

*often chosen to keep silent. In their heart of hearts they know that silence, although a heavy burden to bear, is the best way, the one that will open the doors behind which suffering, solitude and misery are often to be found."*

*Françoise Perret*

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## INTERNATIONAL HUMANITARIAN LAW IN THE CONTEMPORARY WORLD

*From traditional humanitarian law  
to expanded humanitarian law*

Established more than twenty years ago to promote the dissemination and development of international humanitarian law and to work at all levels for its implementation, during this time the International Institute of Humanitarian Law has become — thanks to congresses, round tables, meetings of experts and training courses — a genuine humanitarian forum fostering ongoing dialogue between representatives of States, international, intergovernmental and non-governmental organizations, academic institutions and many leading figures interested in humanitarian problems.<sup>3</sup>

This booklet by Jovica Patrnogić, former President of the Institute, and Boško Jakovljević, an expert in humanitarian law,<sup>4</sup> is fully in line with the Institute's objectives and methods which are to make an up-to-date assessment of humanitarian law (including human rights law and refugee law), stress its merits, expose its weaknesses and examine ways of developing it in accordance with the realities of the present-day world so as to ensure the best possible protection for the ever-increasing number of victims of calamities in our time. To achieve this, the authors decided to "provoke" — in the best sense of the term — the reader into reacting to the ideas, initiatives and suggestions which are interspersed throughout the booklet.

The authors begin by tracing the origin of humanitarian law as positive law. They describe how it evolved since 1864 and highlight the main features of the Geneva Conventions and their Additional Protocols, together with the

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<sup>3</sup> In this connection see "Working for a humanitarian dialogue — the International Institute of Humanitarian Law celebrates its twentieth anniversary", *IRRC*, No. 278, September-October 1990, pp. 450-455.

<sup>4</sup> Jovica Patrnogić & Boško Jakovljević, *International Humanitarian Law in the Contemporary World*, International Institute of Humanitarian Law, San Remo, 1991, 64 pp. (Collection of publications — No. 10) (in English).

principles underlying the provisions of these treaties. They then go on to stress the efforts of the international community and institutions such as the International Red Cross and Red Crescent Movement progressively to develop this law.

After noting that many situations, such as internal disturbances and tension and the position of political detainees, still often elude legal definition, the authors advocate that what they term “traditional international humanitarian law” be gradually adapted to cover the numerous categories of victims of disaster, whether man-made or not, pointing out that the scope of international humanitarian law must henceforth be expanded so that in accordance with the principle of humanity, *all* who suffer are protected.

The authors are aware that the complexity of conflicts, disturbances and situations of tension, as well as the great variety in categories of victims, lead to disparities in terms of protection, if only because refugees, displaced persons, separated families, and victims of torture and violence come within the purview of different legal systems and especially of human rights law.

A useful outline is accordingly given of the main features of international humanitarian law and international human rights law and the views of the various schools of thought on the relationship between the two systems. First there is the integrationist theory, according to which the two systems are merged; secondly, there is the separatist theory which considers that the two systems are different and independent; thirdly, there is the complementarist theory according to which the two systems are distinct but complement each other. *Patrnogić and Jakovljević* seem to incline towards the latter theory. They stress the independence of humanitarian law (although, in their view, this independence is less evident in the case of internal conflicts); it is based upon the principle of neutrality — a characteristic which clearly is not shared by human rights law, as this is influenced by political factors.

The authors then go on to examine the complementarity of the two systems, making a comparative analysis of traditional humanitarian law, human rights law and refugee law to demonstrate how and to what extent they regulate such fundamental human rights as the right to life, the right to health, social rights, the protection of the family, and the right to humanitarian assistance.

Proceeding from this analysis, the authors single out the criteria which they would use to determine humanitarian law in the broader sense. This law would include the most fundamental human rights, those which ensure the human being's elementary needs and thus his or her survival, but also those which guarantee that he or she can enjoy the aforesaid rights. Its field of application would be extended to include emergency and, to use the authors' term, extraordinary situations (international and non-international armed conflicts, disturbances, tension, riots and other acts of violence). It would also cover displaced persons, detainees and anyone in a vulnerable position. To what extent would this expanded humanitarian law be applicable to natural disasters? Although the authors are not explicit on this point they do stress

that the basic right to survival and security must be ensured *in all circumstances*.

As the authors themselves indeed recognize, it is no easy task to define the exact boundaries between traditional humanitarian law, expanded humanitarian law and human rights law. However, the three systems do contain basic humanitarian principles which are common to them all and it would be interesting to set them down in the form of a declaration or statement of guiding principles.

Lastly, an attempt should be made to harmonize the provisions of these various legal systems and to ensure that they are applied simultaneously. To this end, the authors recommend several things that could be done:

1. study the legal instruments belonging to traditional humanitarian law, human rights instruments and humanitarian law in a broad sense and make efforts to eliminate contradictions;
2. study measures to implement each of the three systems so as to avoid duplication and make them applicable simultaneously to all situations;
3. elaborate additional rules, where necessary, to specify, by developing the law appropriately, the duties corresponding to each of these rights, these duties falling on the authorities, the organizations concerned and individuals;
4. develop and reinforce collaboration of the institutions concerned in the application of international instruments;
5. introduce an obligatory system for disseminating humanitarian rules, as it exists for international humanitarian law applicable in armed conflicts, and to intensify promotion measures through teaching and training;
6. include in this action intergovernmental — and in particular non-governmental — organizations which are concerned with humanitarian problems.

*Jacques Meurant*

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## COUNTER-MEASURES IN PUBLIC INTERNATIONAL LAW

Dr. Zouhair Al-Hassani's work on counter-measures in public international law\* is innovative both in subject and content. It is also, to our knowledge, unique among Arab legal works. In addition to the introduction and conclu-

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\* Zouhair Al-Hassani, *Counter-measures in public international law*, University of Garyounes, Damascus, 1988, 229 pp. (in Arabic).