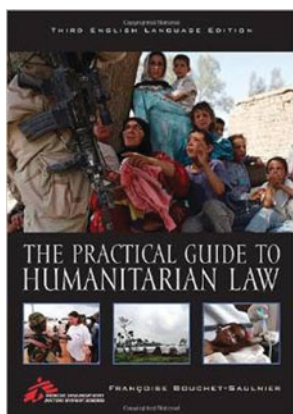


BOOK REVIEW



The Practical Guide to Humanitarian Law

Françoise Bouchet-Saulnier*

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It is astonishing how much those of us who live in reasonably functional communities take for granted. Looking out of my office window upon the brownstones in a leafy New York City neighbourhood, I feel confident that my peace and security are guaranteed. In the unlikely case that a shootout below me should shatter that peace, I only have to call 911 and a reliable scenario will unfold: police cars, ambulances and possibly a curious journalist will appear in no time. The police will secure the street and go after the perpetrators of the violence, the ambulance crews will pick up the casualties, impartial to their role in the conflict, and the media will begin to speculate on the root causes of the event. At some point, a prosecutor will gather information from the police, a trial will be held, the perpetrators will be given their day in court, and the local jail will provide room and board. The media will cover it all. I can safely go back to my desk.

Where rule of law prevails, we know that the State has the monopoly of force, that the judiciary is fair and effective, and that the penitentiary system is functional. The media are the public's watchful eye. If only we could feel as

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secure when it comes to violence in the international arena: violence between States, or violence within States or regions where the rule of law has lost its bearings. What do we have at the international level to mirror those State institutions that we rely on domestically? What legal framework shields us from lawlessness in international armed conflicts? Does international law, in other words, ensure that the necessary triad for global security is in place: a strong and neutral international armed force to protect civilians, a powerful international judiciary, and an effective international structure to provide humanitarian aid?

There is the United Nations (UN) Security Council, entrusted with the task of maintaining international peace and security, and endowed with considerable authority and powers to do so. Its “police” are the “Blue Helmets”, the well over 100,000 uniformed personnel spread over sixteen current UN peacekeeping operations.¹ Its “ambulances” are the wide array of humanitarian actors, inter-governmental and non-governmental, which attempt to alleviate the suffering of those displaced or harmed by outbursts of violence. Its judiciary is the International Criminal Court in The Hague, with a few *ad hoc* international criminal courts operating in the margins. And its penitentiaries, apart from a few cells in The Hague, consist mainly of facilities on loan from Member States.

Is this international legal framework sufficient to provide the same level of peace and security globally that we trust to find in democratic nation states? The Security Council is largely paralyzed, the UN peacekeeping operations address but a fraction of the global crises where stability must be restored, and impunity is still guaranteed for all but a very few at the top of the criminal pyramid – and even they tend to get away with crimes. So what then stands between us and total chaos? If anything at all, it is a formidable body of international humanitarian law (IHL), human rights law and international criminal law that at least reveals what the rules and norms are, even in their breach. Here, Françoise Bouchet-Saulnier’s *The Practical Guide to Humanitarian Law*, the subject of this review, serves as an indispensable resource and valuable guide.

It would seem that this body of international law has grown in scope and complexity as the world around us has become ever more fragmented. The bloodbath at Solferino triggered the First Geneva Convention (1864), addressing the plight of the wounded in battle. The legacy of the American Civil War shaped the standards of martial conduct set out in the Hague Conventions of 1899 and 1907.² The carnage of the First World War and particularly the ghastly impact of asphyxiating and poisonous gases led to a protocol prohibiting this practice in the future (1925),³ and then elicited a subsequent elaboration of the Geneva

1 UN Department of Peacekeeping Operations, Peacekeeping Fact Sheet, 31 October 2014, available at: www.un.org (all internet references were accessed in October 2014).

2 These codified behaviour in times of martial law; for the full text of the Conventions with respect to the laws and customs of war on land, see Hague Convention (II) with Respect to the Laws and Customs of War on Land and its Annex: Regulations concerning the Laws and Customs of War on Land, 29 July 1899 (entered into force 4 September 1900), available at: http://avalon.law.yale.edu/19th_century/hague02.asp.

3 Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, 17 June 1925, 94 LNTS 65 (entered into force 8 February 1928).

Convention (1929), with provisions for the treatment of the sick and wounded and the treatment of prisoners of war.⁴ But the real explosion of IHL, human rights law and international criminal law only occurred after the Second World War, when the annihilation of civilians had become strategy. To understand the depth and scope of that new universe, one needs a reliable and learned guide. Fortunately, that is exactly what we have in Bouchet-Saulnier's impressive *magnum opus*.

The author is legal director of Médecins Sans Frontières, and the book is clearly structured to do exactly what its title promises: provide easily accessible guidance to practitioners, especially those who are working in the field, often in the middle of armed conflict. Its topics are organized in alphabetical order, from "Adoption" to "Wounded and Sick Persons", covering some 200 entries. But before describing the riches that can be found there, I'd like to focus on the book's introduction, which in itself is a thoughtful and extensive essay on the profound changes in humanitarian law since the 1949 Geneva Conventions were drawn up. The author reflects there on the synchronous evolution of international criminal law in tandem with IHL and human rights law, and she examines this development in the context of the emergence of a peacekeeping and peace enforcement doctrine that resulted from a widening definition of national and international security, culminating in the "Responsibility to Protect" concept endorsed by the UN Security Council and the UN General Assembly at their sixtieth session, in 2005.⁵ All this has profoundly changed the context of IHL.

Bouchet-Saulnier laments how the very concepts of IHL have been perverted by interpretations driven by the "war on terror", where "war" no longer is synonymous with "armed conflict" and belligerents no longer meet the definition of combatants, ending up in legal black holes. In citing Albert Camus' aphorism "Calling things by the wrong name adds to the affliction of the world", she stresses the need to restore "precise meaning and substance to words that have become a part of the media's vocabulary of misery and whose weight in law we have forgotten".⁶ For Bouchet-Saulnier, the challenge in preparing this guide was to present humanitarian law from the perspective of victims' rights, and to respond to aid organizations' needs for direction in situations such as confrontations with armed groups, attacks on civilians under their care, combatants' withholding of food as a military strategy, or encounters with child soldiers.

In focusing on victim's rights, Bouchet-Saulnier does far more than provide an inventory of IHL in its narrow sense, within the confines of the 1949 Geneva Convention and the 1977 Additional Protocols. The guidance in this book is drawn from IHL, human rights treaties, international refugee law, the rules that

4 The International Committee of the Red Cross drew up a draft convention which was submitted to the Diplomatic Conference convened at Geneva in 1929. See Convention relative to the Treatment of Prisoners of War, 27 July 1929, 118 LNTS 343 (entered into force 19 June 1931), available at: www.icrc.org/ihl/INTRO/305?OpenDocument. This convention was then superseded by the 1949 Geneva Convention and the later Additional Protocols.

5 *The Practical Guide to Humanitarian Law*, pp. xv–xxvii.

6 *Ibid.*, pp. xv, xvi.

govern peacekeepers, the UN Charter and UN Conventions, international criminal law, and case law of national and international courts. The book also describes and characterizes the institutions that have created this body of law, or that are responsible for observing and implementing its provisions: UN system organizations, regional organizations and international judicial bodies. This broad coverage, the author argues, is necessary in order for the compendium to “serve as a practical guide to the range of uses of international law in the context of aid activities and in the management of armed conflicts and other situations of crisis”.⁷

Very helpful in clarifying this complex environment is the author’s historical analysis of the manner in which this vast body of international law emerged from a changing political environment. The phenomenon of “asymmetrical war”, the use of guerrilla or terror tactics, and the efforts by states to combat secessionist or insurrectionist movements all brought out the gaps in the 1949 Geneva Convention, and triggered the 1977 Additional Protocols to fill this dangerous legal vacuum. At the same time, human rights instruments emerged, starting in 1948 with the Universal Declaration, followed by covenants on civil and political rights, as well as economic, social and cultural rights. This then opened the door for nearly a dozen UN conventions, addressing issues such as genocide, the status of refugees, racial discrimination, discrimination against women, torture, and the rights of the child, of migrant workers and of people with disabilities, just to name a few. In parallel, a system of international criminal courts came up, *ad hoc* initially, then leading to a permanent International Criminal Court.

Each of these developments has had an impact on the normative environment in which humanitarian operations are carried out, and thus *The Practical Guide to Humanitarian Law* is indispensable for both aid workers in the field and for their supporters at headquarters, in equal measure. It is difficult to predict in which crisis each entry will be the most useful, but I can’t think of a situation that is not covered. The first entry, “Adoption”, for example, brings to mind the immediate aftermath of the 2004 tsunami, when a major faith-based NGO planned to bring many orphans out of Aceh to its base in Djakarta, with the alleged intent of then facilitating the adoption of these children, possibly by Western families. At the same time, human traffickers moved in to export some of the 35,000 children who lost parents, for sale as sex slaves or sweatshop labour. This created havoc, and triggered legislation literally overnight whereby the Indonesian parliament blocked all movements of unaccompanied children across provincial boundaries without parental consent.⁸ If the responsible agency had consulted *The Practical Guide*, then available in an earlier edition, it may have considered the provisions of the 1993 Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption, and Article 78

7 *Ibid.*, p. xvi.

8 Alan Cooperman, “Missionaries Take In Orphans: Christian Group to Build Home for 200 Muslims”, *Washington Post*, 13 January 2005; “Guards to Protect Tsunami Orphans from Child Traffickers,” *The Guardian*, 5 January 2005; “The Tsunamis and Child Trafficking”, Editorial, *The New York Times*, 13 January 2005.

of the Additional Protocol to the Geneva Convention, setting out rules restricting the evacuation of children.

To give another example: a fascinating entry, especially after the recent events in Gaza, deals with “Human Shields”.⁹ It cites the Geneva Convention, its Additional Protocols, and the Statute of the International Criminal Court, all describing the use of human shields to prevent an enemy attack as a war crime under IHL. But what if the civilians serving as human shields do so voluntarily, out of ideological fervour? The author cites rulings of the Israel Supreme Court that introduce the notion of “free will” in the concept of human shields, and points out that the assessment of the potential “free will” of a civilian in a situation of armed violence is both complex and dangerous. In doing so, she demonstrates a critical, independent streak that makes *The Practical Guide* far more than a handbook: it is in fact a compendium of very thoughtful analytical essays, some very brief, that consistently reiterate the primacy of the “victims” perspective.

Each entry provides insight into the decisions of relevant courts, and gives detailed bibliographic references; often there are internet links to the organizations mentioned, and at the end of the guide one finds an up-to-date list of the status of ratification of more than thirty international conventions and treaties. But the dominant value of the entries is not only their factual riches, but above all the analysis and critical reflection embedded in nearly every one of them, never hiding the author’s sense of humanitarian purpose.

This focus on the suffering of people affected by violent upheavals is also manifest in entries on topics such as “Individual Recourse”, “Reparation (Compensation)”, “Torture”, “Detention” and “Collective Punishment” – all areas where *The Practical Guide* gives the inquisitive practitioner ample tools to stand her ground in defending assaults on victims’ rights.

The Practical Guide is bulky, taking up no less than 796 pages and weighing in at several pounds. Thus, it may not fit into the backpack of the itinerant aid worker, but it should be available in the field office of every operational NGO, with a copy at the organization’s headquarters, prominently displayed on the CEO’s desk. Will the next step be a digital edition, destined for the hard drive of every aid worker? In its current, physical form *The Practical Guide* represents a nearly monastic achievement, a labour of love and of deep commitment to humanitarian principles. It deserves to become a household item in the international world of aid and advocacy.

9 *The Practical Guide to Humanitarian Law*, p. 211.