

Introduction

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The field of Humanitarian Assistance has become increasingly complex in every aspect. Since the end of the cold war one can observe multiple changes – increase in humanitarian action, increased number and variation of humanitarian actors, proliferation of tasks between different actors (e.g. militaries as relief and developmental actors), professionalization of relief aid, etc. Bluntly speaking, the times when the Red Cross and States were the only humanitarian actors and when international humanitarian law alone was sufficiently covering emergency situations, are long gone.

All these developments were accompanied by a slow adaptation of international (humanitarian) and regional law. The fact that the International Federation of the Red Cross and Red Crescent (IFCR) is developing a corpus of cases, legal case studies and legal documents relevant for emergency situations, what is called international disaster response law, shows that a coherent body of law is far from being in existence. The legal reality of international law pertaining to emergency response is rather broadly spread over various international legal fields and related documents. International humanitarian law (IHL) is far from covering the subject of humanitarian aid, beginning with the fact that it covers only armed conflicts and not purely natural disasters.

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1 General Overview

This book is a first attempt to compile a cross-cut over various fields concerning humanitarian aid. As new actors have emerged particularly in the post-cold war order, the first question that will be raised is whether and to what extent non-governmental organizations are covered by IHL. This is the first departure from a classic view on international humanitarian aid. With the end of the power struggle between the East and the West, the United Nations (UN) possibility, corresponding to its responsibility as a humanitarian actor, emerged to actually engage more actively in the field of disaster response. It picked up and further developed its role as actor and coordinator of disaster response thereby developing an impressive body of laws, resolutions and declarations, establishing new organs and creating new frameworks all dealing with humanitarian aid. Next to the UN the European Union (EU), a regional actor, found its way into the field of humanitarian action. Apart from being the second biggest donor, next to the United States (US), it became itself active as an actor and coordinator of relief aid. The end of the Cold War marked also the beginning of peace-keeping in a large and professional manner. However, as peace-keeping is a task of states and international organizations bound by human rights law, the question immediately arises whether peacekeepers are allowed to ignore human suffering or, put differently, whether peacekeeping must involve humanitarian aid, deriving from its responsibility to ensure human rights. Also international refugee law plays a role in humanitarian aid as most emergencies that require international aid are accompanied with large scale movements of people. According to the fundamental principle of humanity, underlying all work of humanitarian actors, the needs of people are at the centre of concern. In the event of natural disaster, people lack a right to protection by the international community. This issue is currently being dealt with in the International Law Commission (ILC). A look into current developments and the future of the right to humanitarian assistance are therefore necessary elements to be considered.

2 Detailed Chapter Overview

2.1 *Spieker: The Right to Give and Receive Humanitarian Assistance*

This first chapter begins with introducing into the terminology and evolution of concept of the right to give and receive humanitarian assistance. It will sketch the legal regime for humanitarian assistance in international armed conflicts within occupied territory specifically regarding:

1. Obligations and rights of the occupying power
2. Obligations and rights of other states
3. Actors in humanitarian assistance

This is being complemented with a discussion on the right to access persons in need. Finally this chapter sheds light on the right to give and receive access in non-conflict emergencies.

2.2 Mackintosh: Beyond the Red Cross: The Protection of Independent Humanitarian Organizations and Their Staff in International Humanitarian Law

Members of independent humanitarian organizations have less protection, legally speaking, than most of them probably think. Two key features of their work – their neutrality and independence – as well as practical steps they take to implement these principles, actually place them outside much of the protection afforded to either civilians or authorized medical staff. This chapter examines the international legal protection currently available to independent humanitarian organizations, and considers whether there is scope for improvement of both the content of this framework and respect for the same.

2.3 Zwitter: United Nations' Legal Framework of Humanitarian Assistance

Since the end of the cold war the United Nations System in regard to Humanitarian Assistance developed at an incredible speed. Numerous resolutions of the Security Council, the General Assembly and the Economic and Social Council have been adopted and specialized bodies like the Office for the Coordination of Humanitarian Affairs have been established. Though this forest of humanitarian-related norms within this system is constantly developing, two landmark resolutions of the General Assembly are of major importance: (1) An Agenda for Peace (A/RES/47/120[B]) and (2) Strengthening of the coordination of humanitarian emergency assistance of the United Nations (A/RES/46/182). While resolution 47/120 further developed the concept and the UN strategy of humanitarian assistance, the latter resolution took concrete action by creating the position of the Emergency Relief Coordinator and the Inter-Agency Standing Committee. These resolutions prepared the ground for the internationally coordinated humanitarian action we know today.

This chapter aims, firstly, to summarize the history of the UN humanitarian assistance system and, secondly, to give an overview on how this system works nowadays. It will furthermore elaborate on the rules regarding safety and protection of humanitarian personnel and conclude with the privileges and immunities of the UN and of specialized agencies.

2.4 Broberg: Legal Basis of EU Council Regulation 1257/96 Concerning Humanitarian Aid: Time for Revision?

This fourth chapter will examine the workings of the EU's legal regulation of its provision of humanitarian aid. Focus will be upon Regulation 1257/96 on Humanitarian Aid. Hence, the chapter will look at the regulation's legal basis (Title XX of the EC Treaty), scope, objectives and specific workings. Particular attention will be given to the general principles (neutrality, non-discrimination, impartiality, etc.) and to the EU's cooperation with international organisations. Due account will also be taken of the European Consensus of Humanitarian Aid [COM(2007) 317 final] as well as of the Principles and Good Practice of Humanitarian Donorship (Stockholm 2003) as guides for EU humanitarian aid. Finally, provided that the Treaty of Lisbon gains momentum anew, the chapter will consider the consequences of the Article 214 of the Treaty – whereby for the first time humanitarian aid will be covered by the Treaty itself.

2.5 Maus: Human Rights in UN Peace-Keeping Missions: A Framework for Humanitarian Obligations?

When countries emerge from armed conflict, the need for humanitarian action to provide essential goods to the population does not cease. With the increasing role of UN peace-keeping missions in post-conflict situations, the question of their responsibility to care for vital needs such as food, health and shelter for the population is of utmost importance. With regard to legal rules, international humanitarian law, which serves as a fundamental source of rights and obligations during armed conflict, is only applicable to a very limited extent in these situations. Instead, the search for a legal framework regulating post-conflict protection and provision of the population leads to human rights law. Here, particularly economic, social and cultural rights can serve as guidance concerning the obligations of UN peace-keeping missions.

The chapter aims at evaluating to what extent human rights play a role in UN peace-keeping missions within the presented context. After (1) giving a short overview on the relationship between human rights and humanitarian action, the chapter will (2) analyse in how far such missions are bound by human rights obligations arising from conventional and customary law. In the main part, it will (3) focus on human rights duties explicitly laid down in some exemplary mandates of peace-keeping missions. In the remainder, the chapter will (4) analyse to what extent other aspects in the mandates, e.g. specific tasks of the mission, create implicit human rights obligations.

2.6 *Heintze: Human Rights and International Humanitarian Law*

The prevention of forced displacement has become a key topic of international humanitarian law (IHL) and of refugee law. Against the background of “ethnic cleansing” in the Balkans and recently in Africa this chapter will deal with the lack of adequate theoretical analysis and the weakness of legal regulation. The right to return is part of international peace agreements, however has this right been implemented in practice? Therefore the prevention of forced displacement is necessary and an obligation of the international community. International criminal courts have dealt with cases of displacement. The chapter will analyze the relationship between the human rights aspect, the IHL and refugee law approach. Furthermore, it will examine the challenges and hazards entailed by the emergence of this concept, which appear to be both multidimensional in its objective and application and controversial in terms of its potential impact on certain norms and principles of international law.

2.7 *Patnaik: Protection of Individuals in the Event of Disasters: Quest for an International Legal Framework*

This chapter builds on the International Law Commission’s initiative for an international legal framework for the Protection of Individuals in the Event of Disasters, with reference to natural disasters. That humanitarian assistance is the responsibility of the recipient State is indisputable as Governments derive their rights and duties from individuals. This also raises the question whether there is a right of initiative for States, International Organizations and non-State actors in offering assistance. Here again, it is essential to emphasize the primary role of the affected State as international assistance to persons within its territory, as part of international solidarity and cooperation, takes place with its consent and under its supervision. The issue of humanitarian assistance encapsulates a legal, political and moral conundrum. Nonetheless, there exists a responsibility to render assistance for protection of individuals during disasters. However, there is no provision to deal with such a situation when a State refuses cooperation and the Government, International Organizations and NGOs cannot ignore this. This situation opens up a new dimension in the scope of humanitarian intervention for the sake of rendering assistance.

It is expected that we proceed on the new initiative for a comprehensive multi-lateral legal framework to arrive at the following objectives to understand: (a) the causes of humanitarian crisis/natural disasters and shape our responses accordingly and (b) the functional interdependence between protection of individuals, their human rights and international responsibility. Further, this chapter will focus on principles of international disaster relief, characteristics of humanitarian assistance and examine if humanitarian assistance is part of customary international law.

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