

Assistance to victims of war in international humanitarian law and humanitarian practice

To crown the feature on humanitarian assistance published in the May-June 1992 issue of the Review, we now present the text of a lecture given by ICRC President Cornelio Sommaruga in several European cities in recent months, among them Freiburg im Breisgau, Como, Oslo and Paris.

Speaking on the subject "Assistance to victims of war in international humanitarian law and humanitarian practice", Mr. Sommaruga addressed people from the realms of politics and economics, the academic world and the Red Cross. He strongly reaffirmed the importance of the Fundamental Principles of the Red Cross and the Red Crescent — above all those of impartiality, neutrality and independence — on which the humanitarian work of the ICRC is based. Using examples from recent conflicts, he demonstrated that respect for these principles is the best guarantee for credibility and effectiveness in humanitarian aid. Apart from anything else, this is an eloquent reply to those who are tempted to mix politics with humanitarianism.

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Last year's events in the Middle East and Yugoslavia have directed public awareness — finally, I would say — to the difficulty of providing efficient *assistance* to the victims of armed conflict. Consciousness of these difficulties has set in motion a discussion which unfortunately demonstrates how little the public has so far been prepared to grapple seriously with this question.

The problem has existed since the beginning of humanitarian aid. In the 129 years of its existence, the International Committee of the Red Cross has again and again had the painful experience that victims of wars and persecutions have waited in vain for assistance from the Red Cross. The impossibility during the last World War of helping the

millions of people persecuted and murdered by the Nazis has indeed been the most traumatic experience of our history. But even after World War II tragedies have taken place again and again without humanitarian organizations being able to intervene. In Tibet and Burma, for example, ICRC delegates are still refused access to areas of conflict, and in Sudan, in Ethiopia and quite recently in Iran, the ICRC has had to interrupt its work because the authorities have refused it entry to the war zones or to the camps of prisoners of war.

The official reasons given for the reluctance of holders of political and military power to allow humanitarian assistance range from reference to the sovereignty of the State and security considerations to the statement that sufficient aid is already available and that no outside help is needed, not to mention bureaucratic objections. In most cases, however, these reasons conceal the concern of military and political authorities that humanitarian helpers and unwelcome witnesses will hinder the prosecution of war, the means of which are considered effective but not necessarily praiseworthy.

The refusal of certain governments to accept offers of aid thus does not stem from fear of material help, which on the contrary would often be extremely welcome, but can be attributed to a frequently neglected but basic aspect of humanitarian assistance, in particular in war situations or those of political tension, namely the *protection* that assistance inevitably entails. To provide assistance without protection would be absurd. What is the point of providing medicine to wounded people in a hospital if that same hospital is being bombarded? Why give a refugee food if immediately afterwards he is sent back home across minefields? What use is a bar of soap to a prisoner undergoing torture? Access to the victims of war must allow action on their behalf, on the one hand providing them with the necessary material assistance, but on the other hand also protecting them from those dangers which prolong and aggravate their suffering.

Thanks to the founders of the Red Cross this close *interrelationship* between protection and assistance has been clearly recognized. It was laid down for the first time in the 1864 Geneva Conventions, which established the right of the war-wounded to care and protection and the right of those caring for them to be free to work unharmed and unimpeded. Article 5 of this Convention even stipulates that “the presence of any wounded combatant receiving shelter and care in a house shall ensure its protection”. In this way, victims of war became bearers of a right to be protected, which was also transferred to those caring for them. The visible sign of this right to protection was a red cross. It is important that the *red cross emblem* should not, as often

happens, be misunderstood as being purely a symbol of assistance and therefore wrongly used. It is first and foremost a symbol of protection and its use for other purposes jeopardizes its protective function.

After the first-ever Geneva Convention was adopted in 1864, the protection of *international humanitarian law* was progressively extended, based on experiences in the major wars of this century, to other categories of victims of war. One after another, specific international agreements were concluded covering sick, wounded and shipwrecked victims of naval warfare, prisoners of war and civilians. All these were combined after the Second World War in a single set of treaties, the four Geneva Conventions of 12 August 1949. The emergence of new forms of warfare and the development of new military and civilian technologies continue to demand the adaptation of international humanitarian law to new threats. For example, Protocol I of 1977 additional to the Geneva Conventions takes account for the first time of the threat posed to the natural environment by war and prohibits attacks on dams, dykes and nuclear power stations. Additional Protocol II of 1977 closed a further gap, for with the exception of Article 3 common to all four Geneva Conventions, the latter's provisions are binding only in the event of armed conflict between States. Under Protocol II, certain arrangements for assistance and protection to the victims of hostilities must now also be made by the Parties to *internal* armed conflict.

In recent years, discussions on humanitarian aid have focused not least on the demand that a "*right to intervene on humanitarian grounds*" ("*le droit d'ingérence humanitaire*") be created. Claiming this right to intervene — or to interfere — is to demand a paradox. Neither so-called "common sense" nor ethical considerations allow us to view the assistance which we provide to persons in need as an unjustified interference — on the contrary: *providing assistance is a duty*. Every philosophical and religious tradition contains texts to impress this obligation upon us, beginning with the Good Samaritan of Christian tradition.

International humanitarian law likewise does not view help as interference. The Geneva Conventions and their Additional Protocols contain more than twenty provisions on medical and other material assistance to which victims of armed conflict are entitled.

For example, Article 70 of Additional Protocol I states clearly in relation to aid to civilian populations in need that "Offers of such relief shall not be regarded as interference in the armed conflict or as unfriendly acts. (...) The Parties to the conflict and each High Contracting Party shall allow and facilitate the rapid and unimpeded

passage of all relief consignments, equipment and personnel (...) even if such assistance is destined for the civilian population of the adverse Party". What are the *conditions* which govern the entitlement to unimpeded assistance? There are two: the actual needs of the civilian population and the humanitarian and impartial nature of the assistance. While it is true that under the same Article 70, relief operations require the consent of the State concerned, the context and the discussion on the formulation of these provisions at the 1974-1977 Diplomatic Conference nonetheless clearly show that consent must be given if the above-mentioned conditions are met. In this way, consent becomes an expression of the sovereignty of the State, which is thereby fulfilling obligations it has accepted, for by ratifying the Geneva Conventions the Contracting Parties have undertaken, in the free exercise of their sovereign rights, to respect the *right of victims to be assisted*.

The consent of the authorities in an area in which a humanitarian operation is being conducted also has a very practical value, for how can one in actual fact impose assistance on a country — in an area controlled by the government — against its will? Or how is it possible to provide this help, in all its cultural, social, logistic and administrative aspects, without the cooperation of the local people in command or even against their resistance?

I wish to stress this latter point: it is not the formal consent of the government that we seek to go somewhere in the country where it is not in control. In such cases we require the consent of those exerting effective power in the specific region where there are humanitarian needs.

There is of course one answer if there is no consent, namely by force. And the much-publicized "Provide Comfort" operation carried out one year ago in Iraqi Kurdistan is an example of this. However, any armed intervention, even for reputedly humanitarian purposes, gives rise to doubts as to its genuinely humanitarian and impartial character. Such doubts are but accentuated by the slogan of "humanitarian interference" and appear to confirm a suspicion, long held by many recipients of humanitarian aid, as to whether the help so generously given is really disinterested? Is it not rather a particularly artful, indeed devious form of political intervention? The historical experience of southern countries has various times confirmed the justification of this suspicion. How often in the past have settlers, preachers and whole armies overrun those countries, with joyous tidings on their lips and greed for power and riches in their hearts!

And yet there is a *right of victims to humanitarian assistance* and a duty for all of us to provide this help. In international humanitarian law States recognize this right and duty and set the rules by which they must be fulfilled. The simple, basic rule for assistance to victims of armed conflict is that the assistance must be provided in an impartial manner by a neutral, independent organization. Almost everywhere that this stipulation appears in the Geneva Conventions, mention of the *neutral organization* is accompanied by the words “such as the International Committee of the Red Cross”. Indeed, in the eyes of the framers of the 1949 Conventions the activities of the ICRC set the supreme example for humanitarian action. This is really rather surprising when one considers that the ICRC was founded as a private institution, all of whose members and the majority of whose delegates and other staff are Swiss. The development from being a private club to becoming a subject of international law is not, however, the result of chance, skilful public relations or political influence. Rather it is the outcome of the ICRC’s unceasing, practical work in the world’s war zones. From the battlefields in Schleswig-Holstein in 1864 until today, for example in the civil war in Somalia or in Nagorno-Karabakh, the ICRC has developed an expertise in humanitarian action which is unique in its kind. This is backed by the experience of thousands of delegates and by theoretical discussion, critical debate and careful consideration within the Committee itself. This humanitarian mission and its success would have been inconceivable without the moral and material support of the entire International Red Cross and Red Crescent Movement with its meanwhile 151 National Societies.

The bases for this humanitarian action lie in the *Fundamental Principles of the Red Cross and the Red Crescent*: humanity, impartiality, neutrality, independence, voluntary service, unity and universality. Three of these principles are particularly important for such action, namely impartiality, neutrality and independence.

Independence forms the basis of the ICRC’s neutral and impartial work. The ICRC is independent of other international organizations, and of governments, pressure groups and business enterprises. Maintaining this independence is not easy. It involves withstanding the attempts of donor nation governments to gain influence and the greater or lesser pressure exerted by the parties to an armed conflict, in order to be able to work according to exclusively humanitarian criteria. The importance of credible independence is clearly evident in the ICRC’s role as a neutral humanitarian intermediary. Protection and assistance to the victims of war are given between battlefronts, in no man’s land, and in disputed territory. The evacuation of injured persons from a

besieged town, visits to prisoners of war or the distribution of relief supplies to inhabitants of an occupied area must be negotiated by the ICRC delegates with all parties to an armed conflict. Delegates themselves travel to the areas of conflict to determine needs, accompany the consignments of relief supplies and distribute them to the recipients. All this is possible only if the ICRC's independence is credible to our negotiating partners, and to all military and political powers in our area of action.

Let me take *Iraq* as an example to illustrate the importance of this credibility. After the UN's imposition of the embargo and threat of military intervention, the representatives of most international organizations and the diplomats of most States gradually withdrew from Baghdad. The ICRC kept its delegation there throughout the entire Gulf War. Whilst the anti-Iraq Coalition and the Western media were reporting a quick, clean war against Saddam Hussein, the ICRC continued to warn about the distressing consequences of armed intervention, calling on the parties to the conflict to respect international humanitarian law. When the suffering of the civilian population following the international war and the uprisings in the south and the north of the country became known, ICRC delegates were already on the spot: they knew the country and the people, at whose side they had endured the war, and they knew the different persons in command. And the authorities knew the ICRC: independent of the powers which had waged the war against Iraq, independent of the United Nations, which had declared the embargo, independent of the Swiss Government, which had autonomously aligned itself with the UN sanctions, but an ICRC which was ready to act. The first shipments of aid reached Baghdad whilst the war was still continuing, and when the question how to help the hundreds of thousands of displaced Kurds arose, the first delegates — with the consent of the Iraqi authorities — set off for the mountains of Kurdistan to survey the situation and deliver the first relief supplies. Aid by the Allies — against Iraqi resistance — conversely had to be brought in using enormous military resources and in very difficult logistic conditions. The ICRC, with the help of personnel from West European Red Cross Societies, is still there to this day, working alongside UNHCR operations — conducted under the protection of UN guards.

What is the position of the *National Red Cross and Red Crescent Societies* as regards independence? This fundamental principle, which is defined by the Statutes of the International Red Cross, states explicitly that the National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respec-

tive countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the Red Cross principles. This also places a major responsibility on the governments of States party to the Geneva Conventions (today numbering 170) since they, together with the 151 National Red Cross and Red Crescent Societies, adopted the present Statutes of the International Red Cross in 1986. These stipulate that "the States shall at all times respect the adherence by all the components of the Movement to the Fundamental Principles".

Needless to say, independence at the national level is just as indispensable. If the Red Cross were not able to decide for itself, speak for itself and act of its own volition, it would not be what it is. Its task is constantly to show the way of compassion and justice. It must at all times be able to be true to its humanitarian ideals and apply its own principles. The Red Cross must, without fail, inspire confidence in every man and woman throughout the world, including those who are powerless, those who most need its protection and assistance.

The National Societies must above all show independence *vis-à-vis* the political authorities in their country. They too must resist any political interference in their decision-making bodies. In practice, this means that any post held within the Red Cross must be entirely distinct from other political or administrative responsibilities, just as the Society itself must remain a private and autonomous institution.

The International Committee must be able to count on the independence of the National Societies. Maintaining independence means above all avoiding any politicization of the International Red Cross and Red Crescent Movement. This is the only way to maintain the credibility of its neutral and impartial humanitarian work as a whole. On a worldwide scale, the Movement has one single image: it is the Red Cross. If even one National Society fails to live up to the standards I have mentioned, the entire Movement suffers. Thus, the credibility of the International Committee and its humanitarian work can depend on the true autonomy of one single National Society, and vice versa.

The second basic principle for effective humanitarian assistance is neutrality. The concept of neutrality has changed meaning somewhat in recent history and is today often misunderstood. For the Red Cross, neutrality means non-intervention in political discussions, the refusal to take a stance on political issues. For the ICRC, working in the context of political disputes which can flare into armed combat, neutrality is quite simply the only possible way of preserving the necessary scope for humanitarian action.

Neutrality does not however mean indifference to circumstances and in particular to the consequences of conflicts. On the contrary, neutrality is a means of defending humanitarian concerns with even greater conviction. The neutrality of the ICRC is different from that of a State — including that of Switzerland — it is a code of conduct which must be observed without fail at all times if the ICRC is to accomplish its objectives and discharge its international mandate.

The specific neutrality and independence of the ICRC are also legally recognized in the Geneva Conventions and in the Statutes of the International Red Cross and Red Crescent Movement. They are further guaranteed by the strict procedure of cooptation of the members of the International Committee, the governing body of the ICRC, in secret ballots and by a qualified majority. Its single nationality is yet another important token of independence and efficiency. The fact that it is exclusively Swiss is in my view less important, but well understood because of the historic initiative taken by five Geneva citizens in 1863, entirely independently of the Swiss Government, who wished to build up the new institution on a private basis. I believe that there is at present no valid alternative to a mononational ICRC with a coopted governing body composed of Swiss citizens, if it is to discharge its mandate as a specifically neutral humanitarian intermediary efficiently and in complete independence.

Let me give you an example in which the neutrality of words is conducive to the effectiveness of deeds, and how we do not decide who is right or wrong, but act when someone does wrong. Let me speak of Yugoslavia. In the war between Croatia and Serbia, an intensive propaganda campaign is being waged about alleged — and real — violations of human rights and international humanitarian law. The parties to the conflict are accusing each other of the most terrible massacres, of torture and deportations. The ICRC, however, acts: it attempts wherever possible to be on the spot when civilians get caught up in the war, it visits prisoners and organizes their release. It has called on the parties to the conflict to protect the civilian population, but has also intervened directly and very specifically with the military and political authorities when the rules of international law were being flouted. On several occasions it has furthermore brought the representatives of the parties to the conflict together around a table in Geneva to devise concrete suggestions for solving serious problems of humanitarian concern. As a result, the parties have agreed on procedures to search for missing persons and to transmit and investigate allegations of breaches of international law. In this way, instruments have been created that lead out of the vicious circle of accusation and retaliation,

render negotiation possible and — who knows — mark a first step towards a defusing of the confrontation. A fourth meeting of this kind, chaired by the ICRC and attended by representatives of Serbia, Croatia, the Yugoslav Federal Army and the Federal Government, took place at ministerial level (including army generals) in Geneva in March 1992.

Our third principle is *impartiality*. This means that the protection and assistance of the Red Cross must be given without consideration of political, social, ethnic or ideological criteria and only with regard to actual needs. Impartiality means providing human beings with protection and assistance because they are human beings, and not because they belong to any specific category. All victims are entitled to the same assistance, and nobody can be excluded. This principle at times demands a certain toughness when it has to be enforced. Parties to an armed conflict will often accept aid for parts of a population which are politically close to them, whilst not allowing assistance for “enemy” or “unworthy” sections of the population. In these cases the question arises as to whether one should give help wherever possible and hope thereby to earn goodwill for helping later wherever needed? For example, during the Iraqi occupation of *Kuwait*, i.e. from 2 August 1990, the Iraqi authorities were apparently ready, after hard negotiations, to allow ICRC delegates to evaluate needs and provide assistance everywhere except in Kuwait. However, the population of the occupied territory that Kuwait had become not only had major needs, but also a vested right to the protection of the ICRC, and it was unacceptable to exclude them in particular from assistance. For this reason, until the end of the occupation of Kuwait the ICRC had to confront the Iraqi Government with the alternative that either aid would be provided for everyone or for no one. We did depart from this admittedly strict position during the bombardment of Baghdad, in order to provide Iraqi hospitals with emergency aid (medical supplies and in particular drinking water).

As you can see, humanitarian assistance is a balancing act in which effective protection and active assistance depend on credible impartiality and independence. That such assistance is possible is demonstrated by the worldwide activity of the International Committee of the Red Cross. More than eight hundred delegates and other expatriate staff and 5,000 local employees are currently working to help the victims of some thirty conflicts. These include many staff members seconded to us by Red Cross and Red Crescent Societies for specific assignments. In areas on the edge of war zones we are moreover

currently running 13 surgical hospitals and 26 orthopaedic centres for the rehabilitation of amputees.

In 1991, not only were 89,000 tonnes of food worth more than \$100 million plus medical and other relief supplies worth \$25 million distributed in war zones; 153,759 prisoners of war and detainees were also visited. And the fact that these activities were carried out with the agreement of the parties to armed conflicts demonstrates the extent of the trust placed by the political and military authorities of these countries in the independence and neutrality of the ICRC. But although failures and temporary setbacks can admittedly occur at any moment — as in Iran today — that is no reason to give way to the politization of humanitarian action.

We do believe in the possibility and the effectiveness of humanitarian action and of international humanitarian law. They serve as an essential basis for countering the threat posed to mankind by war, injustice and sickness. However, the Red Cross needs the *convinced and active support of the public and the community of nations*.

With regard to humanitarian work this means, on the one hand, that we need political and material support, and on the other hand that our *political independence* must be guaranteed. At a time when the world is dividing more and more clearly into two political blocks, the affluent North and the indigent South, humanitarian institutions must not be used to promote the power or economic policy of the wealthy *vis-à-vis* the poor, but must be an instrument expressing true solidarity between human beings.

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