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# Introduction to the Special Issue on Partnered Operations and International Law

**Left running head:** Emanuele Cimiotta et al.

**Short title :** Introduction

**Emanuele Cimiotta, Andrea Harrison and Nicholas Tsagourias** [AQ1](#) [AQ3](#)

Partnered operations refer to military operations where States collaborate with each other, with non-State actors (such as organized armed groups) or with intergovernmental organizations (such as the United Nations) to achieve a common aim in a given conflict situation. Partnered operations are not a new phenomenon, but nowadays they have become the standard modality of conducting military operations, with the armed conflicts in Afghanistan, Iraq, Libya, Mali, Syria, Yemen being such examples.

Partnered operations are characterized by different degrees of support and involvement which can range from the supply of weapons and military equipment; the provision of logistical, financial, and technical support; intelligence sharing; training and advising; to co-deployment and joint combat operations. In addition to the *rationae materiae* and *rationae personae* diversity of partnered operations, military partnerships may also give rise to (co) belligerency or non-belligerency.

Partnered operations are governed by international law but whereas, on the one hand, they can enhance compliance with the law through joint efforts and oversight, they pose, on the other, certain challenges to international law in particular international humanitarian law, international human rights law and the law of international responsibility. One can identify at least four sets of challenges.

First, there is a need to determine the belligerent or non-belligerent status of a partner who supports a party engaged in a pre-existing conflict. This should be done on account of the nature and intensity of the support provided to the party to the armed conflict. Such support can take many forms, for example: financial support, the provision of training and resources, transporting troops to the front line, allowing the use of military bases, assisting in the planning or coordination of the supported party's military operations, and sharing intelligence used immediately in the conduct of hostilities. Answering this question is important because it will determine the character of the conflict as well as the applicable law; for example, whether it is the law applicable to international or non-international armed conflicts or instead whether it is the law of peace that applies to the situation.

Secondly, and as a consequence of the above, there is a need to determine the nature, scope and

content of legal obligations each partner may have because, even if the applicable legal framework is determined, partners may be bound by different rules or adopt different interpretations of the same rules. Moreover, if partners have positive as well as negative obligations when involved in partnered operations, what specific conduct do these obligations require from partners?

Thirdly, questions arise about the scope and content of the responsibility of each partner for violations of the law or their responsibility in relation to violations of the law by others. More specifically, questions arise about the direct responsibility of partners and/or their responsibility for complicity.

Fourthly, partnered operations give rise to questions about the interplay between legal notions belonging to general international law and legal notions belonging to specific fields of international law that apply to partnered operations. For example, how do obligations flowing from Common Article 1 of the Geneva Conventions of 12 August 1949 interact with due diligence obligations under international law or the law of complicity in the law of state responsibility? These legal regimes—general and specific—are formally different but substantially similar to each other in their contents and consequences. The follow-up questions that can be asked are: what are the advantages or disadvantages for partnered operation of applying these regimes? On what basis do those different regimes apply to a given situation? How do primary and secondary rules interact?

The articles in this special issue address many of these issues, including the legal status of partners and the law applicable to them and their obligations in relation to certain activities carried out in partnered operations such as detention or drone strikes as well as partners' responsibility for the violation of their international law obligations.

The first article sets out the legal framework for partner obligations under international humanitarian law, providing a foundation for the more specific topics addressed by the following articles. Cornelius Wiesener and Astrid Kjeldgaard-Pedersen's 'Ensuring Respect by Partners—Revisiting the Debate on Common Article 1' recounts the current debate on Common Article 1 to the four Geneva Conventions of 1949 (CA1), and hones in on the external dimension of the duty to 'ensure respect' by carefully examining the customary rules on treaty interpretation codified in the Vienna Convention on the Law of Treaties of 1969 (VCLT). In finding that an external dimension is indeed supported by the basic tenets of treaty interpretation under the VCLT, Wiesener and Kjeldgaard-Pedersen argue that the general obligations of CA1 apply to states regardless of the nature of the armed conflict or their status as parties to the conflict. However, the authors also recognize that the exact content of both the negative and positive duties found in CA1 remain ambiguous, as demonstrated by the next two articles, and therefore they call on states to engage constructively in better delineating those obligations.

The second article addressing the general obligations of CA1 is Alexander Wentker's 'Partnered Operations and Positive Duties of Co-Parties'. Wentker examines the positive obligations of co-

belligerents or ‘co-parties’ under international humanitarian law (IHL) in relation to partner forces in an armed conflict. Wentker proposes a network of duties that would allow co-parties to satisfy their IHL obligations by ensuring a complementary approach based on whether the obligation stems from a specific IHL obligation incumbent upon the co-party or a general obligation based on Common Article 1. By arguing that co-parties have a mutual duty to cooperate in the fulfilment of their party obligations based on what is feasible for each partner, Wentker hopes that co-parties will be incentivized to cooperate in order to enhance capacities to achieve greater standards of protection.

~~Andrea Harrison and~~ Benjamin Farley drills down to a very specific legal obligation under IHL in ‘Detainee Transfers and the Principle of Non-Refoulement in Relation to “Non-belligerent Supporting States” in Non-International Armed Conflicts’. ~~Harrison and~~ Farley looks at how non-belligerent supporting States may have obligations under CA1 to ensure respect by belligerent partners of the prohibition against transfers of detainees who face a real or substantial risk of a violation of their fundamental rights. ~~He~~ ~~They~~ focuses on the gaps between what kinds of support might trigger belligerent obligations in an international armed conflict (IAC) under the law of neutrality and what kinds of support might trigger IHL obligations in a non-international armed conflict (NIAC) under various legal approaches, and look at how CA1 might be used to address those gaps.

In ‘Revisiting the Law on UN Peace Operations’ Support to Partner Forces’, Ralph Mamiya and Tobias Vestner look at the current legal approaches addressing when United Nations peace operations become a party to a NIAC. Mamiya and Vestner critique certain current approaches that have been applied to support relationships in armed conflict, including the International Committee of the Red Cross’s support-based approach, and instead propose that a ‘totality-of-the-circumstances’ approach be applied to UN peace operations. They then go on to discuss the advantages and drawbacks of such an approach in the context of support operations.

Having discussed the scope and nature of obligations of supporting partners and their legal status, the final two articles look at issues of accountability in partnered operations. First, in ‘Overlap Between Complicity and Positive Obligations: What Advantages in Resorting to Positive Obligations in Case of Partnered Operations?’, Anna Liguori explores how under the law pertaining to state responsibility, the concept of complicity and violation of the duty to prevent may be connected. Liguori employs jurisprudence from the International Court of Justice and the European Court of Human Rights to demonstrate why failure to fulfill positive obligations is the better standard for attributing state responsibility in relation to partnered military operations.

Finally, Eleonora Branca’s article entitled ‘Complicity of States in Partnered Drone Operations’, focuses on a specific type of partnered operation, namely drone strikes, and examines recent jurisprudence on the international legal responsibility under Article 16 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts for assistance provided by Italy, Germany and the Netherlands to the United States drone programme. Branca points to three kinds of relevant

assistance, namely the use of foreign military bases, logistical and technical support, and intelligence sharing, and analyses how the components of Article 16—significant contribution, the mental element and opposability—may be applied to these categories of support.

The papers were first presented at a conference on ‘Partnered Operations and International Law’ that took place on 24 September 2021 at the Law School of Sapienza University of Rome. The conference was co-sponsored by the American Society of International Law (ASIL) Lieber Society on the Law of Armed Conflict and the European Society of International Law (ESIL) Interest Group on Peace and Security. The editors of this special issue and co-organizers of the conference would like to thank all participants and chairs for their contributions and in particular Dr Ilja Richard Pavone. We would also want to thank the *Journal of Conflict and Security Law* and its editors, Professor Nigel White and Professor Eric Myjer, for hosting this publication. [AQ2](#)

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