# Assistance to the civilian population: the development and present state of international humanitarian law

**by Denise Plattner***

## 1. Introduction

Bearing in mind the plethora of rules applicable in time of war, jurists define international law rather elaborately as follows:

*"International humanitarian law applicable in armed conflict means international rules, established by treaties or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts and which, for humanitarian reasons, limit the right of Parties to a conflict to use the methods and means of warfare of their choice or protect persons and property that are, or may be, affected by conflict".*[1]

International humanitarian law is contained mainly in six international treaties - the four Geneva Conventions of 1949 and their two Additional Protocols of 1977. The Geneva Conventions are binding on nearly all States (169 States are party to them). Protocol I regulates international armed conflicts, with 110 States party, and

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[1] *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Yves Sandoz, Christophe Swinarski and Bruno Zimmermann, eds., International Committee of the Red Cross, Martinus Nijhoff Publishers, Geneva, 1987, p. xxvii.

Protocol II regulates non-international armed conflicts, with 100 States party.[2]

International humanitarian law is often styled *"jus in bello"* as opposed to *"jus ad bellum* or *"jus contra bellum"* (the rules of international law that prohibit the use of armed force). There is thus a sharp divide between *"jus contra bellum"* and *"jus in bello"*; this distinction preserves humanitarian law from any influence by *"jus contra bellum"*. In other words, humanitarian law has to be observed by all belligerents — both by the aggressor and by the victim of aggression; similarly, humanitarian law is applicable whatever the cause or the grounds for the war.

Contrary to widespread belief, the prohibition of war has tended to encourage the development of humanitarian law - the four Geneva Conventions were adopted just four years after the Charter of the United Nations. It seems therefore that progress in humanitarian law and progress in *"jus contra bellum"* go together.

With regard to international humanitarian law, the International Committee of the Red Cross (ICRC), as distinct from the National Red Cross and Red Crescent Societies and their Federation, fulfils various functions. States request the ICRC to prepare developments in international humanitarian law; this it did as soon as it was founded by proposing that they adopt the original Geneva Convention, that of 1864 for the Amelioration of the Condition of the Wounded in Armies in the Field.[3] The ICRC also has to ensure, in particular by visiting prisoners of war and monitoring conditions in occupied territory,[4] that humanitarian rules are being observed. Lastly, it has a right of initiative whereby, with the agreement of the authorities concerned, it takes any action it considers necessary to

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[2] As at 15 May 1992.

[3] See on this subject Article 5, paragraph 2(g), of the Statutes of the International Red Cross and Red Crescent Movement, adopted by the 25th International Conference of the Red Cross in Geneva in October 1986. The text of these Statutes was published in the *International Review of the Red Cross*, No. 256, Jan.-Feb. 1987, p. 25 ff.

[4] See Article 126 of the Third Geneva Convention and Article 143 of the Fourth Geneva Convention, which relate to supervision of the provisions made for the protection of prisoners of war and of civilian persons respectively. Article 5, paragraph 2(c), of the Statutes of the International Red Cross and Red Crescent Movement defines in general terms the various duties involved in supervising the application of international humanitarian law, when it states that "the role of the International Committee is to work for the faithful application of international humanitarian law applicable in armed conflicts" (see Note 3 above).

further the interests of victims of armed conflict and the aims of humanitarian law.[5].

## 2. Protection of the civilian population until 1949

Humanitarian law recognizes that the civilian population of a belligerent State is entitled to receive assistance. Accordingly it takes into account the almost inevitable effects of war on standards of living, and the fact that the consequent suffering serves no purpose because the sufferers take no direct part in hostilities. It may be as well to remind the reader at this point that humanitarian law is founded on the principle codified in 1868 by the Declaration of St. Petersburg, which states that "the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy".[6] As will be seen later, both in theory and in practice assistance to the civilian population is only one of the ways of protecting it from the rigours of armed conflict. This means that development of the rules governing assistance is linked to development of the humanitarian law protecting the civilian population.

Before 1949 there were no humanitarian rules relating specifically to the civilian population as such. The Regulations annexed to Hague Convention IV envisaged only some of the acts that could be committed by an army of occupation.[7] Unlike the provisions made as early as 1899 for prisoners of war, the annexed Regulations of 1907 did not mention aid to civilians. Curiously enough, the governments of that time were so sure that it was impossible to intern nationals of a belligerent State who were resident in the territory of

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[5] The ICRC's right of initiative is recognized, as regards international armed conflicts, in Article 9 of the First, Second and Third Geneva Conventions, and in the second sentence of Article 81, paragraph 1, of Additional Protocol I; and as regards non-international armed conflicts in the second paragraph of Article 3 common to the four Geneva Conventions. Article 5, paragraph 2(d), of the Statutes of the International Red Cross and Red Crescent Movement sanctions it as regards internal armed conflicts and strife (see Note 3 above).

[6] Declaration of St. Petersburg of 1868 to the Effect of Prohibiting the Use of Certain Projectiles in Wartime. This text appears in *The Laws of Armed Conflict, A Collection of Conventions, Resolutions and Other Documents*, Dietrich Schindler and Jiri Toman, eds., Martinus Nihoff Publishers, Dordrecht, Henry Dunant Institute, Geneva, 1988, pp. 285-288.

[7] See Articles 42-56 of the Regulations annexed to Hague Convention IV, 1899 and 1907 versions, Schindler/Toman, *op. cit.*, pp. 75-93.

the adverse party that they refused to include any such prohibition in those Regulations.[8]

The First World War gave the lie to such optimistic beliefs, and in 1921 the ICRC began to put forward preliminary drafts to deal with the humanitarian problems thrown up by the war. The most important of these proposals forbade deportations and the execution of hostages in occupied territory, and guaranteed civilians the right to correspond and receive relief.[9]

In 1929, however, governments would not commit themselves except in regard to members of the armed forces, and only the Convention on prisoners of war was adopted. In 1934 the International Conference of the Red Cross in Tokyo adopted another draft for submission to a Diplomatic Conference planned for 1940,[10] but it came too late, for the Second World War broke out in 1939. Had that draft been adopted, the legal and political context of the fate of the Jews and the civilian populations of Nazi-occupied territory would have been different, but there is no certainty that it could have prevented the barbarous cruelties that took place.

By the end of the Second World War nobody questioned the need for an instrument designed especially for the protection of civilians in time of war. The protection of wounded, sick and shipwrecked members of armed forces, and of prisoners of war, had been much improved by the adoption of the First, Second and Third Geneva Conventions of 1949, and the Fourth Geneva Convention of 1949 relative to the protection of civilian persons in time of war was a great advance on previous regulations. No wonder, then, that the first rules pertaining to assistance for civilians appeared in 1949.

It has however been said that already at the time of the First World War the ICRC had seen the need for new rules to protect civilians, for its Commentary on the Fourth Geneva Convention remarks that the first signs of total war, exposing civilians and soldiers to the same dangers and extending beyond the front line, had already appeared in the 1914-1918 war.[11]

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[8] *Commentary on the Fourth Geneva Convention relative to the protection of civilian persons in time of war*, published under the general editorship of Jean S. Pictet, ICRC, Geneva, 1958, p. 3.

[9] *Ibid.*, p. 4.

[10] *Ibid.*, p. 4.

[11] *Ibid.*, p. 3.

## 3. Regulations governing assistance in time of blockade and enemy occupation

The principal provisions of the Fourth Geneva Convention relative to the protection of civilian persons stem from the ICRC's work to bring assistance to distressed civilian populations from 1939 onwards and all the attendant difficulties.

Three economic factors dominated the Second World War. The first was destruction on an unprecedented scale by mechanized units, artillery and aircraft, devastating rural areas and towns alike and destroying equipment, livestock and means of transport. The second was the requisitioning of labour, raw materials and food by the Axis powers. The third was the blockade whereby each coalition of warring powers attempted to isolate its adversary and cut it off from its sources of supply; neutral trade too was subject to quotas and kept under supervision. These three factors together caused production to plummet all over Europe. The situation was particularly disastrous in countries like Belgium and Greece, which even in peacetime had to import much of their food. Deficiency diseases appeared and soon led to a sharp rise in mortality.[12]

Relying solely on its own Statutes — the Fourth Geneva Convention did not yet exist — the ICRC carried out relief operations under the aegis of the Joint Relief Commission set up by itself and the League of Red Cross Societies (now the International Federation of Red Cross and Red Crescent Societies) for assistance to civilian populations.[13] It also acted independently, as, for example, in Greece. The following figures will give some idea of the scale of these operations:

— the Joint Commission bought, transported and distributed 165,000 tonnes of relief supplies, worth 314 million Swiss francs, to 16 European countries including Belgium, France, the Netherlands, Yugoslavia and Poland, and later, in the immediate post-war period, to defeated Germany, Austria, Italy and Hungary;[14]

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[12] See François Bugnion, *Le Comité international de la Croix-Rouge et la protection des victimes de la guerre*, Thesis (in press), p. 263.

[13] *Report of the International Committee of the Red Cross on its activities during the Second World War (September 1, 1939-June 30, 1947).* Vol. III, Relief activities, Geneva, 1948, p. 363 ff.

[14] *Report of the Joint Relief Commission of the International Red Cross,*

— to supply Greece, Swedish vessels made 94 voyages between Canada (or Argentina) and Greece, delivering 17,000 tonnes of food monthly from September 1942 to March 1944, and even more thereafter.[15]

These relief operations necessarily required the agreement of the principal belligerents. The ICRC had therefore to conduct two separate sets of negotiations, respectively with Germany and with the Allies. On 11 January 1941, the Ministry of Foreign Affairs of the German Reich agreed in principle to relief operations for the benefit of the civilian population of the occupied territories, on the following conditions: consignments were to be collective, not individual; the German Red Cross was to organize and supervise the distribution of gifts, but they were to be distributed by local charitable organizations; representatives of donors might be allowed to visit occupied territories to see that aid was being properly distributed; and for its part Germany undertook that no part of the relief would be diverted to German troops or civilian administrators.[16]

The British government's reaction of 14 September 1940 was much less favourable to relief operations. It argued that it was the duty of the Occupying Power to provide food for occupied territory; that relief consignments might enable the Occupying Power to increase its requisitions of locally-produced foodstuffs; that occupied territory would not have been at risk from famine had the invader not seized all available reserves; and lastly that humanitarian considerations should not stand in the way of a blockade, because only rigorous blockade would bring hostilities to a speedy close. It did, however, make an exception for consignments of medicines for the sole use of the sick and wounded,[17] and in practice a few other exceptions to the blockade were negotiated, for example for the operation in Greece.

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*1941-1946*, Geneva, ICRC and League of Red Cross Societies, 1948, p. 441. See also Bugnion, *op. cit.*, p. 267.

[15] *Ravitaillement de la Grèce pendant l'occupation 1941-1944 et pendant les premiers cinq mois après la libération. Rapport final de la Commission de Gestion pour les secours en Grèce sous les auspices du Comité international de la Croix-Rouge*, ICRC, Athens, 1949, pp. 17-19 and pp. 168-171. See also Bugnion, *op. cit.*, p. 271.

[16] *Report of the Joint Relief Commission, op. cit.*, pp. 436-437. See also Bugnion, *op. cit.*, p. 265.

[17] *Report of the Joint Relief Commission, op. cit.*, p. 13. See also Bugnion, *op. cit.*, p. 265.

The British government's last argument would, at any rate nowadays, be considered absolutely incompatible with international humanitarian law; it is in fact an attempt to justify total war, which is exactly what international humanitarian law seeks to prevent.

The contrast between the British and German attitudes is particularly striking. It may be asked whether the German response was made for humanitarian reasons, and whether it would have been the same had the British government's reply welcomed relief operations. Perhaps, as the British feared, Germany agreed to relief operations in the hope of using them for its own benefit. No answer can be given to all these questions, but the precedent is instructive for several reasons.

First, the German reply shows that a relief operation should not be regarded as contrary to a belligerent's military interests. Secondly, a totalitarian State waging a war of aggression welcomed the ICRC's proposal, whereas a country regarded as one of the oldest democracies in the world refused it — for reasons one of which would now be regarded as unacceptable, to say the least. Admittedly Britain was a victim of aggression, and this tends to show that a country that goes to war for a just cause, or for a cause it believes to be just, will not necessarily behave in a humanitarian way. It would be wrong to jump to conclusions; but neither is it safe to assume that a country that respects human rights will always or in all circumstances respect humanitarian law.

The ICRC's negotiations on this matter led in particular to two highly important provisions of the Fourth Geneva Convention. Its Article 23, drafted with blockade in view, makes mandatory the free passage of certain goods necessary to the survival of the civilian population. The British government's reservations have not been overlooked, for an exception may be made to the obligation to allow the free passage of relief supplies where they would confer a definite advantage on the enemy. Now that the economic weapon has become particularly effective because States are dependent on each other in commercial relations, this provision is still of the greatest importance.

The duty of the Occupying Power to ensure that the population of occupied territory is properly supplied and the limits to its powers of requisition are set out in Article 55 of the Fourth Geneva Convention. If in spite of this the population of an occupied territory is still inadequately supplied, the Occupying Power is obliged by Article 59 of the Fourth Geneva Conventions to agree to relief schemes, in which supervision of distribution of supplies is compulsory.

## 4. Regulations governing assistance to the civilian population on national territory

The obligations imposed by Articles 23 and 55 ff. of the Fourth Geneva Convention apply only to the relations existing, by reason of war, between one State and another, as in Article 23, or between a State and a population other than its own, as in the provisions regulating relief operations on occupied territory.

The obligations of a State concerning assistance to its own nationals were elaborated at the Diplomatic Conference of 1974-1977, which adopted the two Protocols additional to the Geneva Conventions. Their appearance in the form of written rules coincided with a new approach to the humanitarian problems raised by armed conflicts.

The Diplomatic Conference of 1949 confined itself to alleviating the plight of a civilian population "in enemy hands" and therefore liable to suffer from arbitrary action by a foreign belligerent State. With few exceptions,[18] the Fourth Geneva Convention does not deal with protection of the population from hostilities, that is, from military operations, although in the Second World War the civilian population probably suffered about as much from indiscriminate bombing as from abuses of power by the occupying forces. As stated above, during the 1914-1918 war the ICRC realized the danger to victims of armed conflict represented by more powerful weapons and military aircraft. In all probability the situation immediately after the Second World War hardly lent itself to consideration of such matters, for the conduct of military operations in that war could reflect unfavourably on the Allies as well as on Nazi Germany.

In 1956, only ten years after the Second World War, the ICRC drew up a set of "Draft Rules for the Limitation of the Dangers incurred by the Civilian Population in time of War", which was not adopted by governments.[19] Another attempt was made in 1965 at the 20th International Conference of the Red Cross, and this time a resolution was adopted.[20] Some years later, in 1968, the United Nations,

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[18] See especially Part II of the Fourth Geneva Convention.

[19] *Commentary on the Additional Protocols, op. cit.*, p. 587, paragraphs 1831 and 1832.

[20] Resolution XXVIII, on the protection of civilian populations against the dangers of indiscriminate warfare, published in the *International Review of the Red Cross*, No. 56, November 1965, pp. 588-590. This resolution also appears in Schindler/Toman, *op. cit.*, pp. 259-260.

which had hitherto been reluctant to consider matters relating to armed conflict, adopted a resolution of similar content.[21] Some of the many resolutions on respect for the civilian population in time of war which subsequently emanated from the United Nations[22] or International Conferences of the Red Cross covered the conduct of military operations as well as the provision of supplies.[23]

When the Diplomatic Conference opened in 1974, the time was therefore ripe for the drafting of new rules to cover both subjects — the protection of civilian persons from hostilities, and assistance to the civilian population.

For several reasons these two subjects were, in a way, connected with each other. To begin with, it was probably realized throughout the blockade enforced in the Second World War, and in subsequent Third World armed conflicts, that the belligerents were using starvation as a weapon. It should be emphasized that both instruments adopted in 1977 strictly forbid attempts to starve the civilian population as a means of weakening the enemy.[24] The precedent of Biafra, although the armed conflict there was a non-international one, was certainly one of the underlying reasons for these provisions, and for those relating to assistance.[25] The strategy of total war, which abolishes the fundamental distinction between combatants and civilians, made it urgently necessary to devise rules to counter it and uphold the principle established in 1868 by the Declaration of St. Petersburg. The civilian population thus became an entity to be protected from any belligerent whatsoever, even if that belligerent was its own State. Paragraph 5, Article 54 of Additional Protocol I is revealing in that respect. It reads:

> "In recognition of the vital requirements of any Party to the conflict in the defence of its national territory against invasion,

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[21] Resolution 2444 (XXIII) of 19 December 1968, on respect for human rights in armed conflicts. See Schindler/Toman, *op. cit.*, pp. 263-264.

[22] See the list of these resolutions in the *Commentary on the Additional Protocols*, *op. cit.*, p. 588, Note 16.

[23] See especially Resolution 2675 (XXV) resuming the basic principles for the protection of civilian populations in armed conflicts, of 9 December 1970, in Schindler/Toman, *op. cit.*, pp. 167-268. See also, on relief actions, Resolution XXVI adopted by the 21st International Conference of the Red Cross, Istanbul, 1969, in *International Review of the Red Cross*, No. 104, November 1969, pp. 632-633.

[24] Articles 54 of Protocol I and 14 of Protocol II.

[25] On the relief activities undertaken during this conflict, see Thierry Hentsch, *Face au blocus: La Croix-Rouge internationale dans le Nigéria en guerre (1967-1970)*, Graduate Institute of International Studies, Geneva, 1973.

derogation from the prohibitions contained in paragraph 2 may be made by a Party to the conflict within such territory under its own control where required by imperative military necessity" (our underlining).

While these rules may have been made necessary by events, States were probably more prepared to accept them because of the international development of human rights.

Article 70 of Additional Protocol I, then, obliges a State at war to agree to a relief action which is humanitarian and impartial and conducted without any adverse distinction, and if the civilian population in its territory is insufficiently supplied with goods essential to its survival. The agreement of the State is needed, but this is in no way a matter of discretion and such agreement must be given as soon as the necessary conditions are fulfilled.[26] Nevertheless, the wording of Article 70 is less imperative than that of Article 59 of the Fourth Geneva Convention. The fact that the population is "national" and not foreign partly explains this difference.

## 5. The regulation of assistance in a non-international armed conflict

So far, this paper has confined itself to examining the humanitarian rules applicable in an international armed conflict, that is, a conflict which except for wars of national liberation is between States. However, humanitarian law also contains rules applicable to non-international armed conflicts, which have been by far the more frequent since the end of decolonization.

In 1949, States adopted for the first time a provision applicable to internal armed conflicts. It appears in each of the four Geneva Conventions, and is known as "Article 3 common to the Geneva Conventions". Just as the Second World War led to codification and development of international humanitarian law in respect of international armed conflicts, the Spanish Civil War prompted the codification and development of international humanitarian law in respect of non-international armed conflicts.[27]

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[26] See the *Commentary on the Additional Protocols, op. cit.*, p. 819, paragraph 2805.

[27] On the legal aspects of the Spanish Civil War see Antonio Cassese, "The Spanish Civil War and Customary Law", in *Current problems of International Law*,

Although Article 3 common to the Geneva Conventions fell far short of the ICRC drafts[28] its adoption was a great step forward for international humanitarian law, for it removes the *a priori* internal situation of a non-international armed conflict from the exclusive jurisdiction of the State concerned. Its injunctions are admittedly so basic that they seem very modest, but if they were duly respected in all internal armed conflicts, the plight of victims would be greatly alleviated.

Humanitarian law confers no legal status under international law on the parties to an internal armed conflict,[29] but it does impose the same obligations on each of them. These are basically the duty of treating humanely persons who take no direct part in hostilities or who have ceased to fight, the prohibition of summary executions, and the granting of the judicial guarantees necessary to a fair trial. Lastly, by authorizing the ICRC to offer its services to the parties to the conflict, common Article 3 gives a basis, laid down by the Conventions, for ICRC intervention in non-international armed conflicts.

Considerable though it is, the protection afforded by Article 3 common to the Conventions cannot be compared with that given by the imposing body of rules applicable to international armed conflicts. Understandably, therefore, the work done from the 1970s onwards for the adoption of new humanitarian rules intended these to cover internal as well as international armed conflicts. Accordingly, the ICRC submitted a draft Protocol on non-international armed conflicts[30] to the Diplomatic Conference of 1974-1977.

Discussion of this text was arduous and protracted.[31] New States particularly wanted wars of national liberation to be upgraded to the status of international armed conflicts. This was done by article 1, paragraph 4 of Additional Protocol I. The draft concerning internal

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Antonio Cassese, ed., Milan, 1975, pp. 287-317.

[28] See the *Commentary on the Fourth Geneva Convention, op. cit.*, p. 34.

[29] This was the decision of the States that adopted Article 3 common to the Geneva Conventions, since the last paragraph of that article reads: "The application of the preceding provisions shall not affect the legal status of the Parties to the conflict".

[30] See the *Draft Additional Protocols to the Geneva Conventions of 12 August 1949, Commentary*, ICRC, Geneva, October 1973, p. 130.

[31] On the historical background to Protocol II, see the *Commentary on the Additional Protocols*, paragraph 4360 ff., pp. 1325 ff. For an analytical account of the discussions, see *The Law of Non-International Armed Conflict, Protocol II to the 1949 Geneva Conventions*, Howard S. Levie, ed., Martinus Nijhoff Publishers, Dordrecht, 1987. For the history of the law see Rosemary Abi-Saab, *Droit humanitaire et conflits internes. Origines et évolution de la réglementation internationale*, Henry Dunant Institute, Geneva, 1986.

armed conflicts met with difficulties similar to those encountered in 1949. The rules finally adopted, which form Additional Protocol II, nevertheless develop the principles contained in Article 3 common to the Geneva Conventions. Above all, they cover various aspects of protection of the civilian population from hostilities.[32]

The ICRC draft contained an article on actions for the relief of the civilian population whose wording was identical with that proposed for international conflicts.[33] It was not accepted, but Additional Protocol II does contain a provision on international relief actions, Article 18, paragraph 2, which reads:

*"If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned".*

This article was strongly criticized because it makes a relief action subject to the agreement of the legal government. Article 18 should be considered as the equivalent of Article 70, Protocol I, in that, when correctly interpreted, it means that such agreement must be given if the necessary conditions are fulfilled,[34] and for as long as the relief operation is taking place on the territory controlled by the legal government. However, Protocol II does give the legal government an advantage over the rebel party by requiring the agreement of the legal government but not that of the rebel party, even if the relief operation takes place on territory under the latter's control. The legal government may then be tempted to refuse, since the relief will go to the "enemy", who is, to make matters worse, an "internal" enemy. Any such refusal by the legal government would however be a violation of humanitarian law under Article 18, paragraph 2, of Protocol II, as correctly interpreted; and where its refusal is intended to starve the civilian population as a means of weakening the enemy, that violation is aggravated because it infringes Article 14 of Protocol II.

Professor Bothe has investigated the legal basis of all the relief actions possible in such circumstances, and concludes that a unilateral

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[32] See Protocol II, Part IV.

[33] See *Draft Additional Protocols, op. cit.*, p. 165.

[34] See *Commentary on the Additional Protocols*, p. 1479, paragraph 4885.

ICRC relief action would be in accordance with international law.[35] The ICRC, however, does its best to win the confidence of all parties to the conflict and to persuade them to observe the basic tenets of humanitarian law. Although the relevant text entitles it only to offer its services, the principle that the ICRC may operate in a country ravaged by internal armed conflict is now generally accepted.

## 6. The present position as to humanitarian assistance

A party to an armed conflict cannot, however, be obliged to agree unconditionally to a relief action. The Fourth Geneva Convention provides that permission for the free passage of relief consignments may be conditional on their distribution being supervised by the bodies responsible for monitoring the application of humanitarian law, namely the Protecting Power or the ICRC. Relief consignments for the inhabitants of occupied territory must be distributed "with the co-operation and under the supervision of the Protecting Power". That duty may be delegated, by agreement between the Occupying Power and the Protecting Power, "to a neutral Power, to the International Committee of the Red Cross or to any other impartial humanitarian body" (Art. 61).

The 1977 texts reaffirmed the obligations laid down in 1949, but in more general wording. Thus, both Article 70 of Protocol I and Article 18 of Protocol II specify that relief actions must be conducted in a humanitarian and impartial fashion and without any adverse distinction.[36] Article 70, paragraph 1, of Protocol I states that offers of such relief that conform to these conditions shall not be regarded as interference in the armed conflict or as unfriendly acts. These provisos were repeated in Article 5 of the resolution on the protection of human rights and the principle of non-intervention in the internal affairs of States which was adopted on 13 September

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[35] Michael Bothe, "Relief Actions: The Position of the Recipient State", in *Assisting the Victims of Armed Conflicts and other Disasters*, Fritz Kalshoven, ed., Martinus Nijhoff Publishers, Dordrecht, 1989, pp. 92-97, at p. 96.

[36] See also "The Right to Humanitarian Assistance" in *Implementation of international humanitarian law, protection of the civilian population and persons hors de combat*, International Committee of the Red Cross, Doc. C. I74, 2/1, Geneva, 1991, pp. 6-12; and Resolution 12 adopted by the Council of Delegates of the International Red Cross and Red Crescent Movement, at its meeting of 28-30 November 1991 in Budapest, on humanitarian assistance in situations of armed conflict, in *International Review of the Cross*, No. 286, Jan.-Feb. 1992, pp. 56-57.

1989 by the Institute of International Law.[37] The International Court of Justice had already accepted them in its judgment in the case of military and paramilitary activities in and against Nicaragua.[38]

It is of course extremely difficult to say what are the conditions required by each of these principles separately. Can, for example, discriminatory behaviour be in accordance with the principle of humanity? Such criteria serve primarily to preserve the neutral character of aid to victims of armed conflicts, so that such aid shall not pervert the aims of humanitarian law. Know-how and experience are probably essential, and are important in winning the confidence of the belligerents. The agreement of all the parties concerned is also an indication (not necessarily the only one or an absolute one) that assistance does not interfere with military operations in the armed conflict. Article 71 of Protocol I, which deals with personnel participating in relief actions, clearly shows the inevitably precarious balance struck between humanitarian considerations and military necessity. For example, "Only in case of imperative military necessity may the activities of the relief personnel be limited or their movements temporarily restricted", but such personnel "shall take account of the security requirements of the Party in whose territory they are carrying out their duties."

## 7. Conclusions

The aims of international humanitarian law are too important to admit of ineffective regulations. Its history shows that it was not developed from pre-established concepts, but by full and accurate consideration of the realities of war, on which its texts throw a tragic

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[37] *Yearbook of the Institute of International Law*, Vol. 63-II, p. 345. Article 5 reads:

"An offer by a State, a group of States, an international organization or an impartial humanitarian body such as the International Committee of the Red Cross, of food or medical supplies to another State in whose territory the life or health of the population is seriously threatened cannot be considered an unlawful intervention in the internal affairs of that State. However, such offers of assistance shall not, particularly by virtue of the means used to implement them, take a form suggestive of a threat of armed intervention or any other measure of intimidation; assistance shall be granted and distributed without discrimination.

States in whose territories these emergency situations exist should not arbitrarily reject such offers of humanitarian assistance."

[38] ICJ, *Reports of Judgments, Advisory Opinions and Orders*, The Hague, 1986, p. 125, paragraph 243.

light for anyone who takes the trouble to look. Obligations must be imposed on leaders of an armed struggle, whether they are national authorities or combatants in an internal armed struggle. The balance between rights and obligations must be acceptable to the whole of the international community, for unless the constraints of humanitarian law are accepted by all it will not be applied. Only where humanitarian duties apply equally to both sides will law take its due place in war.

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