

MODERN WARFARE

Armed Groups, Private Militaries,
Humanitarian Organizations, and the Law

Edited by Benjamin Perrin



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Preface

This book is the culmination of “The Edges of Conflict” project, which began in 2007 as a joint initiative between the University of British Columbia’s Liu Institute for Global Issues and the Canadian Red Cross to engage in the debate regarding the changing nature of armed conflict and to improve respect for the rule of law in complex security environments. The specific goals of the endeavour were threefold:

- to examine and debate contemporary challenges of armed conflict
- to develop new conceptual approaches, policy recommendations, and areas for further research to address the challenge to international humanitarian law posed by the changing nature of armed conflict
- to raise awareness of contemporary conflict issues, build Canadian capacity, and ensure policy coherence by engaging a wide range of Canadian and international actors.

The project began in January 2008 with a consultation in the form of a “fast-talk” with several leading experts in order to narrow and identify areas for research. As a result of this consultation, five research papers were commissioned and published on the project website (<http://www.edgesofconflict.com>) in March 2008. From these initial papers, the path for future research became clear, with two main thematic areas emerging.

The first is the complex interaction in conflict and post-conflict settings between non-state actors (including humanitarian organizations, private military and security companies, and non-state armed groups) and state armed forces. The interplay between these diverse actors has given rise to concepts such as “humanitarian space” and counterinsurgency doctrine in order to manage the tensions between them. The coexistence of these actors in modern armed conflict thus became a central focus of the project from the very beginning. The second area of interest arising from the “fast-talk process” focused on violence that does not fall within the definition of an armed conflict but is detrimental and threatening to civilian populations, such as low-level insurgencies and endemic urban violence.

These two thematic areas are of particular relevance to Canadians due to the overseas missions of the Canadian Forces in areas such as Afghanistan and Haiti, as well as the plethora of humanitarian organizations that are based in Canada and that operate in conflict and post-conflict environments around the world.

Following the initial phase of research, the project advisory group decided to host an international conference in Vancouver, British Columbia, in 2009. Experts from Canada and around the world came to share their current research in the priority areas that were identified through the fast-talk process and commissioned research papers. The conference included a specialized panel on Afghanistan as a case study of a complex security and humanitarian environment. Thematic panels then discussed each topic in greater detail, identified gaps and challenges in the implementation and enforcement of applicable legal regimes, and made further recommendations to address the most immediate challenges. These panels included: the rise of non-state armed groups, shrinking humanitarian space, the expansion of private military and security companies, and the advent of endemic urban violence. A conference report summarized the proceedings and was widely distributed in print and on the project website.

Following the Vancouver conference, participants from diverse backgrounds along with other international experts were invited to submit papers for this edited volume as a lasting scholarly contribution to international humanitarian law, policy, and practice. A series of policy papers were also prepared and were presented in April 2010 in Ottawa to the community of humanitarian policy advisors in government and academia as well as practitioners.

We hope that you will find this book to be a thoughtful and timely critique of the current state of international humanitarian law and practice.

Professor Benjamin Perrin, University of British Columbia
Ilario Maiolo, Canadian Red Cross

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Abbreviations

AFRICOM	United States African Command
ANSA	armed non-state actor
ATT	Arms Trade Treaty
BAPSC	British Association of Private Security Companies
CIDA	Canadian International Development Agency
CNA	Chin National Army (Burma/Myanmar)
CNF	Chin National Front (Burma/Myanmar)
CPLA	Chinese People's Liberation Army
CPN-M	Communist Party of Nepal–Maoist
CVR	Community Violence Reduction program (Haiti)
DCAF	Geneva Centre for the Democratic Control of Armed Forces
DDR	Disarmament, Demobilization, and Reintegration
DFID	Department for International Development (United Kingdom)
DRC	Democratic Republic of the Congo
ECOWAS	Economic Community of West African States

ELN	Ejército de Liberación Nacional (National Liberation Army) (Colombia)
FARC	Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia)
FLN	Front de Libération Nationale (National Liberation Front) (Algeria)
FMLN	Frente Farabundo Martí para la Liberación Nacional (Farabundo Martí National Liberation Front) (El Salvador)
GATT	General Agreement on Tariffs and Trade
GOA	Government of Afghanistan
HNP	Haitian National Police
HPG	Humanitarian Policy Group
HRL	human rights law
HSI	Haiti Stabilization Initiative
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICBL	International Campaign to Ban Landmines
ICoC	International Code of Conduct for Private Security Service Providers
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
ICU	Islamic Courts Union (Somalia)
IDP	internally displaced person
IED	improvised explosive device
IFRC	International Federation of Red Cross and Red Crescent Societies
IHL	international humanitarian law
IHRL	international human rights law
IMTF	Integrated Mission Task Force
IOM	International Organization for Migration
ISAF	International Security Assistance Force
ISP	Inspektionen för Strategiska Produkter (Sweden)

LTTE	Liberation Tigers of Tamil Eelam (Sri Lanka)
MANPADS	Man Portable Air Defence Systems
MINUSTAH	United Nations Stabilization Mission in Haiti
MONUC	United Nations Organization Mission in the Democratic Republic of the Congo
MSF	Médecins Sans Frontières
NATO	North Atlantic Treaty Organization
NDFP	National Democratic Front of the Philippines
NGO	non-governmental organization
NSA	non-state actor
NSAG	non-state armed group
OCHA	Office for the Coordination of Humanitarian Affairs (United Nations)
ODA	official development assistance
OECD	Organisation for Economic Co-operation and Development
OECD-DAC	OECD Development Assistance Committee
OEF	Operation Enduring Freedom
ONUSAL	United Nations Observer Mission in El Salvador
OPAC	Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict
PBC	Peacebuilding Commission (United Nations)
PKK	Kurdistan Workers' Party
PMC	private military company
PMSC	private military/private security company
PRT	Provincial Reconstruction Team (in Afghanistan)
PSC	private security company
QIP	quick impacts project
ROCK	Representative of Canada in Kandahar
RUF	Revolutionary United Front (Sierra Leone)
S/CRS	Office of the Coordinator for Reconstruction and Stabilization
SALW	small arms and light weapons

SIPRI	Stockholm International Peace Research Institute
SPLM/A	Sudan People's Liberation Movement/Army
SSR	security sector reform
START	Stabilization and Reconstruction Team (Canada)
TCN	third-country national
UNAMA	United Nations Assistance Mission in Afghanistan
UNAMIR	United Nations Assistance Mission for Rwanda
UNCT	United Nations Country Team
UNDP	United Nations Development Programme
UN-HABITAT	United Nations Human Settlements Programme
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
UNODC	United Nations Office on Drugs and Crime
UPC	Union des Patriotes Congolais (Democratic Republic of the Congo)
USAID	United States Agency for International Development
UXO	unexploded ordnances
WFP	World Food Programme (United Nations)

MODERN WARFARE

Introduction

BENJAMIN PERRIN

A great deal has changed since the birth of the modern humanitarian movement in 1859, when Henry Dunant, who would go on to create the Red Cross, witnessed the heart-wrenching suffering of the Battle of Solferino. One hundred fifty years later, the Edges of Conflict project was launched with the aim of better understanding the changing nature of armed conflict in order to improve respect for the rule of law in complex security environments. Like all anniversaries, this one prompted a mixture of celebration, reflection, and assessment.

Since the terrorist attacks of 11 September 2001, international humanitarian law (IHL) scholarship, particularly in North America, has largely focused on issues related to the status of “unlawful combatants,” the obligations involved in transferring detainees, limitations on methods of interrogation, and other topics tied to the War on Terror.¹ Another stream of scholarship has focused on the *jus ad bellum* question of humanitarian intervention, reacting to atrocities in Darfur, Rwanda, Sierra Leone, East Timor, and the former Yugoslavia.² Although these are topical and important matters, the singular focus upon them has come at the expense of other emergent trends that also demand attention.

The proliferation of non-state actors in contemporary armed conflict and post-conflict environments has shaken the foundations of IHL³ so significantly that some legal scholars question its continued relevance.⁴ These non-state actors include numerous humanitarian organizations operating

with diverse mandates, private security and military contractors hired by a wide array of clients, and non-state armed groups that have expanded significantly since the end of the Cold War. The co-existence of these state and non-state actors in modern armed conflict environments is part of a “new culture of war”⁵ that concepts like “humanitarian space” and counterinsurgency doctrines have attempted to confront.

Alongside these developments, there has been a growth in widespread forms of violence affecting civilians that may not fall within the definition of “armed conflict,” which is necessary to engage IHL. In many instances, endemic urban violence and low-level insurgencies have claimed more lives and harmed more civilians than some armed conflicts. This expansion of non-state actors and forms of widespread violence pose a significant challenge to the classical underpinnings of IHL in its effort to prevent unnecessary suffering and mitigate the worst effects of armed conflict.

This edited volume engages experts from around the world in exploring and debating a series of specific challenges to the ongoing relevance and validity of IHL. Given that both the issues and proposed solutions reach across disciplines, these experts represent a diverse group, including legal scholars and other academics, humanitarian policy advisors, and representatives of private military organizations and internationally respected research and policy institutions.⁶ Such an approach is critical to bridge the gap between theory and practice across complex and interrelated issues such as the four principal challenges addressed here. Each of the four major sections of this book begins with a longer chapter to provide context for the topic being addressed. The subsequent chapters delve further into specific subtopics and case studies, in order to advance the particular theme more fully than individual chapters would do in isolation.

Non-State Armed Groups: The Compliance Challenge

Non-state armed groups (NSAGs) pose a significant challenge to the ongoing relevance and validity of IHL. M. Cherif Bassiouni has gone so far as to point to a “crisis of compliance” due, in part, to the fact that NSAGs who are militarily outmatched in asymmetric non-international armed conflicts may have little interest in respecting a system of rules that restrains the means and methods that they can employ to achieve their objectives. Furthermore, these non-state actors often lack sufficient training, discipline, and oversight by their commanders, and have little expectation that they will be held accountable for serious violations of IHL.⁷

Some NSAGs are more deliberate in their violations of IHL as part of concerted strategies to terrorize local populations to submit to their *de facto* rule, or as part of a campaign of persecution or “ethnic cleansing.” In these situations, no amount of training or oversight is likely to promote compliance – the very objective of such NSAGs is to violate IHL. Despite the passage of almost twenty years since the renaissance of international criminal prosecutions, beginning with the International Criminal Tribunal for the former Yugoslavia, only the smallest fraction of serious violators of IHL will ever face criminal sanctions before national or international courts and tribunals. Given this reality, the deterrent value of the remote threat of such prosecutions has been questioned.⁸ More is clearly needed than merely enhancing criminal sanctions against members of NSAGs for serious violations of IHL.

For those NSAGs that can potentially be incentivized or otherwise encouraged to comply with IHL, little is offered from existing rights and obligations set out in conventional legal sources. If members of these NSAGs are apprehended, they may be afforded basic protections in Common Article 3 of the 1949 *Geneva Conventions* and in the 1977 Protocol II additional to the same, but they are also exposed to domestic criminal prosecution for taking part in hostilities, unlike lawful combatants in an international armed conflict. The threat of criminal sanction for violating IHL is thus likely to be a hollow one, given that participants in an NSAG have already exposed themselves to the most serious sanctions by choosing to take up arms against their state.

While the trend towards the “humanization” of the laws of war has progressed substantially, pragmatism and reciprocity have historically played a dominant role in the development of IHL. It should not come as a surprise, therefore, that efforts to enhance compliance by NSAGs go beyond legalistic or moral admonitions. The contemporary project to engage NSAGs has been called “as important as peace treaties in traditional wars and the *Geneva Conventions* with regard to humanitarian concerns.”⁹ Consequently, each chapter in this section explores various means to address the challenge of promoting compliance with IHL by NSAGs, drawing on the expertise of a diverse range of contributors.

René Provost explores the concept of reciprocity in Chapter 1, arguing that it does not depend on actual symmetry between the parties to the conflict in order to function, as some have previously asserted. The denial of prisoner-of-war status for rebel combatants, combined with the infrequency

of criminal sanctions against members of NSAGs in domestic courts or international tribunals for violations of IHL, creates a situation where, according to Provost, “there is neither a reciprocal pull to compliance nor a credible threat of enforcement, leaving victims of war gravely underprotected.” Provost proposes that legal pluralism offers a better way to persuade NSAGs to comply with IHL. For example, alternative forums such as Geneva Call involve NSAGs entering into “deeds of commitment” dealing with particular subject areas that mirror obligations set out in treaty law. Such commitments have the potential to encourage mutual acceptance of similar obligations, albeit in different form, between states and NSAGs. Provost argues that by creating these zones of “normative convergence,” based on mutual expectations between states and NSAGs, greater acceptance of humanitarian norms is made possible.

In Chapter 2, Sophie Rondeau advocates increased reliance on the role of reciprocity, broadly understood, to generate enhanced respect for IHL by NSAGs. Although reciprocity has generally played an important role in public international law, and specifically in the historical development of humanitarian norms, the legitimacy of reciprocity as an IHL compliance mechanism has substantially eroded through treaty-based and customary IHL. Rondeau argues, however, that this trend should not diminish the pragmatic value of reciprocity in creating a “culture of compliance” between states and NSAGs in asymmetric non-international armed conflict. She addresses the controversial topics of reprisals and forms of so-called positive reciprocity, such as the recognition of belligerency status for NSAGs, amnesties, and the inclusion of these actors in future negotiations on the development of humanitarian law.

The Geneva Call case study is presented in Chapter 3 by three authors from the organization: Elisabeth Decrey Warner, Jonathan Somer, and Pascal Bongard. Over the last decade, Geneva Call has engaged approximately sixty NSAGs and successfully obtained written commitment from most of them to prohibit the use, production, and transfer of anti-personnel landmines. Overall, these signatories have complied with their commitments and also destroyed thousands of stockpiled anti-personnel mines. The authors observe that although commitments from NSAGs have had a positive influence on state policy in the relevant territories, there are numerous examples of conflicts where both states and NSAGs have made commitments related to anti-personnel landmines even when the opposing party has not entered into reciprocal undertakings. The authors posit that NSAG compliance with humanitarian norms is more likely when there is

substantive equality in the obligations owed by states and NSAGs, a factor that is more important than the equal participation of NSAGs in the norm formation process itself. After such norms have been developed, however, securing the declaration of NSAGs to abide by them is an important aspect of ownership on which monitoring and accountability can be based.

In Chapter 4, Sandesh Sivakumaran discusses the role of NSAGs in the formation and enforcement of IHL, premised on the view that some form of participation is necessary to provide a sense of ownership that will enhance compliance. Concerns about conferring legitimacy on NSAGs by involving them in treaty negotiations, and the unsettled status of NSAG practice in deriving customary international law, are identified as obstacles, however. At the same time, these entities continue to issue unilateral declarations, enter into bilateral agreements with opposing states, issue codes of conduct, and sign deeds of commitment to respect humanitarian norms – despite the uncertain legal status of these statements. Sivakumaran also considers initiatives to engage NSAGs, including Geneva Call and the United Nations Security Council–mandated plans of action dealing with the recruitment and use of child soldiers. With respect to the enforcement of IHL norms, this chapter considers the practice of some NSAGs of creating courts to prosecute violations of IHL. It identifies the tension between support of such courts, contemplated by certain treaty provisions, and concerns over legitimizing the NSAG concerned.

In Chapter 5, Pablo Policzer and Valerie Yankey-Wayne explore the transfer of small arms and light weapons to NSAGs and the need for a more effective international response to the regulation of the arms trade. They point to research findings that most NSAGs obtain such weapons “from poorly controlled state stockpiles and through sophisticated criminal networks.” Accordingly, this chapter argues that greater monitoring of state end use is needed, with both internal command-and-control mechanisms and external governmental and non-governmental monitoring bodies. It also discusses the importance of engaging NSAGs and other non-state actors, such as private military and security companies, in this process.

Private Military and Security Companies and Humanitarian Organizations: An Uneasy Combination

Private military and security companies are notable, often controversial, non-state actors in complex security environments and modern armed conflict. They provide a range of services for an array of clients, such as national militaries, government agencies, corporations, individuals, and even

humanitarian organizations. Their legitimacy has been disputed, however, as a result of allegations of misconduct in Iraq and elsewhere, and unsuccessful efforts to ban foreign security firms outright in Afghanistan. Despite this, private military and security companies have a continuing presence in the world's major conflict and post-conflict areas due to the ongoing demand of a range of clients who claim to depend on them for the ability to operate.

In recent years, several significant initiatives have been launched to enhance private military and security companies' respect for IHL and human rights standards. These approaches have relied to varying degrees on the involvement of states as well as industry and civil society. They evidence a persistent concern among the international community about violations allegedly committed by contractors, and the perceived inadequacy of simply relying on the existing corpus of international law or models of self-regulation to oversee the conduct of these non-state actors.

In 2008, the *Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict*¹⁰ was an attempt by a group of seventeen states to articulate their views on the current state of international legal obligations of home, territorial, contracting, and other states in a non-binding document. The following year, the more ambitious effort of proposing a UN *Draft International Convention on the Regulation, Oversight and Monitoring of Private Military and Security Companies*¹¹ was undertaken by the UN Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination. Although seriously flawed,¹² the Draft Convention demonstrates a tendency towards tightening the reins on private military and security companies, recognizing that the risks they present as transnational non-state actors cannot be effectively addressed only by national governments acting on their own accord. Most recently, in late 2010, the Swiss government supported the creation of an International Code of Conduct for Private Security Service Providers that has been signed by fifty-eight companies.¹³ This voluntary code that purports to be grounded in IHL and human rights standards also includes a grievance procedure for reviewing alleged violations. The robustness and effectiveness of this initiative remains to be tested, but the mere existence of the new code of conduct demonstrates an interest not only among states but also among private military and security companies themselves in clearer oversight of such

companies' activities – and if these firms can participate in shaping the rules (as opposed to a formal treaty process, where they have no official status), all the better from their perspective.

In the context of this flurry of international activity, Part 2 of this book probes the interaction between private armed security contractors and humanitarian organizations from several perspectives. It also explores the obligations of various states regarding the activities of these contractors. In Chapter 6, I examine how complex issues in delivering humanitarian assistance have challenged the traditional consent-based model of securing the safe delivery of aid in contemporary armed conflict. Non-international armed conflicts, ethnically motivated attacks, insurgencies, and failing states present heightened risks to humanitarian organizations, and incidents of serious violence against humanitarian aid personnel are perceived to have occurred. As a result, some humanitarian organizations have turned to defensive armed protection, including the use of private security contractors, while other organizations are concerned that such practices undermine the impartiality, neutrality, and independence of humanitarian aid. After critically evaluating this debate, I address two threshold IHL issues: (1) Is the protected status of humanitarian personnel under IHL suspended or lost if they use armed private security contractors? (2) Is humanitarian access to provide relief affected by the decision to hire a private security company for armed protection of relief consignments?

After these basic questions about whether a humanitarian organization legally *could* hire a private security company are addressed, Andrew Bearpark and Jamie Williamson stake out opposing positions on whether humanitarian organizations *should* work with private security companies. In Chapter 7, Bearpark recognizes that a “convergence of interests” exists between humanitarian organizations and private security companies, beyond defensive armed protection, including a wide range of services, such as consultancy, training, and other behind-the-scenes services. He also believes that a dialogue between humanitarian organizations and private security companies would be beneficial in overcoming the current ad hoc approach to contracting that is exposing humanitarians to poor or even harmful services.

Conversely, Williamson argues in Chapter 8 that any advantages of using armed security that humanitarian organizations gain in the short term are outweighed in the long term by the erosion of the fundamental principles of neutrality and impartiality. Since the early 1990s, the International Red Cross

and Red Crescent Movement has expressed such concerns and has articulated a general policy against the use of armed escorts for its humanitarian relief convoys. Williamson sets out the detailed minimal conditions that must be satisfied when any component of the movement is considering the exceptional use of armed escorts. He also highlights contracting standards in the *Montreux Document*, mentioned above. In his final analysis, however, Williamson argues that these conditions and standards alone may still be insufficient to ensure that beneficiaries and parties to the conflict will view the use of armed escorts by humanitarian organizations in a positive light.

Since IHL has developed prior to the proliferation of private military and security companies, there has been significant debate in recent years about the status, rights, and obligations of such companies' personnel in situations of armed conflict. In Chapter 9, Fred Schreier explores each of these critical questions and finds that the existing corpus of IHL already provides a response to them. He also synthesizes the current views of scholars and the group of states participating in the crafting of the *Montreux Document* concerning the obligations of contracting states, territorial states, home states, and all other states.

"Humanitarian Space": A Concept Worth Resuscitating?

Delivery of humanitarian assistance in conflict zones by impartial and neutral aid organizations has been a significant contribution of the international humanitarian movement. Although the definition of "humanitarian space" lacks consistency, it generally refers to the freedom of non-governmental humanitarian organizations to assess humanitarian needs and deliver aid and assistance independently – without interference from state actors or donors.

Increasingly, however, aid is being delivered by military actors and inter-governmental agencies with specific political and strategic objectives. There is also a continuum of activities, ranging from relief on the one hand to long-term reconstruction projects on the other, that are being carried out in broader integrated missions that seek to bring stability to troubled regions. Counterinsurgency doctrines have also adopted this approach to "win hearts and minds." Nowhere has this approach been more fully developed and implemented than in Afghanistan, where it has at times raised concerns among the approximately eight hundred international and local non-governmental organizations (NGOs) operating in the country alongside the US-led Operation Enduring Freedom (OEF) and the NATO-led International Security Assistance Force (ISAF).¹⁴

Given the expansion in the activities and actors delivering humanitarian aid, the concept of humanitarian space as developed by humanitarian activists is being challenged. To date, however, the debate surrounding the erosion or shrinking of humanitarian space has focused primarily on who is delivering the aid and under what constraints they are operating, rather than on the beneficiaries of the aid and their best interests.

In Chapter 10, Sylvain Beauchamp traces the historical origins of the humanitarian space debate as well as the tension between the various civilian and military actors engaged in delivering a range of supports to civilian populations during armed conflict, occupation, natural disasters, and development activities. Beauchamp reconceptualizes the concept of humanitarian space by analyzing relevant principles from IHL and international human rights law, as well as key sources from the UN and Red Cross systems. He argues that ultimately the debate should be refocused on meeting the needs of the beneficiaries of such aid in a non-discriminatory and impartial manner, rather than on which actor is delivering the aid or assistance.

The International Committee of the Red Cross (ICRC) approach of gaining humanitarian access through acceptance is discussed in Chapter 11 by Michael Khambatta. In his view, gaining long-term and sustainable humanitarian access is best pursued through adherence to the core principles of neutrality, impartiality, and independence. Because counterinsurgency doctrines and “stability operations” increasingly include humanitarian and development activities, however, challenges will continue to arise for organizations such as the ICRC that are also active in such theatres of operation.

In Chapter 12, Valerie Oosterveld offers a critique of the concept of humanitarian space from the perspective of women, who are disproportionately affected by gender-based and sexual violence during armed conflict. She explores how, even in the purported humanitarian space of refugee and internally displaced persons camps, women and girls have faced sexual exploitation and abuse from other camp members and those charged with providing them with assistance and protection. Some important changes have been made to address the problem, but more needs to be done. Oosterveld also argues that the targeting, and subsequent withdrawal, of humanitarian actors has a significant negative impact on female aid beneficiaries, particularly in terms of access to essential healthcare services. The chapter concludes with a discussion of concerns about the treatment of female victim-witnesses testifying about sexual violence before international criminal tribunals as a further limitation on their ability to be protected from such devastating harm perpetrated during armed conflict.

In Chapter 13, Emily Paddon and Taylor Owen consider the case study of Afghanistan, and the challenges to the concept of humanitarian space posed by the emerging model of “integrated peacebuilding.” The concept of integrating the delivery of aid and development with political and strategic objectives has reached its zenith in the post-9/11 intervention in Afghanistan. The authors explore the resulting tensions between the military and NGOs, within the NGO community itself, and between NGOs and donor governments. They argue that “a completely neutral space for all humanitarian action [is now] an unrealistic goal” in Afghanistan, but that there are some promising practices to better delineate the boundaries between humanitarian and instrumental delivery of support in such situations.

Endemic Urban Violence: Regulating Widespread Violence Short of Armed Conflict

In some areas of the world, widespread and pervasive urban violence has caused harm to civilians comparable to that in some war zones. Gang violence, unlawful killings, kidnappings and forced disappearances, torture, robbery, and other grave human rights violations have taken a terrible toll on local populations. Shocking statistics demonstrate the scope of this human tragedy: “Latin America, with only 14% of the world’s population accounts for 42% of firearms-related homicides in the world. Brazil has the highest number of national gun-related deaths in the world, surpassing even Iraq on a per capita basis in 2006. In Guatemala, less than 2% of homicides result in criminal charges, with approximately 20,000 gang-related murders in the past five years.”¹⁵ In some major cities, the sheer death toll from urban violence exceeds that of some armed conflicts.

Despite the widespread suffering, violence, and death, there has not yet been a determined international effort to confront endemic urban violence. Many countries are increasingly faced with sustained and organized instances of violence that do not meet the definition of armed conflict necessary to trigger the application of IHL. These unconventional forms of violence are nevertheless of great significance because of their devastating impact on civilians as well as the instability they foster, threatening to undermine local governments and even regional peace and security.

Consequently, in 2007 the International Conference of the Red Cross and Red Crescent identified urban violence as one of “four great challenges facing the world today which affect the individual and specifically the most vulnerable.”¹⁶ The humanitarian movement’s concern for widespread violence in global cities raises several critical issues: Are there gaps in international law with respect to endemic urban violence? Should the principles

of IHL be applicable to these situations? Are other bodies of law more appropriate? What policy recommendations and enhanced implementation of existing legal principles can address the root causes of urban violence?

In Chapter 14, Carlos Iván Fuentes considers whether, and to what extent, IHL standards should govern situations of endemic urban violence that fall short of the current definition of an armed conflict necessary to trigger the application of IHL. He argues that although it may be tempting to apply various IHL principles to such situations, including the protected status of civilians, obligations to provide humanitarian assistance, prohibitions on the use of children in conflict, and the concept of protected objects, such application would ultimately be ill-suited to address endemic urban violence. He finds, however, some promise in the potential of international human rights law, as it has been applied within the Inter-American human rights system, to redress some of the root causes and accountability needed to confront widespread urban violence.

In Chapter 15, Robert Muggah and Oliver Jütersonke critically assess the mainstreaming of the concepts of fragility (situations where “governments cannot or will not deliver core functions to the majority of its people”) and stabilization (the use of strategic multisector approaches to restore order). They argue that such concepts are not well suited to achieving long-term positive outcomes, including in urban areas where humanitarian actors are beginning to play a great role in attempting to alleviate suffering. Instead, the case study of the ICRC’s recent efforts in Rio de Janeiro, Brazil, is presented as an alternative concept to promote the resilience of urban areas affected by widespread violence.

In Chapter 16, Robert Muggah examines the interplay between humanitarian actors and the various approaches to pursuing “stabilization” in areas of endemic urban violence in Haiti, notably Cité Soleil and Bel Air. While many humanitarian organizations were initially reluctant to cooperate or to coordinate their activities with the UN Stabilization Mission in Haiti or efforts by other states in the country, a form of pragmatic collaboration eventually developed among some of them. The result appears to be progress in terms of declining rates of serious violence and the creation of spaces for socioeconomic development.

Finally, in Chapter 17, Gurvinder Singh and Judi Fairholm assess the relationship between violence against children in the private sphere and violence in increasingly urban public spaces. This analysis insists on a broader view of what is typically considered to be encompassed in the problem of urban violence, both to recognize the reality faced by children around the

world and to identify root causes of public manifestations of violence. The authors recognize that violence against children is aggregated across a spectrum that flows from the individual to their family to their community, and finally to their society as a whole. Singh and Fairholm argue for comprehensive preventative programs to address the underlying causes of violence against children, inspired by the UN *Convention on the Rights of the Child*.

The potential – and limitations – of IHL to play a constructive role in addressing the needs of those affected by armed conflict and widespread violence is a common theme that runs throughout this book. This balanced approach is neither naïve (believing that more or better laws hold all the answers) nor cynical (believing the law to be wholly irrelevant). By adopting a wider lens than the simple consideration of settled standards of humanitarian law, the contributors consider first principles, related bodies of law, and humanitarian policy as well as the social science evidence on the prevention and mitigation of violence and conflict in order to tackle the various challenges raised in these pages. This common project harks back to the original inspiration of Henry Dunant and the powerful idea that unnecessary suffering can be mitigated through the enterprise and dedication of thoughtful, concerned citizens. It is thus a modest tribute to his inspiring vision, over 150 years later.

NOTES

- 1 See, e.g., Clark Butler, ed., *Guantanamo Bay and the Judicial-Moral Treatment of the Other* (West Lafayette, IN: Purdue University Press, 2007); Michael N. Schmitt and Jelena Pejic, eds., *International Law and Armed Conflict: Exploring the Faultlines* (Leiden and Boston: Martinus Nijhoff, 2007); David Rodin, ed., *War, Torture, and Terrorism: Ethics and War in the 21st Century* (Malden, MA: Blackwell, 2007); Wolff Heintschel von Heinegg and Volker Epping, eds., *International Humanitarian Law Facing New Challenges: Symposium in Honour of Knut Ipsen* (Berlin and New York: Springer, 2007); Mirko Bagaric, *Future Directions in International Law and Human Rights* (Melbourne: Sandstone Academic Press, 2007).
- 2 See, e.g., George P. Fletcher and Jens David Ohlin, *Defending Humanity: When Force Is Justified and Why* (Oxford and New York: Oxford University Press, 2008); Thomas E. Hill, *Kant and Humanitarian Intervention* (Toronto: Faculty of Law, University of Toronto, 2008); Mohamed Abdelsalam Babiker, *Application of International Humanitarian and Human Rights Law to the Armed Conflicts of the Sudan* (Antwerp: Intersentia, 2007).
- 3 The use of the term *IHL* is intended to encompass a broad corpus of international law applicable during armed conflict, including both customary and conventional sources. Most notable among the conventional IHL sources are the landmark four *Geneva Conventions* of 1949 and their two *Additional Protocols* of 1977.

- 4 M. Cherif Bassiouni, "The New Wars and the Crisis of Compliance with the Law of Armed Conflict by Non-State Actors" (2008) 98 J. Crim. L. & Criminology 711 at 714.
- 5 *Ibid.* at 717.
- 6 The usual disclaimer applies here, *i.e.*, that contributors to this book are expressing their own personal views and not necessarily those of the organizations with which they are affiliated or employed.
- 7 Bassiouni, *supra* note 4 at 715.
- 8 David Whippman, "Atrocities, Deterrence, and the Limits of International Justice" (1999-2000) 23 Fordham Int'l L.J. 473.
- 9 Claudia Hoffman, "Engaging Non-State Armed Groups in Humanitarian Action" (2006) 13 International Peacekeeping 396.
- 10 *The Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict* (Montreux: Government of Switzerland, 2008), online: ICRC <<http://www.icrc.org/web/>>.
- 11 United Nations Office of the High Commissioner for Human Rights (UNHCR), Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination (UN Working Group), *Draft International Convention on the Regulation, Oversight and Monitoring of Private Military and Security Companies* (final draft for distribution, 13 July 2009).
- 12 For critical commentary on the Draft Convention, see Benjamin Perrin, "Searching for Accountability: The Draft UN International Convention on the Regulation, Oversight and Monitoring of Private Military and Security Companies" (2009) 47 Can. Y.B. Int'l Law 299-317.
- 13 Government of Switzerland, *International Code of Conduct for Private Security Service Providers* (9 November 2010), online: <<http://www.icoc-psp.org>>.
- 14 Lara Olson, "Fighting for Humanitarian Space: NGOs in Afghanistan" (2006) 9 Journal of Military and Strategic Studies 1-28.
- 15 Rebecca Comley *et al.*, *Urban Violence: The Silent War of the Americas* (Vancouver: Action Canada, 2008) at 4, online: Action Canada <<http://www.actioncanada.ca/en/>>.
- 16 ICRC, "Together for Humanity, 30th International Conference of the Red Cross and Red Crescent," 26-30 November 2007, Doc. 30IC/07/R1/Declaration, at 1, online: ICRC <<http://www.icrc.org/>>.

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