—oddly—no book dedicated to this particular subject had been published. At the time, most studies focused on specific entities without necessarily placing them within a broader mosaic where a variety of NSAs interact among themselves and States. Because of our work, we had the opportunity to engage directly with non-State armed groups (NSAGs), non-governmental organizations (NGOs), international criminal tribunals, private military security companies, local and religious leaders and academic institutions. Each was, in one way or another, having an impact on how IHL was interpreted, respected or deliberately disregarded and ignored. Attempting to understand these dynamics was an important task that we felt compelled to undertake. This is why this book was conceived as an edited collection: a discussion of various NSAs acting within IHL required the involvement of professionals with experience in studying and analysing those NSAs' practices and interactions.

As co-editors, we are grateful to all the authors who are published in this book for supporting and becoming a part of a project launched by three unknown individuals. The authors bring novel and alternative perspectives on how IHL is currently conceived, and they thoughtfully (and patiently) engaged in dialogue at every stage of the editing process. The book also profited from the help and encouragement of a number of people. Special thanks are due to Emiliano Buis, for his long-lasting and invaluable help at the School of Law of the University of Buenos Aires. Neither Ezequiel nor Marcos would be co-editors of this book without Emiliano opening the IHL field for them. The *Jean Pictet* family also played a

crucial role in this regard, as it gave us the opportunity to interact with some of the authors a few years before this book was actually conceived. Much of the dynamics identified in this volume are influenced by the teachings of, and discussions with, Prof. Andrew Clapham, who previously taught Ezequiel and Manuel. His views on international law and how it is constructed and influenced by different stakeholders have served to shape the path of this project. Special thanks are also due to Sabrina Frydman, who joined the project in its final stage and went through hundreds of footnotes and references, helping us to conform the text to the applicable style guide and showing us the light at the end of the tunnel. Her eye for detail was an invaluable contribution, one that any reader of this book will surely appreciate. Additionally, we are grateful to Frank Bakker and Kiki van Gorp at the T.M.C. Asser Institute for their advice and support throughout this process from start to finish. We particularly appreciate the trust they placed on three young professionals who did not previously have a book to their names. Finally, we would like to thank you—the readers—for taking the time to consider, think and critically engage with the opinions and ideas contained in the following pages. We hope that they will contribute positively to your academic and/or professional endeavours and to the marketplace of ideas generally. If our book manages to accomplish this, even in a small way, then the effort we have put into this project will have been more than worth it.

At the time these acknowledgements were written, all three of us are still working within the NSA field but now hold different positions. Ezequiel is a legal adviser at Geneva Call—an NGO that engages NSAGs on humanitarian norms—in Geneva, Switzerland; Marcos is a Judicial Fellow at the International Court of Justice in The Hague, The Netherlands; and Manuel is an Associate Legal Officer in the Office of the Prosecutor at the International Residual Mechanism for Criminal Tribunals in Arusha, Tanzania. Although our professional paths have moved from one place to another, the influence of NSAs on our own personal lives can be clearly identified.

Geneva, Switzerland
The Hague, The Netherlands
Arusha, Tanzania
June 2019

Ezequiel Heffes
Marcos D. Kotlik
Manuel J. Ventura

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