

Yearbook of International Humanitarian Law

Volume 26

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Heike Krieger · Pablo Kalmanovitz ·
Eliav Lieblich · Stavros Evdokimos Pantazopoulos
Editors

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Humanitarian Actors



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Editors

Heike Krieger
Department of Law/Public Law
Free University of Berlin
Berlin, Germany

Eliav Lieblich
Buchmann Faculty of Law
Tel Aviv University
Tel Aviv, Israel

Pablo Kalmanovitz
Department of International Studies
Instituto Tecnológico Autónomo de México
(ITAM)
Mexico City, Mexico

Stavros Evdokimos Pantazopoulos
National and Kapodistrian University
of Athens
Athens, Greece

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Preface

International Humanitarian Law (IHL) arguably originates with the neutralization of battlefield medical assistance in the late nineteenth century. Since then, humanitarian actors have diversified and amplified their work and mission far beyond their founders' imagination, in a process that has contributed fundamentally to shaping contemporary IHL. Most notably, the International Red Cross and Red Crescent Movement has played fundamental roles in the drafting and enforcement of IHL instruments and has expanded its membership and mandate globally to cover humanitarian crises directly or indirectly linked to armed conflicts all over the world.

For volume 26, the *Yearbook of International Humanitarian Law* invited contributions that investigate the law, history, and politics of humanitarian action in armed conflicts and beyond. Common to the complex contemporary constellation of humanitarian actors is the espousal of a historically distinctive set of fundamental principles: humanity, neutrality, impartiality, and independence. In keeping with these principles, humanitarian actors have prioritized access to populations in need in conflict areas, often operating with discretion and confidentially. All humanitarian actors are forced to engage with *de facto* powers of various sorts in conflict areas, including High Contracting Parties, non-state opposition groups, terrorist organizations, and drug trafficking cartels with military capabilities. How is loyalty to humanitarian principles maintained in contexts that bear so little resemblance with historical battlefields—and in a political and legal world that increasingly demands criminal accountability and counter-terrorist action? Are the efforts of humanitarian actors excessively restricted by applicable legal frameworks?

The two contributions to the special theme address these questions and more. David Matyas's article conveys a rich sense of the legal complexity surrounding the work of humanitarian actors on the ground. Focusing on international non-governmental organizations, international humanitarian organizations, and civil society actors, and drawing on interviews with humanitarian practitioners in Africa, the Middle East, Europe, and the United Kingdom, the author reconstructs the intricate configurations of international, domestic, and foreign state laws and jurisdictions; public and private laws; soft law standards and regulations, which constitute, constrain and enable, the "everyday work" of humanitarian actors. In the process,

Matyas reveals the insufficiency of traditional legal approaches to humanitarian governance, which are framed within areas of public international law, and relativizes the role and practical importance of IHL in humanitarian action.

While Matyas's analysis of humanitarian legal governance focuses on non-state actors, Oscar Gómez's contribution looks at the state as a humanitarian actor. Challenging the perceived centrality of non-state actors in humanitarian practice, in which states appear as either benevolent funders or dysfunctional structures, Gómez shows the crucial importance of state agencies in aid-receiving states as effective providers of humanitarian relief and protection. Through a case study of Colombia's highly developed state humanitarian agencies, which have been dedicated to addressing the humanitarian impact of decades-long armed conflict, the article shows why we should see the state as a key humanitarian actor, not simply as either benevolent funder or helpless receiver.

In the general submissions section, Neil Davison looks at the exemption in the Chemical Weapons Convention for law enforcement operations, notably for "domestic riot control purposes." As Davison shows, while the CCW drafters had mainly tear gas in mind when introducing the law enforcement exemption, ambiguities in the treaty left open the question whether other toxic chemicals could be permissibly used in law enforcement, in particular aerosolized chemicals acting on the central nervous system. Davison's article reconstructs and reflects on the legal clarification introduced by the CCW Conference of the Parties in 2021, whereby the use of this type of chemicals was excluded from the law enforcement exemption. Davison highlights the crucial role of the ICRC in this clarification and identifies remaining ambiguities and open questions in the treaty.

The Russian aggression against Ukraine has brought the question to the fore of when a third state turns into a co-party to an international armed conflict because of the provision of support to a belligerent. In his contribution, Robin Sebastiaan David Sinnige digs into the specific case of the provision of processed satellite imagery. He argues that such a kind of intelligence support operates in a legal grey area because the pertinent standards are unclear in practice and in literature. Against this background, he proposes a new test consisting of three elements: the extent of the support, the causal link, and the intent. Based on this definition he concludes that in some instances the provision of tactical intelligence support entails a co-party status.

The Yearbook concludes with the Year in Review section, written by Belén Guerrero Romero, Wamika Sachdev, and Baptiste Beurrier.

We are grateful to the authors for their engagement with the Yearbook. Huge thanks are due to the peer-reviewers and to Baptiste Beurrier for his support with the editing process. We hope this edition contributes to the manifold discourses in international humanitarian law.

Mexico City, Mexico
Berlin, Germany
Tel Aviv, Israel

Pablo Kalmanovitz
Heike Krieger
Eliav Lieblich

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