

After his detailed and very well documented examination of the international legal system for protecting human rights, the author concludes that the system, albeit remarkable, still requires considerable efforts to improve its efficacy.

In the final chapter, the author recalls three essential factors for effective protection of the fundamental rights and freedoms and makes the following proposals to develop them:

first, he considers that the system of international legal regulations guaranteeing State security should be expanded, saying that it is up to governments and international organizations to create a climate of "trust" and to determine the best ways and means of solving problems in international relations;

secondly, he recommends that international responsibility for violations of human rights and fundamental liberties be reaffirmed and more widely shared;

thirdly, he advises that the United Nations system, whose purpose is to protect the effective exercise of rights and freedoms, be developed by drawing up instruments and establishing procedures designed to ensure that the relevant resolutions and decisions are respected.

In conclusion, the author gives the assurance that every effort helps to make modern international law a powerful tool in the struggle by the forces of democracy for peace, security, democracy and social progress.

Cristina Pellandini

LEGAL ASPECTS OF HUMANITARIAN INTERVENTION

THE PROTECTION OF DOCTORS ON VOLUNTARY HUMANITARIAN MISSIONS

The *Annales de droit international médical*, No. 33, 1986, published by the Medico-Legal Commission of Monaco, contains the papers of the Commission's tenth session, held in Monaco from 24 to 26 April 1986. The two topics discussed were: "Legal aspects of humanitarian intervention" and "The protection of doctors on voluntary humanitarian missions".

The first topic was presented in two introductory papers. One of these, entitled "Legal aspects of humanitarian intervention" was written by Professor Jovica Patrnogic, President of the International Institute of Humanitarian Law, in collaboration with Dr. Zidane Mériboute, a member of the ICRC's legal division. The other, entitled "Humanitarian intervention —international humanitarian law and the ICRC" was written by

Mr. Yves Sandoz, head of the ICRC's Principles and Law Department.¹

A third paper, delivered by Professor Maurice Torrelli of the University of Nice, discusses "The protection of doctors on voluntary humanitarian missions".

The first paper analyses the legal aspects of humanitarian intervention. The authors, Professor Patrnoic and Dr. Mériboute begin by explaining the theory whereby intervention could take place when a State seriously violates fundamental human rights; a notion that calls State sovereignty into question.

They then examine whether such humanitarian intervention is really permitted under international law. This investigation is based on an analysis of doctrine, jurisprudence, international legal instruments and actual practice, in the periods before and after the United Nations Charter.

The authors conclude that armed intervention for humanitarian purposes is prohibited under international law at present. Nevertheless, since respect for fundamental human rights is at the very basis of such intervention, it is important that international organizations such as the UN, the ICRC, the UNHCR and the League of Red Cross and Red Crescent Societies should be recognized as competent to intervene on purely humanitarian grounds. Finally, the authors examine the statutes, terms of reference and specific characteristics of all the above-mentioned organizations, apart from the UN.

They analyse the relevant provisions in instruments such as the 1949 Geneva Conventions and the 1977 Additional Protocols, the 1951 Convention on Refugees and its 1967 Protocol. This brings out the fact that the organizations concerned are recognized by international instruments and accepted by the international community as competent to undertake humanitarian work to help protected persons both in peacetime and in time of armed conflict.

The second paper, which supplements the first and is written by Yves Sandoz, examines the situations in which international humanitarian law may be applied and the role played by the ICRC. The author also considers Article 1, paragraph 1 common to the four Geneva Conventions, which implies that the Contracting Parties have a general obligation to ensure that the Conventions are being respected even in conflicts in which they are not involved. In this connection, he rules out the notion that (armed) intervention on humanitarian grounds could take place under Article 1 and develops the idea of encouragement to undertake humanitarian work. The latter, carried out by neutral and impartial organizations such as the ICRC, could take the place of humanitarian intervention and is obviously more acceptable to the States concerned. If this substitution is to be valid, however, humanitarian work must be systematically accepted whenever it is necessary.

¹ These two papers were reissued as an off-print by the Medico-Legal Commission, Monaco Palace, 1987, 40 pp. (in French only).

In the third paper, on "the protection of doctors on voluntary humanitarian missions", Maurice Torrelli begins by analysing the duty of such doctors to provide assistance whenever needed. He points out that the efforts of humanitarian organizations to bring relief in cases of armed conflict, famine and natural disaster are hampered by serious obstacles. He then examines the legal grounds for humanitarian intervention and underscores the disparity among the various legal systems governing situations of armed conflict and natural disaster. Although the right to receive humanitarian relief is widely recognized, the right to provide such relief continues to be vague, defective and hindered by "the dubious pride of States".

Humanitarian law does admittedly comprise provisions specifying conditions and procedures for the intervention of impartial humanitarian bodies. However, it must be ascertained whether these bodies meet the aforesaid conditions, particularly that of impartiality. According to the author this basic principle must govern both, medical relief organizations themselves and the activities of their staff. Medical teams must also be able to prove the authenticity, identity and professional competence of their members.

The major obstacles to the intervention of medical teams nonetheless remains the reaction of the States concerned, whose consent is virtually always required. Doctors on such missions may invoke the right to receive humanitarian relief and medical care, but it would perhaps be more realistic to make use of the potential of humanitarian law. In the case of international conflicts, humanitarian organizations have no choice but to obtain the consent of the belligerent States. However, the situation is different in the case of non-international armed conflicts. Article 3 common to the four Geneva Conventions provides for intervention by impartial humanitarian bodies in rebel-controlled territory upon the sole consent of the rebel forces, with no obligation to obtain the consent of the legitimate government. Although this interpretation of the law has not in practice been accepted by all States, Article 3 nevertheless constitutes legal grounds for intervention by medical teams and can thereby facilitate their protection.

In the second part of the paper, the author deals with the right of doctors to basic protection. He discusses the role of the emblem used as a protective device, the rules governing its use by emergency medical relief organizations and the provisions guarding against its misuse. He also examines the implementation of the general provisions for protection to which emergency medical missions are entitled under humanitarian law.

The author pays particular attention to the repatriation of doctors captured during humanitarian missions in alien territory, in cases of both legal and non-legal interventions, and to the basic protection to which the provision of medical assistance, in accordance with the medical code, entitles them.

He considers that the general guarantee applicable to medical missions covers the members of emergency medical teams whose intervention has not received prior authorization or has been contested by the government. This being the case, a captured doctor could not be prosecuted solely for having practiced according to his ethical code. "He may be accused only of illegal entry into a territory... Why should he not then be immediately escorted back to the border?"

One would be hard-pressed not to share the author's conclusion that "in view of the ever-increasing number of disasters of every kind, all humanitarian initiatives should be recognized and encouraged".

The Review

