

Contents

<i>Acknowledgements</i>	vii
<i>List of Acronyms</i>	xvii
<i>Table of Cases</i>	xix
<i>Table of Selected Legislation and Related Documents</i>	xxi
<i>Introduction</i>	xxxv

Part I: Conceptual Framework

1. Setting the Scene: Humanitarianism in Context	3
I. The Foundations of Humanitarianism	3
A. Inter-disciplinary Understandings of ‘Humanitarianism’	3
B. The Humanitarian Imperative: To Prevent and Alleviate Human Suffering	7
C. Humanitarian Principles: Humanity, Neutrality and Impartiality	11
II. The Concept of Humanitarian Action	18
A. Defining ‘Humanitarian Assistance’	19
B. The Protection of Persons.....	23
C. Hazards, Vulnerability and Resilience	25
III. The Evolution of Legal Humanitarian Obligations	27
A. Humanitarian Responses in Armed Conflicts	27
B. Codification of International Disaster Laws.....	29
C. Similarities and Differences between Armed Conflicts and Disasters	32
2. Defining the <i>Acquis Humanitaire</i>	37
I. The Concept of an Emerging <i>Acquis Humanitaire</i>	37
A. Core Components.....	39
i. Identifying the Constituent Parts.....	39
ii. Determining the Substantive Sources.....	41

x Contents

B.	Conceptual Underpinnings: Humanity and Human Dignity.....	49
i.	Humanity.....	49
ii.	Human Dignity.....	52
iii.	Human Rights Conditionality	54
C.	Demarcating the <i>Acquis Humanitaire</i>	56
II.	Sources of the <i>Acquis Humanitaire</i>	59
A.	Law, Non-Binding Norms and Non-Law	59
i.	Normative Hierarchies in International Law	60
ii.	International Law Making and Humanitarian Action	64
B.	Customary International Law and State Practice.....	66
C.	Fragmentation and Coherence between Distinct Bodies of Law	69
3.	Protection of Persons in Humanitarian Crises	73
I.	Exploring the Concept of Protection.....	73
A.	Protection in International Law	75
i.	ICRC-IASC Definition of ‘Protection’	75
ii.	Distinguishing Rights-based and Needs-based Approaches	79
iii.	Distinguishing Humanitarian Protection from Human Rights Protection	83
B.	Protection Infrastructure	86
i.	Organisational Protection Mandates	86
ii.	Coordination of International Protection Activities	90
C.	Operationalising Protection.....	93
i.	International Standards and Guidelines on Protection	93
ii.	Implementing Protection Strategies	101
II.	A Rights-Based Approach to Humanitarian Action.....	104
A.	Promoting Coherence in Humanitarian Action.....	104
i.	The Disaster Cycle.....	105
ii.	The Full Cycle of Protection.....	107

B.	Merging Rights-based and Needs-based Approaches	109
i.	Indonesia: Beneficiary Communications in Banda Aceh.....	110
ii.	Incorporating Human Rights Principles into Programming	111
4.	Strengthening the Web of International Legal Protection.....	114
I.	Challenges of Implementation and Enforcement	114
A.	Ensuring Humanitarian Access.....	115
B.	Sovereignty and Non-Intervention in Domestic Affairs	118
i.	Distinguishing Humanitarian Action from Humanitarian Intervention.....	118
ii.	Nicaragua: Humanitarian Assistance and the International Court of Justice.....	122
iii.	The Responsibility to Protect Doctrine.....	123
II.	Norm Creation and Internalisation.....	125
A.	Koh’s Theory of Transnational Legal Process	128
i.	Social, Political and Legal Internalisation of the Red Cross Symbol	131
B.	Applying a Transnational Legal Process Approach to Humanitarian Action.....	132
III.	Accountability Mechanisms.....	135
A.	Forms of Accountability	135
B.	Accountability Fora.....	137
C.	Impact of Accountability Mechanisms.....	139
i.	Haiti: Privileges and Immunities of the UN.....	140
IV.	Conclusion: Summary So Far.....	143
	Part II: Normative Content of the <i>Acquis Humanitaire</i>	
5.	International Human Rights Law.....	147
I.	Introduction.....	147
A.	State Obligations to Respect, Protect and Fulfil Human Rights	149
i.	The Right to Food in Emergencies	151
B.	Limitations and Derogations to Human Rights.....	154

xii Contents

II.	Substantive Human Rights Provisions in Humanitarian Crises	158
A.	Right of Access to Protection and Assistance.....	160
B.	Right to an Adequate Standard of Living.....	165
i.	Haiti: The Right to Housing.....	167
C.	Right to Physical Security and Integrity	169
i.	Disaster Risk Reduction: The Right to Life and the European Court of Human Rights.....	170
III.	Conclusion: Human Rights and the <i>Acquis Humanitaire</i>	173
6.	Law of Armed Conflict.....	176
I.	Introduction.....	176
A.	The Law of Armed Conflict as <i>Lex Specialis</i>	178
B.	Customary International Law	183
i.	Particularly Relevant Rules from the ICRC CIL Database.....	185
II.	International Armed Conflicts	188
A.	Geneva Convention IV Relative to the Protection of Civilians (1949).....	188
B.	Additional Protocol I (1977).....	191
i.	Maritime Blockades: The Gaza Freedom Flotilla.....	194
C.	Specific Provisions for Occupying Powers.....	196
i.	Iraq: State-building and the Law of Occupation	200
III.	Non-International Armed Conflicts.....	202
A.	Additional Protocol II (1977)	202
i.	Syria: Cross-border Humanitarian Operations	206
IV.	Conclusion: Balancing Humanitarian Considerations and Military Necessity	208
7.	International Criminal Law.....	211
I.	Introduction.....	211
A.	Rome Statute of the International Criminal Court.....	213
B.	International Humanitarian Fact-finding Commission	216

II.	War Crimes	217
A.	Attacks Against Humanitarian Personnel and Equipment	219
i.	Afghanistan: Attacks against Medical Facilities	222
B.	Misuse of the Emblems of the Geneva Conventions	224
C.	Starvation as a Means of Warfare.....	226
i.	Syria: Besieged Communities	227
D.	Grave Breaches of the Geneva Conventions	229
i.	Civilian Detainees: The Čelebići and Stakić Cases (ICTY).....	229
III.	Wilful Denial of Humanitarian Assistance	231
A.	Genocide.....	232
i.	Sudan: The ICC Arrest Warrant for Omar Al-Bashir	235
B.	Crimes Against Humanity	238
i.	Myanmar: Delayed Response to Cyclone Nargis.....	239
IV.	Conclusion: Legal Accountability via International Criminal Law.....	242
8.	International Disaster Laws	244
I.	Introduction: The Concept of International Disaster Laws	244
A.	Defining a ‘Disaster’	245
B.	Early Attempts to Develop International Disaster Laws.....	248
C.	Constructing a Coherent Body of International Disaster Laws.....	252
i.	Legal Impact of the 2004 Indian Ocean Tsunami.....	255
II.	Disaster Risk Reduction, Prevention and Preparedness	257
A.	From Yokohama to Hyogo	257
B.	Sendai Framework for Action 2015–2030	260
C.	ILC Draft Articles on the Protection of Persons in the Event of Disasters.....	266
III.	Humanitarian Response and Recovery	269
A.	ILC Draft Articles on the Protection of Persons in the Event of Disasters.....	269

xiv Contents

i.	Key Provisions Regarding Humanitarian Response and Recovery	271
B.	Selected International Conventions.....	273
i.	Tampere Convention on Telecommunications in Disasters (1998).....	273
ii.	Framework Convention on Civil Defence Assistance (2000).....	275
C.	Selected Non-Binding Normative Instruments	277
i.	IFRC IDRL Guidelines (2007).....	279
ii.	IFRC Model Act on Disaster Relief (2013).....	281
iii.	INSARAG Guidelines (2014)	282
IV.	Conclusion: Developing Coherence.....	284
9.	Refugee and Displaced Persons Law	286
I.	Introduction.....	286
II.	Global Instruments.....	288
A.	UN Convention Relating to the Status of Refugees (1951).....	288
i.	Nepal: Sexual and Gender-based Violence in Bhutanese Refugee Camps.....	291
B.	UN Guiding Principles on Internal Displacement (1998).....	294
i.	Development of the Guiding Principles	294
ii.	Colombia: Internalisation of the Guiding Principles	296
iii.	Substantive Content of the Guiding Principles	299
C.	Climate Change and Disasters: The Nansen Initiative's Protection Agenda	303
III.	Regional Approaches: The African Experience	305
A.	OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969)	306
B.	ICGLR Pact on Security, Stability and Development in the Great Lakes (2006).....	307
C.	AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa (2009)	308
IV.	Conclusion: Evaluating the Normative Content of the <i>Acquis Humanitaire</i>	310

Part III: Concluding Observations

10.	Crystallisation of a General Right to Humanitarian Assistance....	315
	I. Introduction	315
	II. Individual Right to Request or Receive Humanitarian Assistance	319
	A. During Armed Conflicts	319
	B. During Other Humanitarian Crises	321
	III. Organisational Right to Offer Humanitarian Services.....	323
	IV. The Crystallisation of a General Right to Humanitarian Assistance	325
11.	Future Development of the <i>Acquis Humanitaire</i>	328
	<i>Index</i>	333