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Humanitarians in court: how duty of care travelled from human resources to legal liability

Kristin Bergtora Sandvik

Department of Criminology and Sociology of Law, University of Oslo and PRIO, Oslo, Norway

ABSTRACT
This article explores the process of legalization as a shift in the way humanitarian actors are held accountable. The analysis is developed at the interface of legal sociology, legal anthropology and at the margins of an anthropology of the Norwegian welfare state. Through an account of the groundbreaking Steven Patrick Dennis v. the Norwegian Refugee Council (NRC) case litigated in Oslo District Court in 2015, I show how the evolving juridification of humanitarian organizations' duty of care for their staff is transforming both the content and the framing of the relationship between employers (NGOs) and employees (NGO workers), and perceptions of the moral duties and humanitarian worker subject positions that underpin this relationship. Over the last decade, the NRC has gone through a period of exceptional growth and has evolved to become one of the humanitarian sectors most well-known and respected actors. Despite this prominence, there is no critical academic engagement with the organization's work or its institutional culture. The article aims to bridge that knowledge gap.

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Introduction

This article gives an account of the groundbreaking *Steven Patrick Dennis v. the Norwegian Refugee Council* case litigated in Oslo District Court in October 2015 and its aftermath. The article explores how the evolving juridification of humanitarian organizations' duty of care for their staff is transforming both the content and the framing of the relationship between employers (NGOs) and employees (NGO workers), and perceptions of the duties and obligations that underpin this relationship.

The case concerns negligence and torts under Norwegian law. Steve Dennis, a Canadian employed by NRC, sued for compensation for economic and non-economic loss following his kidnapping and shooting in June 2012 in Dadaab refugee camp, in Northern Kenya. The kidnapping took place in the context of a high-profile visit from the NRC Secretary General, Elisabeth Rasmussen. Additionally, three other NRC staff – the Canadian country director for Kenya, Qurat Ul-Ain Sadozai, the Filipino project manager Glenn Costes and the Norwegian communications

CONTACT Kristin Bergtora Sandvik bergtora@prio.no
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adviser Astrid Sehl – were also kidnapped, a total of four staff were injured and the Kenyan driver Abdi Ali was killed. After four days, Kenyan authorities and a local militia paid by the NRC rescued the group, which was flown to Nairobi for medical treatment and debriefing. Subsequently, the group was offered post-care, including medical treatment and counselling, and insurance payouts. In February 2015, Dennis submitted a claim to the Oslo District court for additional compensation from NRC. The parties disagreed about the amounts and costs to be covered, and about the demand that the NRC publicly admit gross negligence in relation to the kidnapping. Several attempts at court mediation failed. As the trial was ending, unusually, the NRC suddenly admitted negligence for information security. The verdict additionally found the NRC grossly negligent for its security arrangements, and liable for compensation. By early 2018, the NRC was still entangled in settlement-negotiations connected to the incident.

While negotiated settlements and academic commentary prior to the Dennis case had begun to articulate the legal aspects of the 'duty of care' norm in the humanitarian context, the duty of care standard formulated in this case is the first to be spelled out by a domestic court. In the article, I describe how the NRC's encounter with Dennis and the Norwegian legal system at the Oslo District Court engendered a re-conceptualization of this standard from being a good practice standard in human resource management to become a standard considered from and articulated through the language of law and liability. I will show how culturally specific contestations over the humanitarian worker subject position, and the appropriate place and role of law in this struggle are central to understand this normative shift.

Contribution, method and conceptual framework

Drawing on insights from the well-established literatures on the anthropology of humanitarianism (Harrell-Bond 1982; Malkki 1992, 2015; Bornstein and Redfield 2008; Sandvik 2009, 2011; Mosse 2011; Ticktin 2014; Fassin 2011) and the anthropology of international organizations (Hopgood 2006; Müller 2013; Niezen and Sapignoli 2017) this article contributes to the embryonic socio-legal literature on the humanitarian sector by exploring the process of legalization as a shift in the way humanitarian actors are held accountable, and by showing how such analysis is developed at the interface of legal sociology, legal anthropology and at the margins of an anthropology of the Norwegian welfare state. While substantial focus has been given to the relationship between humanitarians and their intended beneficiaries and the notion of 'gifts' (Bornstein & Redfield 2008), there has been a surprising lack of attention to the relationship between the organizations and their staff as it plays out between management at the headquarter and country office level, and workers in 'the field'.

The Norwegian Refugee Council is a powerful, global humanitarian actor—yet no critical ethnographic study of the organization has been undertaken so far (for a socio-legal account of NRC's struggles in Colombia, see Lemaitre 2018). To bridge that gap, this article represents an attempt to unpack humanitarian power by 'studying up' (Gusterson 1997) in the relatively small humanitarian community in Oslo, where

the NRC has its headquarters and the author is a national and a professional insider with a longstanding and extensive personal network.[1]

The analysis draws on courtroom observation of the Dennis case litigated in Oslo District Court October 20-28 2015, an examination of court documents in Norwegian and English obtained through a request for information under the 2005 Dispute Act; and a review of media coverage in Norwegian and English, a Norwegian language documentary entitled 'Angrepet i Dadaab' aired on national television in 2017 and grey literature in Norwegian and English available online in the period 2015–18. In the period before the trial, I had corresponded with Steve Dennis' lawyer Knut Hurum as well as international humanitarian NGOs to gauge their opinions about the case. During the Court-case itself, I was seated with current and former NRC-staff, staff of other Norwegian humanitarian NGO's, Dennis family and friends and members of the press, with whom I engaged actively during coffee and lunch breaks. Continuing conversations (2015–18) have taken place with all groups of informants.[2] Dennis, Sehl, Hurum, NRC management and staff have been invited to comment on previous versions of this article.

The transnational scale of this case invites a multifaceted conceptual approach, bringing legal anthropology and legal sociology into dialogue. I use the concept of 'semi-autonomous social fields' (Moore 1973) to study how normative orderings are contested, shift and evolve in a context involving a Norwegian court, a global NGO with a Norwegian headquarter, a refugee camp for Somalis in Kenya and Canadian, Filipino and Kenyan claimants. Legal sociology provides a methodological and conceptual toolbox for studying defined actors and artefacts in defined contexts: litigants, lawyers, the judge, the audience, interpreters, expert witnesses, witnesses, 'evidence' and the court room itself. I draw on the classic 'naming, blaming, claiming' (Felstiner, Abel, & Sarat 1980) framework to try to understand the difference between previous 'duty of care' cases that did not go to court, and the Dennis case. I use the concept of legal consciousness, and the notion of being 'in front of', 'with' or 'against' the law (Ewick & Silbey 1998) as prisms for analyzing the relationship between what happened *in* court —law as process—and the outcome of the case, where a classic 'have'—a large and respected NGO—did not come out ahead (Galanter 1974).

The article proceeds as follows: first, I present the context and my analytic approach. Next, I describe the conceptualization of the duty of care norm in the humanitarian human resources context, and the gradual move towards the domain of litigation through negotiated settlements. Thereafter I describe and analyze the Dennis case and its aftermath. I conclude by considering future lines of research that might be pursued.

1. Studying the legalization of humanitarianism

The context

The NRC was founded in 1946 and is headquartered in Oslo, Norway. As of 2018, the organization employs around 6000 staff in 31 countries (NRC 2018). Previously known as a 'Norwegian' organization, overwhelmingly staffed by Norwegians and

funded through the Norwegian aid budget, the organization has gone through a process of 'denationalization' and has a presence in Brussels, Geneva, Addis Ababa, Dubai and Washington D.C. However, the upper management, the human resources department and its Secretary General are Norwegians. Through the efforts of its charismatic Secretary Generals Elisabeth Rasmussen and Jan Egeland, its active role as a 'soft-lawmaker' in Geneva and beyond and the close affiliation with the Norwegian Ministry of Foreign affairs and the Nordic 'humanitarian superpower' brand, the NRC has won particular recognition as an international leader in programming and humanitarian standard setting.

Established in 1991, by 2012, the Dadaab refugee camp in Northern Kenya was the world's largest refugee camp, housing almost half a million Somali refugees. The NRC has been present in the refugee camp in Dadaab since 2006, running projects within shelter, education, food security, water, sanitation and hygiene (the Verdict, p. 2). In trying to manage the camp, UNHCR and its multiple implementing partners struggled with overcrowding and deteriorating security due to attacks from Al-Shabaab. In September 2011 a Kenyan driver working for CARE was kidnapped. In October 2011, two Spanish aid workers from Médecins Sans Frontières (MSF) were kidnapped and their driver shot. In December 2011, a bomb attack on a humanitarian convoy killed a police officer and seriously injured three others. Al-Shabaab also killed refugee leaders thought to cooperate with UNHCR and the police. By 2012, many humanitarian organizations had restricted their operations in one or several of the subcamps, Dagahaley, Hagadera, Ifo, Ifo II and Kambioos (McSweeney 2012; UNHCR 2012). In June 2012, NRC had 120 staff in the camp, of which 113 were local staff and seven were international aid workers (the Verdict, p. 2).

In many ways, the evolution of the NRC follows the general post-cold war trajectory of the humanitarian sector, which is characterized by accelerating consolidation and growth (See Donini et al. 2017). The largest humanitarian NGO's now have thousands of employees all over the world and annual turnovers of hundreds of millions of dollars. In response to calls for enhanced accountability and effectiveness – and a turn to professionalization (James 2016; Beerli 2018) – and because of the sector's rapid expansion and increasing integration into global markets, humanitarian action is now emerging as a transnational space where the practice of actors like the NRC is increasingly taking place within a thickening framework of soft law (such as handbooks, standard operating procedures, codes of conducts, guidelines, declaration and principles), host state regulations, and contractual agreements (Lohne & Sandvik 2017; for a discussion of soft law see Abbott and Snidal 2000; Sandvik 2018). Actors like the NRC manage multiple jurisdictions, legal systems and dispute settlement mechanisms. In the last number of years, there has been a small but discernible trend towards *litigation* on humanitarian issues focusing on humanitarian accountability to beneficiaries and donors, but also on the criminalization of individuals and organizations providing humanitarian aid (Glikati 2016; Breeden 2017). However, until recently, the rights and duties embedded in the contractual relationship between humanitarian organizations and their employees have rarely been a topic of discussion in the sector.

The analytic approach

While negotiated settlements and academic commentary prior to the Dennis case had begun to articulate a legalized notion of the 'duty of care' norm in the humanitarian context, the Oslo District court is the first domestic court to spell out this standard. To explore how this shift occurred, I draw on three analytical concepts.

To consider how this norm is articulated, travels and is received, I use Sally Falk Moore's concept of semi-autonomous social fields to construe the duty of care norm as flowing between discrete but interconnected semi-autonomous social fields with porous quality, upon which the actors operate in this particular case. This includes the NRC and in particular its Oslo-based, Norwegian middle-management and leadership; the Norwegian welfare state, with its view of law as a tool for social engineering, equality and justice; and the Oslo District court, where the judge set out to apply Norwegian labor law to what was perceived as a Norwegian employer. It also includes the Dadaab refugee camp and its surroundings, in which the primary events occurred, and from where some of the victims—on the basis of Oslo District court's verdict—continue to call on the NRC to fulfill a duty of care responsibility; and finally the international humanitarian NGO sector collectively affected by this decision. These fields are to some extent structured by national/transnational legal and political orders while they have the capacity to generate their own (non-legal) obligatory norms to which compliance can be induced or coerced.

To understand the transformation of the specific disagreement between Steve Dennis and the NRC from a disagreement over mutual moral obligations and sacrifice to a legal dispute; and how this case differed from previous similar cases that did *not* end up in court, I look to Felstiner, Abel, and Sarat (1980) concept of 'naming' an experience as injurious; of 'blaming' someone as responsible for the injury (and that something can be done about it); and of 'claiming' a certain set of legal consequences (and how disputes occur when claims are rejected and resisted). I use the concepts to describe and understand the process leading to the court case, but also as a way to understand how events *in* court shaped the outcome.

A central aspect of the case concerns contestations over the humanitarian worker subject position, and the appropriate place and role of law in this struggle. Legal consciousness theory is useful for exploring how Dennis—as an Anglo-Canadian Caucasian, educated male— understood and used law as a tool for social change, but also to analyze how the NRC, as a powerful transnational player, mobilizes collective action frames to define appropriate subject positions (Snow & Benford 2000). Juxtaposed against the subject position of helpless, worthy victims (Sandvik 2011), the humanitarian worker is traditionally imagined to be selfless and apolitical. In this scheme, a rights-claiming humanitarian worker subjectivity conflicts with ideas about sacrifice and moral purpose embedded in humanitarian reason (Fassin 2011; Ticktin 2014).

In Ewick and Silbey's tripartite conceptualization of legal consciousness, 'standing before the law' captures an idea of law as a powerful weapon of justice, fairness and equality, calling to account the failings of bureaucracies and organizations. The notion of 'playing with the law' sees law as a morally neutral game and as a resource that can be played to advantage. Finally, being 'against law' is a story about law as an

illegitimate, unpredictable force of brute power that must be resisted (Ewick & Silbey 1998). Humanitarians have traditionally vigorously resisted the 'politicization' of humanitarian action. The NRC persistently resisted litigation, legal argumentation, the jurisdiction and authority of the Norwegian district court and finally the outcome of the case as all being detrimental to 'helping refugees'. I suggest that understanding how NRCs self-positioning as operating not only in 'States of exception' but also *through* a state of exception, interfaced with and shaped the Court's understanding of Norwegian labor law and compensation law, is important to make sense of the duty of care norm articulated in the Dennis case.

2. 'Duty of care' between service delivery, risk management and 'wrongdoing'

Human resource management (HRM) in the aid sector concerns recruitment and hiring, training, contracting, compensation, well-being, travel, expatriation, and pay discrepancies. Staff come from a variety of cultural, economic, and social backgrounds and bring different expectations, support needs, and personnel challenges for human resource departments, which is mashed up with the challenge provided by the context in which they work (insecure, poor, unpredictable) (Oelberger, Fechter, & McWha-Hermann 2017). A key distinction in the humanitarian workforce is between national staff and international staff, with important differentiations within these categories (such as between Western and non-Western international staff). In addition, this workforce is made up of volunteers, interns, and contract-hired consultants.

In the literature on HRM in international organizations it is generally understood that security incidents, whether by design, bad management or by accident, can be financially and reputationally costly, so that 'the duty of care is the HRM department's reason for being' (Williamson & Roger 2011) and that 'a responsive, strategic, and thoughtful approach to HRM is crucial to ensure the well-being and performance of staff and the fulfillment of their organizations' crucial goals' (Oelberger, Fechter, & McWha-Hermann 2017). At the same time, there are multiple and contested understandings of HRMs purpose and relevance in the humanitarian sector. There is a tension between standardized global approaches to HRM, versus adaptation to local context and conditions. Organizational priorities are also made based on a *perceived* tension between investing in service delivery and the functions of the organization; or between service delivery and security. Additionally, the general 'bunkerization' of aid has engendered a system that provides tiered (and unequal) levels of expected risk-acceptance and security measures for national and international staff (Stoddard, Harmer, & Jean 2010).

While the employer-employee relationship is increasingly permeated by legalistic concepts and norms of employment law, until the Dennis trial, no lawsuits concerning employer's duty of care towards humanitarian workers had been litigated. Of the few cases known to the public, all were dismissed or 'vanished'. Stephen Vance was working as a civilian contractor for CHF International in Pakistan when he was killed in 2008. A suit arguing that the employer had failed to provide Vance with basic security protocols, including an armored car and a security-trained driver was

dismissed in 2012 by a Maryland court for lack of subject matter jurisdiction. In 2009, Hilda Kawuki and Sharon Cummins, employed by the Irish NGO GOAL, were held hostage for 128 days in Darfur. Cummins publicly blamed GOAL for her kidnapping (Hickey & Keane 2010). The head of GOAL stated that he did not see himself as responsible for staff security (Cullen 2010). In 2010, Flavia Wagner, working for Samaritan's Purse in Darfur was abducted by rebels. In her lawsuit before the Southern District Court of New York, Wagner accused Samaritan's Purse of failing to train its employees properly, of ignoring signs of kidnapping threats and of deliberately delaying ransom payments out of self-interested economic considerations. The case was settled out of court in 2012 (Rix 2013). According to the NGO's lawyer, the settlement agreement was 'not an admission of liability in any respect', as it denied 'all allegations of wrongdoing' (Kravitz & O'Molloy 2014).

While invoking legalistic claims about responsibility and obligations and resorting to legal institutions to varying degree, none of these cases changed or challenged any domestic law or prevailing international soft law standard—and they were not transformed into disputes. Taking a powerful actor in the humanitarian sector to court is an extraordinary complicated, expensive and time-consuming process, involving multiple jurisdictions and languages. In this context, why and how did the Steve Dennis case end up being litigated and how can we understand the relationship between the geographical and cultural context and the outcome?

3. Humanitarians in court

The hearing took place October 20–28, 2015 in the large district court building in downtown Oslo. 15 witnesses were heard. Simultaneous translation into English was provided by two interpreters. Observing the trial together with me were Dennis parents and partner, some of his Norwegian aid worker friends, representatives from the NRC union, a journalist from *Bistandsaktuelt* (the trade paper for the Norwegian aid industry), security focal points from other Norwegian humanitarian NGOs and senior NRC staff. Dennis pursued three claims against the NRC under the Compensation Act: Under section 2-1 for employers liability rule, under section 3-5 for compensation for pain and suffering and under non-statutory rules of strict liability and responsible arrangement. To be liable for compensation, there must be injury; negligence (deviation from responsible conduct); and a factual and legal causal relationship between the basis of liability and the injury. For compensation for pain and suffering, there must be *gross* negligence. The key issues of contention concerned the risk of kidnapping; whether a lack of information security and the decision to forego an armed escort had increased this risk; and finally the relevance of NRCs alleged longstanding knowledge of widespread and unusual lapses in security policies and practices in its Dadaab operations.

Naming

To arrive at the Oslo District Court, Steve Dennis went through a process of naming his injury as a legal injury. This included seeing a Norwegian court as the appropriate

site for holding the NRC responsible for its actions and inactions, and to decide that a highly publicized finding of 'gross negligence' and liability for compensation would be the desired format for this responsibility. The NRC offers (relatively) high salaries to attract the most talented individuals in the sector. Crucial to Dennis' initial use of the law was his personal resourcefulness, his network and a creative ability to overcome practical obstacles. He connected with his Norwegian lawyer Knut Hurum through Hurum's sister, one of Norway's most recognized humanitarian workers, and partially funded his case through crowdfunding, in addition to pro bono contributions from Hurum's law firm.

In February 2015, Oslo District Court received a writ of summons from Dennis with a demand for compensation to be fixed at the Court's discretion. The NRC pleaded for acquittal and refused judicial mediation. As the trial opened in Oslo District court in October 2015, the judge rebuked the parties, and in particular the NRC, for not being willing to settle; the NRC responded by declaring willingness to settle at 'any time' without admitting gross negligence, a willingness also signaled during the early days of the trial. However, months earlier, in view of perceived NRC intransigence, Dennis had decided—in a way that speaks to Ewick and Silbey's 'standing before the law' narrative of legality — that it was necessary to go to trial:

> the heart of my case is a demand for a transparent process to assess if there was negligence and a lapse in the Norwegian Refugee Council's duty of care and if so, to hold my former employer accountable. These concepts of organizational accountability and of 'procedural justice' have been sorely lacking to-date. [Kemp and Merkelbach 2016, 115]

This perspective—that NRC's conduct represented a violation of the moral duty of care that could only be remedied through legalized accountability, and that a trial could offer this kind of justice—was reiterated by many of the witnesses, and by the family, friends and colleagues of Steve Dennis sitting with me in the courtroom. They commonly linked this understanding to a broader framing where a deep affection for the NRC and its mission had led them to take sides in a battle for the soul of the NRC. Members of the international humanitarian community that I spoke with before and during the trial had more pragmatic concerns: The NRC had a very bad case. Since the incident, this had been known in the field as the 'NRC security scandal'. The organization should have settled for its own and Steve Dennis sake, but also to avoid a bad legal precedent affecting the entire sector.

In contrast, the NRC leadership pursued a strategy of rejection and claim diversion to resist the naming of the Dadaab incident as 'legal'. It appears that in the early discussions between the NRC and Dennis, the organizations human resources department—staffed by Norwegian, long-term employees—had assumed that as a citizen of a Western country, Dennis had access to the type of social security coverage available to citizens in the Norwegian welfare system. According to the rate of compensation usually determined by Norwegian courts (which is generally low compared to for example UK or U.S jurisdictions), Dennis monetary claims were perceived by the NRC as unusually high, something which was actively communicated internally, also in relation to the institutional understanding that his injuries were moderate and that a lot had already been done for him. Also, before this case no international aid

organization had *ever* publicly admitted gross negligence with respect to the duty of care for its staff.

The framing quickly grew more confrontational. As noted above, humanitarians have long premised much of their discursive framing on a difference between humanitarianism and politics: in the Dennis case, the NRC leadership and the pro-bono legal team framed this as a struggle between humanitarianism and law. When the District Court held a planning meeting in April 2015, the NRC unsuccessfully requested a division of the case to have the question of the legal basis of liability treated separately (the Verdict, p.3). From NRCs perspective, moving the case into the domain of litigation was a moral breach from the plaintiff's side as '[A] judgment based on strict liability may cause enormous ripple effects for the aid industry. The consequence might be that important aid work is stopped' (the Verdict, p.10).

Blaming

The Dennis case exhibits a multifaceted process of blaming that contributed to the re-articulation of the duty of care norm. With respect to Dennis, I think it is useful to distinguish between the articulation of a remediable grievance against the NRC and the framing of the NRC as *blameworthy* for failing to be a moral employer, which emerged in tandem with the NRC's own efforts to resist Dennis claims by apportioning blame. Dennis attitude towards the NRC changed over time, as the NRC leadership was perceived as increasingly non-responsive (taking a long time to react) or unreasonable (demanding more examinations to assess Dennis medical claims, refusing to go along with Dennis claims for compensation or public admission of gross negligence). Once going to court had become a possibility, piecing together the case was complicated: witnesses were globally dispersed and frequently concerned about not provoking a powerful organization—or being seen talking to Hurum in backstreet cafés in Oslo.

This aspect of a 'culture of fear' played an important part in the framing of the NRC as blameworthy: Hurum complained about witnesses who had suddenly become impossible to contact in the weeks before the trial. In an interview with *Bistandsaktuelt*, the kidnap victim Astrid Sehl reflected that 'people are afraid to talk and they are afraid to talk about this case in particular. It was like this before, I just wish it still wasn't like that now' (Vandapuye 2015b). This view was repeated in an exchange with a NRC employee I encountered at a humanitarian innovation industry event a few weeks later, who reflected that as the organization had grown so much, now it was falling apart –and maybe this [the trial] needed to happen. This individual was highly critical of the managements approach to the court case, describing how the staff had gotten updates every day, but redacted, and that it was the practice at NRC that the leaders would push responsibility downwards. Allegations about a perceived information containment policy were deeply embarrassing for the NRC: While publicly emphasizing the need for 'turning every stone', it emerged during the trial that the organization had actively tried to suppress the circulation of critical internal evaluation reports—including sharing them with its own kidnapped staff— and opted against external audits (Vandapuye 2015c).

Once the proceedings had officially started, NRC's resistance towards being in the courtroom shifted towards an active discursive framing where the NRC being in court was presented as evidence of an inappropriate course of action taken by Steve Dennis, and where the Dadaab kidnapping was the result of staff incompetence. As noted in the anthropology of bureaucracy, bureaucrats often seek means of exonerating themselves from blame by passing the buck and blaming others, including superiors and colleagues: but they also direct blame 'downwards' —towards subordinates or aid recipients (Herzfeld 1993; Walkup 1997:5). During the trial, it emerged that Dennis, Sehl and Costes had not had their contracts renewed because projects 'ended', funding was short or because they were 'no longer qualified' when a job description was changed. While acknowledging that its breaches of information security were negligent under the rule of employer's liability in section 2-1 of the Compensation Act, the NRC denied that responsibility could be 'allocated to the top manager', suggesting that '[T]he concrete failure happened at the office in Dadaab and cannot be linked to the regional office in Nairobi or the head office in Oslo' (the Verdict, p 9).

Dennis' witnesses, mostly former employees of the NRC, emphasized that the NRC had fallen short by violating the spirit of the organizations ethos through its actions before, during and after the kidnapping; but also by insisting on a distinction between a legitimate, cost-effective service delivery approach based on employee sacrifice, and an illegitimate labor-law based duty of care. This perspective is illustrated by the heated exchanges over the NRC leaderships attempt to blame their former employees for their own kidnapping and for information insecurity, as well as over the decision to forego armed escorts and let the first car in the convoy 'look for IEDs [Improvised explosive devices] and assume the risk for such an attack' (the Verdict, p.30).

According to the NRC, Steve Dennis had been responsible for the security planning before the Secretary Generals visit, in his alleged capacity as 'security official' (the Verdict, p. 29). Astrid Sehl had been responsible for the leaked information about the visit: in response to the question of whether she thought Sehl was responsible for restricting information about the SG's visit, (then) country director Sadozai stated: 'she should have been in my opinion'. Several times during the trial, and to great dramaturgical effect, Hurum asked NRC's pro-bono lawyer whether she was really blaming his client and the other witnesses for their own kidnapping.

In the judgment, the court adopts a 'standing before the law' perspective on its own activities, and makes a forceful intervention into the dispute over *blame* through what I will argue is a culturally specific apportioning of *blameworthiness*: The values of Norwegian legal culture and the Nordic welfare ideals of accountability, participation, egalitarianism, fairness and trust in and respect for legal institutions were clearly echoed in the Judge's questioning of the parties during the trial, in particular in relation to witnesses' fear of being blacklisted in a sector dominated by short-term contracts, and the existence of a 'fear culture' within the organization. In the judgment, the court apportions blame through the common legal technique of an 'obiter dictum':

> Although it is of no direct consequence to the plaintiff's case, the Court makes reference ….to the fact that persons who presented criticism and asked for an external inquiry,

> have been characterized as 'troublemakers' and that they shortly afterwards were told that their employment contracts with the NRC would be terminated (43).

As previously noted, tiered security systems that provide national and international staff with radically different protection is a controversial but standard practice in the aid world. The danger of IEDs was a central issue in the planning of the convoy that would take the secretary general to visit sub-camps. The country director Sadozai explained 'that if the first car was hit by an IED attack, the other two cars of the convoy could avoid the attack. The court then refers to the previously suppressed evaluation report written by NRC's own security advisor, Chris Allan, who labelled this decision as an 'unacceptable risk', in particular as 'None of the staff in the first car, including Dennis, were informed neither of their function as warners' or of the risk they assumed' (the Verdict p. 26).

In sum, in articulating its views on the duty of care, the Court goes far beyond blaming the NRC for information insecurity and grossly negligent planning: By offering its staff up as possible fodder for an IED (and not consulting them about it), by firing kidnapped staff for being critical and for trying to blame them for the event during the trial, the Court perceived the NRC to be in radical violation of prevailing cultural norms governing the behavior of Norwegian employers.

Claiming

A key point of contestation during the trial was the claim that 'the law applies'. As argued by Dennis, 'Aid organizations are major employers with the same responsibility for their employees as other employers. (the Verdict, p.7). However, the NRC contested this view, claiming that the context was too temporally and geographically remote for a regular process of legal reasoning to apply: 'The case is to be processed pursuant to Norwegian compensation law, but the acts took place in a refugee camp in Dadaab in Kenya. The context cannot be compared to compensation cases normally heard by Norwegian courts' (The defendant's grounds for prayer of relief, the Verdict p. 3). In court, the NRC leadership, including Jan Egeland, challenged the courts legitimate authority to interfere in the affairs of the NRC –because of the difficult and urgent nature of its work but also because of its unique moral status—more directly. In the verdict, the Court acknowledges the uniqueness of the case but finds that in the absence of comparable cases and useful legal analogies, 'the Court can at least not see any basis for applying a milder due care standard for employers within the aid industry than the one that applies to other employers' (the Verdict p.13). In another obiter dictum, the Court emphasizes that a scenario involving fatalities or kidnapping at the head office in Norway would have resulted in an inquiry and a full investigation:

> The NRC musts confront its culture with regard to internal criticism. An external inquiry should have been performed. In this case, superiors have blamed their subordinates for decisions that were made at higher levels of the system (The Verdict p. 7).

These statements illustrate not only that the duty of care concept has journeyed from human resource management to legal liability, but also that the Court is explicit that *state law* is the appropriate legal framework for regulating the practices of

transnational humanitarian actors and the humanitarian worker subject position—not soft law norms and moral contracts created by the organizations themselves and invoked as part of a shared culture.

4. The verdict and its aftermath

In the end, the Court found the NRC to be liable for compensation and to have acted with gross negligence. To establish the basis for compensation, there had to be personal injury, evidence that NRC could have acted differently to avoid the kidnapping, and that there was a relationship between NRC's actions and the injury. The finding of 'gross negligence' on NRC's part required the Court to find evidence of conduct representing 'a clear deviation from responsible conduct'. The Court ruled that NRC should pay Dennis cumulative compensation of approximately NOK 5.5 million (around USD $650,000), which is a significant amount in the context of Norwegian tort law. The outcome is unusual in that the 'haves' did not come out ahead. The Guardian featured Dennis, Hurum and Sehl on its list of 'NGO heroes of 2015' (The Guardian 2015). Humanitarian think tanks and news sites quickly agreed that the Courts findings were relevant across other jurisdictions (IRIN NEWS 2015; Hoppe and Williamson 2016; Kemp and Merkelbach 2016). Over time this can set a precedence. While humanitarian practitioners familiar with the case acknowledged that their organizations grappled with many of the same challenges as the NRC and were quick to state that the NRC was still widely admired as an industry leader, none expressed sympathy with NRCs conduct in the Dennis case.

Of particular significance for both the outcome and perceptions of the outcome, is the way problems in organizational culture inadvertently became visible during the trial, the failure of its 'against the law' approach and in particular, the strategic misrecognition of how the organizations 'humanitarian values' aligned with the values of nordic welfarism. A tangible factor here was the quality of the pro bono services offered by a large Norwegian law firm. In collaboration with NRC leadership, the legal team miscalculated (and failed to modify) the appropriate tuning of NRC's court tactics from the very opening of the trial, where the teams aggressive lawyering seemed designed to project and protect NRC's leadership as the vulnerable and aggrieved party but instead antagonized the judge and gave Hurum the opportunity to perform the role of heroic cause lawyer for the duration of the trial.

The NRC has maintained its 'against the law approach'. The aftermath of the trial has been characterized by continued contestations over the legitimacy of the verdict, over the costs of construing duty of care as a legal liability issue; over how duty of care should be balanced against service delivery and with respect to the acceptability of tiered notions of staff-sacrifice and care offered. The NRC took 6 weeks to decide to *not* to appeal the case. According to rumors within the sector, the organization had tried to obtain the backing of large Geneva-based humanitarian organizations for an appeal, but had been told that the case should never have gone to court in the first place. The organization was also said to have hired two Norwegian law firms to give their opinion on the verdict. While I have not been able to verify these rumors, the important analytical point is that such rumors circulated. In an extraordinary board

meeting January 7 2016, the board issued the following statement, reiterating key themes from the trial:

> The Board does not share the court's assessment that the decisions and assessments made in Dadaab in 2012, including the mistakes documented by the organization itself, indicate gross negligence. However, the Board does not wish to appeal the judgment for the sake of employees who will be exposed to a new and demanding legal process. At a time when we face the biggest refugee crisis since the post-WWII aftermath, it has also been important to give the organization the opportunity to concentrate the forces on the relief work that refugee aid operates around the world. (NRC 2015) [my translation]

This statement represents an interesting vision of *legality* for an organization that is deeply engaged in the production of international soft law norms to regularize and standardize humanitarian practice, and who has historically considered legal aid to be a core programming activity. Hence, while humanitarianism has traditionally framed its credo (the imperatives of assisting according to need and without doing harm, and according to the principles of neutrality, humanity and universality (etc.)) in contrast to *politics*, the Dennis case exemplifies a framing in contrast to *law*.

Meanwhile, uncomfortable contestations continue over race and sacrifice. In 2016, it became known that Glenn Costes, represented by Hurum, was seeking compensation along the same lines as Steve Dennis. Costes explained to Bistandsaktuelt: 'I believed that all the victims would receive the same compensation … Instead, I find that they have offered me small money to make me silent about what happened' (Vandapuye 2016a). Costes and NRC settled in 2017 for an undisclosed [but allegedly modest] sum, as the organization was eager to avoid another court case (Vandapuye 2016b). In late 2017, a highly critical documentary 'Angrepet i Dadaab' (The attack in Dadaab) about the kidnapping was broadcasted on the Norwegian national TV. Asked whether he thought the size of his compensation was related to his status as a white male, Steve Dennis answered in the affirmative. The documentary also alleged that the NRC had pressured the illiterate mother of the killed driver, Abdi Ali, to accept a confidential agreement where she was given a modest lump sum in return for foregoing the right to make further claims, including going to court (NRK 2017). As of 2018, negotiations were continuing between the NRC and Abdi Isak Ibrahim, driver of one of the convoy cars, represented by Hurum (Hurum n.d.g).

Conclusion

Taking the legalization of the humanitarian transnational field as its point of departure, this article has examined the specific instance of the juridification of the duty of care norm. I have described how contestations over the duty of care norm arose from conflicting ideas of morality and law held by NRC management and fieldworkers, but also became part of a struggle over the organizations ethos. The NRC's rejection of a legalistic framing of the relationship between employers and employees seems paradoxical in a context where soft law production and litigation are relied on to enhance humanitarian accountability, and unexpected because the notion of law as a progressive tool for social change is an important part of Norwegian public culture (Baier 2013).

As the organization continues its global work under often extraordinarily difficult and insecure circumstances, has this resistance made the organization more and not less vulnerable to complex and expensive litigation? How will the possibility of litigation shape duty of care norms and the subject positions of victims, workers and leaders across the sector? Moreover, is the resistance towards law unique to the NRC or does it have broader implications? How are legal norms governing the humanitarian field vernacularized, mobilized or resisted by organizations, communities and individuals in host and donor countries?

Finally, while humanitarianism as discourse and practice has recently received much scholarly attention by sociocultural anthropologists, there is little socio-legal analysis of the humanitarian sector. Within anthropology little effort is made so far to connect the existing debate about humanitarianism to findings from legal anthropology or the ethnography of bureaucratic organizations. This article gives a tentative account of the Dennis case drawing on analytical frames borrowed from sociolegal studies while highlighting the particularities of the NRC as a humanitarian non-governmental organisation. In doing so, it is also a plea for a more comprehensive scholarly, and also specifically ethnographic, engagement with the practices and organizational cultures of the NRC and other humanitarian organizations—large and small.

Notes

1. From 1995, I have been an activist with Save the Children Youth Norway (PRESS), a student fundraiser for the NRC, a PRIO research professor in Humanitarian studies and co-founder of the Norwegian Center for Humanitarian studies and a professor at the Faculty of Law at the University of Oslo teaching humanitarian studies.
2. Key individuals named in the verdict have been named in the article, but generally, I have opted to omit the names of other NRC staff, although they have been named in Norwegian language media coverage and in the verdict.

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Case law

Steven Patrick Dennis v. Flyktninghjelpen Index no. 15-132886TVI-OTIR
Vance et al. v. CHF International et al., Case Number 8:11-cv-03210

Flavia Wagner v. Samaritan's Purse and Clayton Consultants Inc., United States District Court for the Southern District of New York, Index no. 11-cv-3375 (RJS/AJP)

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