

# From Cold War to Cyber War: The Evolution of the International Law of Peace and Armed Conflict over the Last 25 Years—An Introduction

Hans-Joachim Heintze and Pierre Thielbörger

This book follows the history of the international law of peace and armed conflict over the last 25 years. It highlights both parameters that have remained the same during this time as well as new challenges that this field of international law faces today.

The idea for this book was born at the international conference ‘From Cold War to Cyber War’, held in Bochum on 14–15 November 2013. The conference celebrated the 150 years anniversary of the Red Cross, the 25 years anniversary of the Institute for International Law of Peace and Armed Conflict (IFHV) and also the 20 years anniversary of the Network on Humanitarian Action (NOHA). The conference was so rich in inspiring contributions from both academics and practitioners that organisers and participants decided to combine the results of the conference into an edited book collection on the recent evolvement of the international law of peace and armed conflict—the result of which you hold now in your hand.

In his introductory contribution ‘Perspectives of International Humanitarian Law’, **Professor Dr. Knut Ipsen (Ruhr-University Bochum)**—founding father of the IFHV and former President of the Red Cross—highlights the different categories of armed conflict and describes the problems in applying international humanitarian law to these conflicts. He particularly explains the difficulty the ‘expectation of reciprocity’ meets in asymmetrical armed conflicts. Professor Ipsen also argues it is necessary to apply international humanitarian law in combination with other fields of international law, in particular human rights law, and highlights the general meaning of the rule of law. He finishes by stressing the important role that the International Committee of the Red Cross (ICRC) has played

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in promoting international humanitarian law in the past and concludes with a positive outlook for the future of this important field of law.

In the second part, the book turns to a specific tension existing in international law that is as old as international itself but at the same time as topical as ever: the tension between State sovereignty and people's right to self-determination. **Professor Dr. Markku Suksi (Åbo Akademi University Turku)** introduces us to the concept of autonomy in international law. He analyses precisely how this concept has been shaped in several cases over the last few decades. He reflects on the legislative powers of several autonomous entities and analyses the legislation governing Sub-State entities, including the Åland Islands (Finland), Hong Kong (China), Zanzibar (Tanzania) and Aceh (Indonesia).

**Lisa Gow (Ruhr-University Bochum)**, a Scottish lawyer by training, takes up these considerations and applies them to the most recent case in which the Scottish people sought to exercise their right to self-determination by establishing a new State. She sheds light on the independence referendum held in September 2014 in Scotland, arguing, that while a majority of Scottish voters answered the question 'Should Scotland be an independent country?' with 'no', the Scottish people nevertheless gained a stronger form of autonomy from the United Kingdom through the process.

In the third part, the book turns to a relatively new challenge for peace and security: the dramatic effects of man-made climate change, for example increasing armed conflicts over scarcer-growing resources or climate migration. **Professor Dr. Pierre Thielbörger (Ruhr-University Bochum)** highlights the critique the United Nations Security Council has faced in the past when dealing with this issue, as many States regard climate change as an environmental concern or a development issue rather than a threat to peace and security. He also highlights that, although many of the effects of climate change currently occur at the local or national level, a competence of the Security Council could still be justified (if politically so desired) in several ways. He particularly highlights the nature of climate change as a global prisoner's dilemma, meaning that both the cause, and the only possible solution to the problem, lie in the international not the national sphere.

**Dr. Kerstin Rosenow-Williams (Ruhr-University Bochum)** also looks at the phenomenon of climate change, but from an organizational-sociological, rather than legal, perspective. She follows discussions within humanitarian organizations concerning environmental migration and analyses both the challenges and opportunities in addressing the needs of environmental migrants from a humanitarian perspective. In doing so, she focuses on the positions developed within the Red Cross Movement, the ICRC, and particularly within the International Federation of the Red Cross (IFRC).

In the next part, the focus moves on to 'New Forms of Warfare and Weaponry'. **Professor Dr. Stephan Hobe (University of Cologne)** focuses in his contribution on the applicability of air law in the case of civil use of remotely piloted aviation systems (RPAS). He analyses both the civil uses, in particular surveillance, and military uses, including the killing of combatant forces, of RPAS. Professor Hobe

also highlights the legal challenges that the use of these systems pose, including the applicability of international humanitarian law and the protection of fundamental rights through data protection legislation.

In the next contribution, **Professor Dr. Robert Kolb (University of Geneva)** considers the question, to what extent railway lines used for deportation of civilians may be attacked under international law. Under *jus in bello*, the attack is difficult to square with article 52(2) of Additional Protocol I of 1977 and related customary international law, which exhaustively provide for the likely objects of attack by belligerents. The contribution then canvasses some arguments as to how an attack could be rendered compatible with international law, considering in particular other legal sources, external to the law on the conduct of hostilities.

**Professor Dr. Peter Hilpold (University of Innsbruck)** deals with the applicability of article 51 of the UN Charter to asymmetric wars. He underlines that the term asymmetric war is not really a legal term of art in international law. However, in its broadest understanding it comprehensively denotes situations of war where there is a disparity between the factual and the legal situation applying to the various actors. In this sense a divide in the power between the participants would suffice to qualify a situation of war as ‘asymmetric’. In his analysis this term clearly relates to the legal qualification of the actors, i.e., to the question whether one or more non-State actors are participating and therefore, whether article 51 of the Charter applies at all. Against this background he considers the category of terrorists, which receives the most attention in both theory and practice.

**Professor Dr. Wolfgang Benedek (University Graz)** gives an overview of the state of the art in the field of human security research and practice. Since its conception 20 years ago, the concept of human security has seen ups and downs in the United Nations and scholarly literature. However, the United Nations have recently agreed on a definition and the concept is broadly employed in the context of violent and non-violent security issues. While international organizations are still hesitant to use the concept directly, there appear to be various forms of indirect usage. This is in line with an emerging human rights-approach to security and humanitarian action. Whereas challenges remain both on a conceptual and a practical level, there is a growing common understanding of the main characteristics of the concept, which remains an inspiring perspective for many scholars and actors.

**Professor Dr. Hans-Joachim Heintze (Ruhr-University Bochum)** argues in his contribution that the international law governing disaster response and humanitarian assistance has developed into a comprehensive body of law dealing with the initiation of relief, questions of the status of humanitarian actors and the right of access to victims. The Special Rapporteur of the UN International Law Commission on the Protection of Persons in the Event of Disasters underlines, in the first set of articles adopted by the Commission, it is the primary responsibility of the affected State for protecting persons under its territorial jurisdiction and the affected State’s consent for providing international assistance. The author predicates that the codification project has given a fresh impetus to the ongoing

discussion on State sovereignty versus the obligation to receive international humanitarian assistance.

**Charlotte Lülff, LL.M., M.A. (Ruhr-University Bochum)** explains the recent armed conflicts and increasing occurrence of natural disasters will result in massive displacement of people within the affected country or across international borders. Protection of victims lies at the centre of the most fundamental but also opposing principles of international law, on one side the principles of State sovereignty and territorial supremacy, and on the other side the humanitarian ideas of the international community framed in State obligations under international treaties. Refugee protection is composed of intersecting and mutually reinforcing rights and duties stemming from different fields of international law, particularly international human rights law, asylum law and international humanitarian law. Her article addresses the specifics of one of the major principles of refugee protection, the principle of non-refoulement.

In the next contribution, **Dr. Wolfgang Heinz and Judith Kaiser (German Institute for Human Rights)** highlight the issue of sexual violence in armed conflict. The authors give an overview of the relevant legal regime and highlight existing activities at the international and regional level. They particularly stress the importance of, and at the same time the difficulty with, monitoring rights violations in this particular field. They identify, as one of the key remaining difficulties, the urgent need to integrate respect for standards in this field more effectively during all stages of a conflict.

In the next part, academics share insights with practitioners from the government, humanitarian organizations and think tanks on progresses and challenges in humanitarian aid. **Dr. Eltje Aderhold (German Foreign Ministry)** describes current structures of humanitarian coordination and outlines their historical origins. The chapter also analyses the existing efforts to reform the international humanitarian system between the years 2005 to 2011. The author identifies furthermore achievements and remaining challenges in international humanitarian coordination efforts and emphasizes Germany's strong commitment towards international and German humanitarian coordination.

**Dr. Ulrike von Pilar, Corinna Ditscheid and Alfhild Böhringer (Médecins sans Frontières)** criticise the western trend to increasingly use humanitarian aid as a tool for political and military ends. The authors fear that humanitarian action will become, or has already become, part of governmental action, and argue that this would be a fundamental breach of several key humanitarian principles. They also highlight the negative consequences for aid workers and affected populations that result from the politicization of humanitarian aid. They draw on several examples of recent interventions to illustrate this point. While the authors focus on German foreign policy, they also make a broader point about a general tendency in Western countries: to use humanitarian aid increasingly for political or military purposes.

**Dr. Sascha Lüder (German Red Cross Blood Transfusion Service West, Hagen)** argues that emergency services, and the blood transfusion service, are objects of public interest in the form of resilient healthcare systems. Thus, the provision of these services must not only be economically sufficient, but the

security of supply must also be ensured. Emergency services and the blood transfusion service have to be provided comprehensively and around the clock—at inconvenient times and under difficult circumstances. In order to operate further under these circumstances, emergency services and of blood transfusion service have to be prepared and equipped accordingly.

**Dr. Christian Schaller (Stiftung Wissenschaft und Politik, Berlin)** addresses in his contribution the political and legal difficulties faced when dealing with rebel groups. He analyses the legal implications of recognizing rebel groups, focusing on the cases of the Syrian and the Libyan rebels. He stresses that a premature recognition can easily be in violation of international law. The author further reflects on initiatives to increase military assistance to these rebels by the United States of America (USA), the United Kingdom (UK) and others. The author emphasizes the importance of having such military involvement authorized by a Chapter VII resolution of the Security Council rather than relying on the ‘responsibility to protect’ which has, according to his account, not reached the status of international customary law.

The demand for crisis management has triggered the involvement of various kinds of actors in the field of humanitarian action. **Professor Daniel-Erasmus Khan (University of the Bundeswehr Munich)** addresses civil-military relations against the background of humanitarian relief operations, the humanitarian principles and cooperation with humanitarian organizations. Referring to core legal and political instruments and State practice, he argues that, although civil-military cooperation is not a new invention, guidance on conflicting priorities in the field of humanitarian action can rarely be found. Nonetheless, humanitarianism has to hold its ground against dominant political and strategic considerations in future operations.

We hope that the book will be of use and interest to anyone concerned with the development of international law and humanitarian studies or working in areas where such issues are raised, whether in circles of academics or practitioners.

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