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## Revitalizing the international legal protection of humanitarian aid workers in armed conflict

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# Revitalizing the international legal protection of humanitarian aid workers in armed conflict

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- 1 The legal status of humanitarian aid workers (HAW) under international law still remains unclear and unresearched.
- 2 It remains unclear because there is no definition of humanitarian aid workers (or volunteers) in the international humanitarian law instruments, namely the four Geneva Conventions of 1949 and their Additional Protocols. These Conventions do refer to volunteers, but only to military volunteers.<sup>1</sup>
- 3 It remains unresearched because the status of humanitarian NGOs under international humanitarian law has been treated in international legal writings almost exclusively in recent times.<sup>2</sup> This is a gap that needs to be filled, given the involvement of humanitarian workers in armed conflicts, which leads to their increasing exposure to frequent attacks and casualties.<sup>3</sup> This paper therefore aims to tackle the issue by considering humanitarian aid volunteers as individuals, distinct from the humanitarian NGOs of which they are a part.
- 4 After some introductory remarks on humanitarian aid assistance in contemporary international law, Part I provides a brief sketch of the role of humanitarian aid workers in international and internal armed conflicts. Part II outlines the legal notion of humanitarian aid workers, with special emphasis on this notion's relationship and partial overlapping with the contiguous notion of medical personnel. Part III then explains the differences between humanitarian aid workers and international civil servants (in particular UN civil servants) as well as the differences, respectively, between humanitarian aid workers and international experts on mission and agents. Part IV provides a number of thought experiments in support of the claim that international agreements between humanitarian non-governmental organizations (NGOs) and states in which armed conflicts are taking place and/or between humanitarian NGOs and the

insurrectional or national liberation movements, which are still rare, could be used as tools for reinforcing the rights and duties of humanitarian aid workers in armed conflicts situations and public emergencies.

- 5 The paper concludes with some specific recommendations for making these agreements effective instruments of protection for HAWs, namely that the Status of Forces Agreements ('SOFA') which deal in detail with the status, privilege and obligations of the military and civilian employees could be suitable as a model for the drafting of the above mentioned future agreements between humanitarian NGOs and warring parties.<sup>4</sup>

## I. The Rising Importance of Humanitarian Aid in Contemporary International and Internal Armed Conflicts

- 6 Our starting point is a well known fact: the proliferation of malnutrition, illness, wounds, torture, harassment of specific groups within the population, disappearances, extrajudicial executions and the forcible displacement of people around the planet as a result of international and internal armed conflicts has led to a dramatic increase in the scale of humanitarian aid that is indispensable to meet the fundamental needs of the people directly affected by one or more of these emergencies.<sup>5</sup>
- 7 This paper argues that the importance of this phenomenon can be appreciated by examining three aspects in more detail. Firstly, humanitarian aid is essential for helping the victims of armed conflicts to survive.<sup>6</sup> Indirectly, this is shown by the circumstance that humanitarian assistance can influence the conflict itself – especially its length and level of violence – for worse but also for better.<sup>7</sup> Moreover, it is also indirectly demonstrated by the general involvement of decisional (political) actors in humanitarian actions (the so-called 'politicization of humanitarian aid').<sup>8</sup>
- 8 Secondly, humanitarian aid is already an integral part of donors' comprehensive strategy to transform armed conflicts, decrease violence and set the stage for liberal development. <sup>9</sup> For instance, although specific aid strategy generally pursues different objectives, aid can be primarily intended to prevent the disastrous consequences mentioned above by stepping in before the health of the victims of conflict deteriorates.<sup>10</sup> This requires prompt action either to assist the affected population groups directly or to prevent the collapse of health care, agricultural or other local systems, thus enabling people to cope with the situation and preventing their health from deteriorating.<sup>11</sup> A figure quickly shows how important prompt action has become: global aid spending by governments and private actors has increased 400% since 2000 to \$ 25 billion USD in 2014.<sup>12</sup>
- 9 However, aid should also be designed to prevent the growth of dependence on outside assistance. For example, food distribution remains a valid option when the situation calls for it, but it often goes hand in hand with action to help the beneficiaries regain their self-sufficiency quickly. Steps may be taken to increase food production and develop distribution channels, while protection work can help restore access to food and in some cases specific action is needed to assist individuals suffering from acute malnutrition. The overall strategy is usually a combination of various measures taken at different stages in the food-production and distribution process, although there are several possible approaches to providing humanitarian aid. These range from an extreme and very radical strategy that stops all forms of aid, although this would have disastrous consequences for

the victims of conflict (no more food, no more medical care, no more humanitarian presence), to a strategy that indicates that humanitarian aid shall be supplied on condition that the humanitarian provisions are respected by the parties.

- 10 That said, and lastly, it is also worth adding that the progressive integration of humanitarian aid into the donors' comprehensive policy was heavily influenced by the perceived failings of the traditional humanitarian aid strategy which focused mainly, if not exclusively, on the emergency phase.

## II. The role of humanitarian aid workers in contemporary armed conflicts

- 11 In the current language of international communications and relations, 'humanitarian aid workers' with their evolving roles and tasks have been provisionally defined as the employees and associated personnel of not-for-profit aid agencies (both national and international) that provide material and technical assistance in humanitarian relief contexts.<sup>13</sup> This includes both emergency relief and multi-mandated (relief and development) organizations: NGOs, the International Movement of the Red Cross/Red Crescent, donor agencies and the UN agencies belonging to the Inter-Agency Standing Committee on Humanitarian Affairs (FAO, OCHA, UNDP, UNFPA, UNHCR, UNICEF, UN-Habitat, WFP and WHO) plus IOM and UNRWA. The aid worker definition includes various locally contracted staff (e.g., drivers, security guards, etc.), and does not include UN peacekeeping personnel, election monitors or purely political, religious, or advocacy organizations.
- 12 As the above definition suggests, humanitarian aid workers normally and primarily act as facilitators of humanitarian assistance to populations affected by armed conflict and natural disasters. At first glance it seems that there is not much to add about the role of these subjects, but things are different to how they appear, as is often the case. This is for a number of interesting reasons. First, the environment in which humanitarian aid workers including humanitarian agencies and their staff operate has changed in significant and worrying ways over the last past decade. The majority of conflicts taking place in the world are non-international in character, with national and/or multinational forces fighting a variety of armed groups, often with significant asymmetry between the parties. Characteristics of contemporary armed conflicts include the deliberate targeting of civilians, large scale population displacement, serious violations of international humanitarian and human rights law, the targeting of international humanitarian personnel, and restrictions on humanitarian access to civilians.<sup>14</sup>
- 13 All this evidently has a direct and immediate consequence on the effective role of humanitarian aid workers, their needs, and how they are perceived from the outside. Indeed HAWs are no longer considered as 'respected and protected neutral healers', often becoming targets, hostages and victims 'of an anarchy they cannot control'. Evidence of this is provided by the restrictions placed on humanitarian assistance in some recent armed conflicts in Africa, notably in the Darfur and Somalia conflicts and, with more clarity though only indirectly, in the 'unprecedented levels' of attacks suffered by humanitarian aid workers during the past decade as reported by John Holmes, UN Under-Secretary-General for Humanitarian Affairs.<sup>15</sup>

- 14 As a result of the increasing insecurity of the environment, humanitarian aid workers currently operate at a distance from beneficiaries. This is remarkable for several reasons. First and foremost, this distance indirectly threatens the independence of humanitarian aid workers since it makes aid more vulnerable to serving political or other elite purposes.<sup>16</sup> In other words, as a result of this distance humanitarian aid workers are often pressured by their agencies and donors. Secondly, the shift of focus away from beneficiaries naturally leads humanitarian aid workers to become more reliant upon national or regional staff. Finally, distance has an impact on the procedures that the majority of international non-governmental organizations ('INGOs') follow to recruit their personnel and to staff their programmes.<sup>17</sup>

### III. Minding the gap: the lack of specific consideration of humanitarian aid workers under contemporary humanitarian and international law

- 15 The starting point here is the fragmented status of humanitarian security under contemporary international humanitarian law ('IHL'). Essentially, but not exclusively, IHL means the four Geneva Conventions of 1949 and their Additional Protocols of 1977 relating to the protection of victims of armed conflicts which has given rise to a system of legal guarantees that acknowledges special protection only to certain (but not all) categories of aid workers. There is little doubt that this is a critical feature of the current status of humanitarian security for (at least) the following reason: the overall and increasing 'vulnerability' of aid workers in contemporary armed conflicts and public emergencies. Incidentally, it is worth observing that this 'fragmentation' has been well described (in rather negative terms) by the International Committee of the Red Cross ('ICRC') in a recent research pamphlet which points out the concern that "the personnel of humanitarian organizations are protected in an unequal manner and that the rules intended to guarantee their security are very widely scattered, thus leading to a lack of clarity about the exact scope of such protection."<sup>18</sup> Moreover, Professor Andrea Schneider in his masterpiece monograph has also detected and strongly criticized the status of 'Humanitarian NGOs, (In)Security and Identity etc', recalling that "this fragmentation (the fragmentation of humanitarian security) impairs the impact of security measures, particularly at the national level where the risk is greatest."<sup>19</sup>
- 16 One of the core principles of the humanitarian security system is that medical services of armed forces, civilian hospitals in wartime, affiliates of the International Red Cross and Red Crescent Movement (including national societies, the International Federation of Red Cross and Red Crescent Societies ('IFRC'), and the ICRC) are granted special protections and rights through the use of the distinctive Red Cross/Red Crescent emblem which is a recognized and protected symbol under IHL. The rationale behind this legal principle is evident and deserves little argumentation as 'protections for the wounded would be largely meaningless without access to medical personnel and supplies'.<sup>20</sup> Common Article 3 expressly requires, in rather broad but precise terms, that "[t]he wounded and sick shall be collected and cared for."<sup>21</sup> It is therefore very useful to consider in depth two corollaries of this international humanitarian security principle.
- 17 The first and most important corollary is that military medical personnel (and also religious personnel as indicated in Art. 37 of the Geneva Convention II)<sup>22</sup> cannot be

treated as persons directly involved in hostilities. Under Article 37 of the Geneva Convention II, if religious, medical, and hospital personnel are captured by the enemy, they shall be respected and protected. More specifically, again according to Art. 37, they may continue to carry out their duties as long as this is indispensable for the care of the wounded and sick. Finally, and equally importantly, they shall afterwards be sent back as soon as the Commander-in-Chief, under whose authority they are operating, considers it practicable.<sup>23</sup>

- 18 Another corollary is that persons belonging to these two categories of aid workers (religious and medical/hospital personnel) cannot be considered military targets and cannot be attacked. In positive terms, Article 24 of 1949 Geneva Convention I stipulates that military medical personnel shall only be “exclusively engaged in the search for, or the collection, transport or treatment of the wounded or sick, or in the prevention of disease, staff exclusively engaged in the administration of medical units and establishments, as well as chaplains attached to the armed forces, and shall be respected and protected in all circumstances.” This *ad hoc* regulation is well complemented by the First Additional Protocol that clarifies that Contracting States have due diligence obligations also in relation to the treatment of civilian medical personnel. Indeed this Protocol provides that civilian medical personnel shall be respected and defended and, if indispensable, all available help shall be afforded to them in an area where civilian medical services are disrupted due to combat activity.
- 19 Can the above-mentioned protective (special) regime for medical and religious personnel be made applicable also to the other categories of aid workers in general and to humanitarian aid workers in particular? A broad and purposive approach to the interpretation of the pertinent provisions of the four Geneva Conventions of 1949 and Additional Protocols would suggest that it could and that, if adopted, this interpretative approach would also produce a tangible and immediate benefit for humanitarian aid workers. It would mean that the otherwise applicable generic civilian protection would not be applied to HAWs as it can hardly be considered appropriate to cope with the special needs arising from the latter’s current ‘vulnerability’. But this benefit should not, however, be overestimated for three fundamental reasons: a) the generic civilian protection shall apply in any case in combination with Art. 71 of Additional Protocol I that includes a special protective regime for the benefit of the personnel participating in relief actions;<sup>24</sup> b) as clarified by the International Court of Justice (‘ICJ’) in the *Nuclear Weapon Advisory Opinion*, human rights law continues to be applicable during armed conflict, in particular ‘...the protection of the International Covenant on Civil and Political Rights (ICCPR) does not cease in times of war, except by operation of Article 4 of the ICCPR whereby certain provisions may be derogated from in a time of national emergency’;<sup>25</sup> c) it is by no means certain that the *lex specialis*<sup>26</sup> applicable to medical and religious personnel would be a good solution for tackling the problem of protecting humanitarian aid workers in armed conflict situations.<sup>27</sup>
- 20 Looking now at the international legal sources other than the IHL treaties, it is worth stressing that the interpretation of the 1994 Convention on the Safety of UN and Associated Personnel, currently the most positive development in the area of protection of peacekeepers, would not be equally admissible for one fundamental and decisive reason: humanitarian aid workers can be likened neither to international civil servants in general nor to UN civil servants (or UN and associated personnel) in particular, as the latter both presuppose a working relationship (i.e. a contract that provides them with

various allowances and benefits) respectively with an international intergovernmental organization (IGOs) and the United Nations.<sup>28</sup> Indirectly, this conclusion is corroborated by the fact that UN Volunteers ('UNVs') cannot be qualified as 'officials' of the Organization, with the meaning of Art. 105 of the UN Charter, which provides that: " .... Officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization'.<sup>29</sup> Again, and, equally significantly, it is also corroborated by the following two facts: firstly, the UNVs are not 'staff' members of the UN Secretariat, under Articles 100 and 101 of the Charter and, secondly, the UNVs are not subject to the UN Staff rules and regulations.<sup>30</sup>

- 21 This conclusion cannot be rebutted by the circumstance that the 2005 Optional Protocol to the Convention on the Safety of UN and Associated Personnel expands the scope of protected subjects also to include personnel focusing on: "(a) the deliverance of humanitarian, political or development assistance in peacebuilding, or (b) deliverance of emergency humanitarian assistance."<sup>31</sup> Prima facie this would represent a solid argument in favor of an expansive interpretation. Nevertheless, a careful examination of the 2005 Optional Protocol suggests a (different) negative conclusion to be the most legally correct. More precisely, this is what emerges from a consideration of the purpose of the Optional Protocol to include a wider set of operations and associated personnel exclusively when they are related to the UN and its programmes. Again, this is also what is indirectly confirmed by the definition of 'associated personnel' in the Optional Protocol that includes other personnel – such as members of NGOs – only if assigned to act in an official capacity by UN personnel. If all this is correct, as it seems to be, it then follows *inter alia* that, unlike for UN peacekeeping personnel, attacks knowingly and intentionally oriented against humanitarian aid workers cannot be qualified as 'war crimes' according to the UN Security Council's Resolution 1502 of 2003.<sup>32</sup> But this should not also preclude the International Criminal Court (ICC)'s considering, in conformity with Art. 8 (2) of its Statute ('the Rome Statute'), intentional attacks against humanitarian personnel (including humanitarian aid workers) and assets as 'war crimes'.<sup>33</sup>
- 22 Finally, it is worth examining whether humanitarian aid workers can be likened to experts on mission, at least for the purpose of applying the UN Convention on the Privileges and Immunities of 1998.<sup>34</sup> That this might be so is suggested by the fact that persons, other than officials of the UN, who are entrusted with tasks requiring professional expertise by the Secretary-General, or by an organ of the United Nations, may be accorded the status of experts on mission under the Convention on the Privileges and Immunities of the United Nations.<sup>35</sup> It is also indicated by the fact that it currently makes disparities between aid workers along individual and organizational lines, in the form of privileges for UN and associated personnel disappearing.<sup>36</sup> But there are also sound reasons against this interpretation of 'expert on mission' status for HAWs. First, an explicit (or implied) decision of the UN General Assembly is indispensable before a HAW can be an 'expert on mission'.<sup>37</sup> Secondly, the privileges and immunities enjoyed by international experts on mission are enjoyed in the interests of the United Nations and not for their personal benefit.<sup>38</sup> For example, if immunity is asserted against a third party alleging damage by the expert, a remedy must be provided by the United Nations to finally dispose of the substance of the claim, and the Secretary-General has the right and duty to waive these immunities "in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the

United Nations.” Lastly, ‘experts on missions for the UN’ are generally persons serving in their capacity on certain subsidiary bodies of the UN without being either staff members or representatives of the Member States or military observers on peace-keeping missions.

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## IV. Filling the gap: a tentative proposal for reinforcing the protection of humanitarian aid workers under international humanitarian law.

- 23 The above raises the question as to whether or not a solution can be envisaged to protect humanitarian aid workers in the event of armed conflict and public emergencies in view of the overall inadequacy of the protection of the general civilian population and of the protective special regimes for medical and religious personnel.
- 24 The contentious idea here is that a good solution can be worked out. It would involve using the agreements that NGOs (to which the humanitarian aid workers generally belong)<sup>40</sup> may conclude with sovereign states and other territorial subjects of international law, such as insurrectional and national liberation movements, to reinforce the guarantees that international humanitarian law could provide them.
- 25 But this would necessarily require the development of a radically different attitude by international NGOs toward their relations with states in general and the states in which armed conflicts are taking place in particular, considering that only the International Committee of the Red Cross (IRC) has so far entered into international legal agreements with states and state entities. But although this attitudinal change is perhaps unlikely, it is not impossible. This is indirectly confirmed by both the numerous international juridical agreements concluded between NGOs and IGOs that are often governed by international law and by the growing perception that legal entities including humanitarian NGOs can be held responsible for breaches of IHL, not only for their own acts but also, in certain cases, for the acts of their employees.<sup>41</sup> Moreover, and equally importantly, that this attitudinal change is possible is also indirectly confirmed by the fact that most agreements by NGOs with national governments are relational in practice, though formally hierarchical in theory.<sup>42</sup>
- 26 How should such international agreements be drafted to achieve the above-indicated protective goal? It is likely that future international agreements between humanitarian NGOs and the sovereign states in which armed conflicts are taking place and/or between humanitarian NGOs and other territorial subjects of international law would have to be drafted by following the general structure, pattern and contents of the Status of Forces Agreements (SOFAs).
- 27 SOFAs are normally conceived as agreements between two sovereign states: a host country and a foreign nation stationing military forces in that country. However, SOFAs can also be framed as agreements between a host state and an international organization for the maintenance of peace and security like NATO or United Nations. Along with other types of military agreements, SOFAs are frequently included as part of a comprehensive security arrangement. Of most interest here, SOFAs aim to clarify the terms under which the foreign military force is allowed to operate. Typically, purely military operational issues such as the locations of bases and access to facilities are covered by separate agreements. A SOFA is more concerned with the legal issues associated with military



individuals and property. This may include such matters as entry and exit into the country, tax liabilities, postal services, or employment terms for host-country nationals, but the most contentious issues are civil and criminal jurisdiction over bases and personnel. For civil matters, SOFAs provide for how civil damages produced by the forces will be determined and paid. Criminal questions vary, but the typical provision in U.S. SOFAs is that U.S. courts will have jurisdiction over crimes committed either by a service member against another service member, or by a service member as part of his or her military obligation, while the host nation retains jurisdiction over other crimes.

- 28 Understandably, given the profound and radical differences between the activities carried out by humanitarian aid workers and armed forces, it is clear that unlike the SOFAs the primary emphasis of the future international agreements between humanitarian NGOs and the states in which armed conflicts are taking place (and/or between the humanitarian NGOs and the insurrectional or national liberation movements) could never be on criminal and civil jurisdiction. Instead, such agreements would focus on the protective guarantees of the fundamental rights and needs of humanitarian aid workers, above all the right to safety and security, the right to work and the right to free movement in and out of the host country.

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## NOTES

1. See e.g. Art. 4 of the Geneva Convention III.
2. See e.g. Yves Beigbederbook, *The Role and Status of International Humanitarian Volunteers and Organizations* (Martinus Nijhoff Publishers, 1991); Claudie Barrat, *Status of NGOs in International Humanitarian Law* (Brill-Nijhoff, 2014); Hugo Slim, 'Humanitarianism with borders? NGOs, belligerent military forces and humanitarian action' (2003) *The Journal of Humanitarian Assistance*, available at: <https://icvnetwork.org/system/files/versions/Humanitarianism%20with%20Borders.pdf>.
3. Amplus Ola Engdahl, *Protection of Personnel in Peace Operations: The Role of the 'Safety Conventions' against the Background of General International Law* (Martinus Nijhoff Publishers, 2007); UN Security Council, 'Increased Attacks on Aid Workers Due to Lack of Respect for International Humanitarian Law, Deputy Secretary-General Tells Security Council', 19 August 2014, available at: <http://www.un.org/press/en/2014/sc11524.doc.htm> (last accessed 12 February 2015); Sam Jones, 'Deaths of humanitarian aid workers reach record high', *The Guardian*, London, 19 August 2014.
4. On the topic, see recently Joseph M. Snee, A. Kenneth Pye, *Status of Forces Agreements and Criminal Jurisdiction* (London: Literary Licensing, LLC, 2013); Joop Voetelink, *Status of Forces: Criminal Jurisdiction over Military Personnel Abroad* (The Hague, TMC Asser, 2015); A. Sari, 'Status of Forces and Status of Mission Agreements under the ESDP: the EU's Evolving Practice' (2008) *EJIL*, 67 ff.
5. Amplus Fernando R. Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality* (2nd ed. 1996); Claudio Sommaruga, 'Réflexion et convictions sur l'humanitaire aujourd'hui et demain' (2000) 838 *Revue internationale de la Croix Rouge*, 305-327.

6. See *ex multis* Felix Schwendimann, 'The Legal Framework of Humanitarian Access in Armed Conflict' (2011) 93 *Revue internationale de la Croix Rouge* 993, 997; Ruth Abril Stoffels, 'Legal Regulation of Humanitarian Assistance in Armed Conflict: Achievements and Gaps' (2004) 86 *IRRC* 515, 539-544.
7. See e.g. Peter Macalister-Smith, 'Rights and Duties of the Agencies Involved in Providing Humanitarian Assistance and Their Personnel in Armed Conflict', in F Kalshoven (ed.), *Assisting the Victims of Armed Conflict and Other Disasters* (Dordrecht: Martinus Nijhoff Publishers, 1989), 99 ff; Consuelo Ramón Chornet (coord), *Conflictos armados: de la vulneración de los derechos humanos a las sanciones del derecho internacional* (Tirant lo Blanch, 2014); Marco Sassoli, 'State Responsibility for Violations of International Humanitarian Law' (2002) 84 *Revue internationale de la Croix Rouge* 401, 421-424; Michael A. Meyer, 'Humanitarian action: A delicate Balancing Act', (1987) 260 *International Review of the Red Cross*, 487.
8. See e.g. Yoram Dinstein, 'The Right to Humanitarian Assistance' (2000) 47 *Naval War College Review*, 77, 84.
9. See Eric A. Belgrad, Nitzza Nachmias, *The Politics of International Humanitarian Aid Operations* (Praeger, 1997), 162 ff; AS Natsios, 'NGOs and the UN system in complex humanitarian emergencies: conflict or cooperation?' (1995) 16 *Third World Quarterly*, 405-420.
10. Amplus Pierre Perrin, 'Cooperation between National Societies and the International Committee of the Red Cross - The impact of humanitarian aid on conflict development' (2010) 323 *Revue internationale de la Croix Rouge* 319-333; Jean-François Golay, *Le financement de l'aide humanitaire : l'exemple du Comité International de la Croix-Rouge* (Lang, 1990), ch. I.
11. See e.g. Hajer Gueldich, 'Le rôle des acteurs non étatiques dans l'aide humanitaire internationale : les nouveaux enjeux de l'humanitaire non étatique?', in Hajer Gueldich (coord.), *Acteurs non étatiques et droit international : VIIe Rencontre internationale de la Faculté des Sciences juridiques, politiques et sociales de Tunisi: 6, 7 et 8 avril 2004* (Pedone, 2007), 243-255.
12. Amplus PRIO Conflicts Trend, 'Understanding Attacks on Humanitarian Aid Workers', (last accessed 20 September 2016)
13. See e.g. Kai Koddenbrock, *The Practice of Humanitarian Intervention* (Routledge, 2014); S. Tenenboim, E. Schwartz, 'Humanitarian Aid workers', in S. Keystone, Phyllis Kozarsky, David O. Freedman, Bradley A. Connor (eds.), *Travel Medicine* (Elsevier, 2008), 322 ff.
14. See Rebecca Barber, *Facilitating humanitarian assistance in international humanitarian and human rights law*
15. See John Holmes, UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, 'Briefing to the Security Council on the situation in Chad and Sudan', 3 December 2008, available at [www.reliefweb.int/rw/rwb.nsf/db900SID/EDIS-7LYTBD?OpenDocument](http://www.reliefweb.int/rw/rwb.nsf/db900SID/EDIS-7LYTBD?OpenDocument) (last visited 23 January 2008) who also stresses that in most cases it was the rebel movements that appeared to be responsible for the attacks.
16. See Rebecca Barber, above n. 14.
17. Amplus Adele Harmer, Katherine Haver, *Providing Aid in Insecure Environments: Trends in Policy and Operations* (HPG Report, Center on International Cooperation, New York University, 2006), (also highlighting the fact that vulnerability to security incidents is different for national staff and expatriates).
18. For further references, see Julia Brooks, 'Humanitarians Under Attack: Tensions, Disparities, and Legal Gaps in Protection', (last accessed 23 September 2016).
19. See Andrea Schneider, *Humanitarian NGOs, (In)Security and Identity: Epistemic Communities and Security Governance* (Routledge, 2009), 120.
20. See Dustin Lewis, Naz Modirzadeh, Gabriella Blum, 'Medical Care in Armed Conflict: IHL and State Responses to Terrorism' (2015) *Lawfare* : (last accessed 22 September 2016).
21. Common Article 3 of the Geneva Conventions.

22. Amplus Ioana Cismas, *Religious Actors and International Law* (OUP, 2014), 42 ff; Stefan Lunze, *The Protection of Religious Personnel in Armed Conflict* (Peter Lang, 2004); Id, 'Serving God and Caesar: Religious Personnel and their Protection in Armed Conflict' (2004) 86 *Revue internationale de la Croix Rouge*, 69, 79.

23. Art. 36 of the Geneva Convention II.

24. Art. 71 of Additional Protocol I states:

1. Where necessary, relief personnel may form part of the assistance provided in any relief action, in particular for the transportation and distribution of relief consignments; the participation of such personnel shall be subject to the approval of the Party in whose territory they will carry out their duties.

2. Such personnel shall be respected and protected.

3. Each Party in receipt of relief consignments shall, to the fullest extent practicable, assist the relief personnel referred to in paragraph 1 in carrying out their relief mission. Only in case of imperative military necessity may the activities of the relief personnel be limited or their movements temporarily restricted.

4. Under no circumstances may relief personnel exceed the terms of their mission under this Protocol. In particular they shall take account of the security requirements of the Party in whose territory they are carrying out their duties. The mission of any of the personnel who do not respect these conditions may be terminated'.

25. ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, *I.C.J. Reports* 1996, 226, International Court of Justice (ICJ), 8 July 1996, para. 25.

26. On the concept of *lex specialis* see Anja Lindroos, 'Addressing Norm Conflicts in a Fragmented Legal System: The Doctrine of *Lex Specialis*' (2005) 74(1) *Nordic Journal of International Law*, 27–66; Nancie Prud'homme, 'Lex Specialis: Oversimplifying a More Complex and Multifaceted Relationship?' (2007) 40 *Israel La Review*, 355–395, at 385.

27. See Frédéric Casier, 'Les règles du droit international humanitaire et du droit international des droits de l'homme pertinentes pour la protection des soins de santé et leur accès aux victimes'

28. UN General Assembly, *Convention on the Safety of United Nations and Associated Personnel*, 9 December 1994 [accessed 5 May 2016]. For a commentary, see e.g. Noelle Higgins, 'The Protection of United Nations and Associated Personnel (November 29, 2014)': (last accessed 22 September 2016):

29. See Ian Brownlie, 'Volunteers and the Law of War and Neutrality' (1956) 5 *The International and Comparative Law Quarterly*, 570–580.

30. See also Yves Beigbeder, above n. 2, 312 (also indicating that UNVs are not subject to the UN Staff Rules and Regulations.); David Lloyd Roberts, *Staying alive: safety and security guidelines for humanitarian volunteers in conflict areas* (International Committee of the Red Cross (ICRC), 1999).

31. UN General Assembly, *Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel*, 6 January 2006, A/RES/60/42, available at: <http://www.refworld.org/docid/44168a999.html> [accessed 5 May 2016]. For a commentary, see Guglielmo Verdirame, 'Introductory Note to Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel' (2010) 49 *International Legal Materials*, 1659–1662.

32. UN Security Council, *Security Council Resolution 1502 (2003) on Protection of United Nations personnel, associated personnel and humanitarian personnel in conflict zones*, 26 August 2003, S/RES/1502 (2003), (accessed 5 May 2016).

33. UN General Assembly, *Rome Statute of the International Criminal Court* (last amended 2010), 17 July 1998, No. 92-9227-227-6 (last accessed 20 September 2016).

34. UN General Assembly, *Convention on the Privileges and Immunities of the United Nations*, 13 February 1946, (last accessed 22 September 2016).

35. See Anthony J. Miller, 'United Nations Experts on Mission and their Privileges and Immunities' (2007) 4 (11) *International Organizations Law Review*, 11-57.
36. On the topic, see ATHA, 'Humanitarians Under Attack: Tensions, Disparities, and Legal Gaps in Protection', (last accessed 22 September 2016).
37. See Anthony J. Miller, above n. 35.
38. *Ibidem*.
39. See also Yves Beigbeder, above n. 2, 313.
40. See Yves Beigbeder, above n. 2, 311, who stresses that the status of international humanitarian volunteers is linked to the status of their employing organizations. See also Dennis Dijkzeul, 'Transnational humanitarian NGOs? A Progress Report', in Ludger Pries (ed.), *Rethinking Transnationalism: The Meso-link of Organisations* (Routledge, 2008), 81 ff; Abby Stoddard, 'Humanitarian NGOs: challenges and trends', available at: [mercury.ethz.ch](http://mercury.ethz.ch).
41. On the topic, see e.g. Eric Mongelard, 'Corporate civil liability for violations of international humanitarian law' (2006) 93 *Revue internationale de la Croix Rouge* 665 ff; Finn Seyersted, *Common Law of International Organizations* (Brill, 2008), 494 (stressing that: '...agreements between IGOs and NGOs are not subject to the internal law of the IGOs if the parties have intended otherwise'); Cecilia Albin, 'Can NGOs Enhance the Effectiveness of International Negotiation?' (1999) 4 *International Negotiation*, 371 - 387; Andrew S. Natsios, 'NGOs and the UN System in Complex Humanitarian Emergencies: Conflict or Cooperation?', in Paul F. Diehl (ed.), *The politics of global governance: international organizations in an interdependent world* (Lynne Rienner Publishers, 1997), 287-304.
42. Amplus Richard Batley, 'Whose Public Action? Analysing Inter-sectoral Collaboration for Service Delivery'.

## ABSTRACTS

Contemporary armed conflicts have seen an increase in the number of humanitarian aid workers (HAW) being attacked. This is so notwithstanding these subjects have traditionally received international legal protection under the four Geneva Conventions of 1949 and the related Protocols I and II of 1977, and *de facto* immunity from attack by warring parties. This article analyses in detail how international humanitarian law (IHL) can be used to protect this category of currently highly vulnerable subjects to mitigate the direct and indirect consequences on them of (international and non-international) armed conflicts and of other public emergencies, together with its limits. With its historical origin and purpose of protecting persons not taking part in hostilities (persons hors de combat), IHL focuses on the protection of civilians suffering from the direct consequences of armed conflicts, such as injuries occurring from ongoing hostilities. In other words, the Geneva Conventions forbid combatants to attack persons hors de combat and require occupying forces to keep general order. However, IHL does not require warring parties to guarantee the safety of humanitarian aid workers (it does not require warring parties to supply security escorts, for instance, when other factions threaten the safety of non-combatants operating in their area) nor guarantee access of humanitarian aid workers to affected areas: governments or occupying forces may, if they wish, ban a relief agency from working in their area. The paper concludes with a proposal for reinforcing and complementing the protection of humanitarian aid workers during armed conflict situations, namely drafting future international agreements between humanitarian NGOs (to which the majority of HAWs

belong) and belligerent parties in a way that is similar to the Statute of Forces Agreements (SOFAs), which deal in detail with the status, privilege and duties of the military and civilian employees.

Les conflits armés ont considérablement augmenté les attaques contre les travailleurs humanitaires en dépit de la protection internationale et de l'immunité ont ils bénéficient traditionnellement en vertu des quatre conventions de Genève de 1949 et de leur protocoles additionnels de 1977. Cet article analyse en détail comment le droit international humanitaire peut être utilisé pour améliorer la protection des personnes "hors combat" intervenant sur les lieux de conflits. Il propose de renforcer la protection des travailleurs humanitaires durant les situations de conflit armé en envisageant des accords internationaux entre les ONG et les parties belligérantes de façon similaire au Statute of Forces Agreements (SOFAs) qui régit en détail les statuts, droits et obligations des employés civils et militaires.

## INDEX

**Mots-clés:** travailleurs humanitaires, humanitaires bénévoles, assistance humanitaire, Conventions de Genève de 1949, accords IGOs/NGO, Status of Forces Agreements (SOFA), ONG, droit international humanitaire

**Keywords:** humanitarian aid workers, humanitarian aid volunteers, humanitarian aid assistance; 1949 Geneva Conventions, IGOs/NGOs' agreements, status of forces agreements (SOFA), humanitarian NGOs, international humanitarian law ('IHL')

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