

XVIIth Round Table of the International Institute of Humanitarian Law

(San Remo, 2-4 September 1992)

The XVIIth Round Table on Current Problems of International Humanitarian Law, organized by the International Institute of Humanitarian Law (IIHL), took place in San Remo from 2 to 4 September 1992.

Placed under the auspices of the International Committee of the Red Cross, the United Nations High Commissioner for Refugees, the United Nations Human Rights Centre, the International Organization for Migration and the International Federation of Red Cross and Red Crescent Societies, the meeting was attended by 120 participants, including the representatives of some fifteen National Red Cross and Red Crescent Societies, academics and representatives of diplomatic missions and non-governmental organizations.

The ICRC was represented at the Round Table by Mr. Yves Sandoz, a member of the Executive Board and Director for Principles, Law and Relations with the Movement, and Mr. René Kosirmik, Head of the Legal Division and the Cooperation-Dissemination Division, together with Ms. Denise Plattner, Mr. Jacques Meurant and Dr. Pierre Perrin.

This year's Round Table was devoted to the single theme "The Evolution of the Right to Assistance".

After *Dr. Enrique Syquia*, President of the International Institute of Humanitarian Law, had welcomed the participants, *Professor Jovica Patrnogic*, Honorary President of the IIHL, introduced the Round Table's subject for discussion: he began by pointing out that in view of the new and large-scale suffering caused by recent conflicts, the responsibility of the international community for protecting and assisting victims, including that of the UN, UNHCR, the ICRC and humanitarian organizations as a whole, had considerably increased.

He then spoke of the right to humanitarian aid, the legal provisions in which it is enshrined and its application by the United Nations and

humanitarian organizations, stressing the shortcomings of the law governing internal conflicts and the political and military problems raised by the notion of sovereignty, especially the problem of having access to victims.

Convinced that humanitarian aid should always be carried out in conformity with the principles of humanity, neutrality and impartiality inherent in any type of humanitarian work, he invited the participants to examine new developments in the right to humanitarian assistance both as regards the form it took and how it was implemented. Prevention and coordination should not, he said, be overlooked.

Dr. Franck Verhagen, representative of H.E. Mr. Jan Eliasson, United Nations Under-Secretary-General for Humanitarian Affairs, referred to the complexity of issues connected with humanitarian aid and stressed the importance of coordinating international assistance during emergency situations. He hoped that the Round Table would find a way of reconciling the concept of national sovereignty with that of the right to assistance.

The meeting was honoured by the presence of *Mrs. Barbara Hendricks*, UNHCR Goodwill Ambassador and Honorary Member of the IIHL. Several experts put forward their opinions and suggestions concerning the problem of providing humanitarian assistance during conflict situations.

Summarized below are the reports submitted to the meeting, which were commended for their high-mindedness and the originality of their ideas.

Mr. Yves Sandoz, who opened the discussions, felt that the serious violations and irregularities observed during recent conflicts should be attributed less to the legal provisions themselves, which on the whole were satisfactory, than to their application. Experience had shown that international humanitarian law formed a well thought out and carefully balanced body of law. What needed reviewing were the practical arrangements governing relief operations and their coordination, together with the procedures for consultation and concerted action.

To his way of thinking, the main problem was that international humanitarian law enjoyed only a marginal place in international relations. The crux of the matter was to what extent world authorities were today really willing to subject themselves to a system based on international law. Despite this uncertainty, action had to be taken and courage and imagination shown, like the humanitarian organizations at present working in Somalia and the former Yugoslavia.

Another serious question came to mind: up to what point should those traditionally involved in humanitarian action expect States to

provide the necessary human, financial and logistic support to cater for humanitarian needs within the framework of the system of international humanitarian law, and at what stage should they make it plain that the system was no longer working, and force the community of States to face up to their responsibilities when a situation became too much for humanitarian organizations to handle.

The system of international humanitarian law was based on the consent of States and everything must be done to convince the parties in conflict and, where appropriate, to obtain their financial and logistic support. Mr. Sandoz acknowledged that, in dramatic situations endangering thousands or even millions of lives, armed intervention (within the framework provided for in the UN Charter) could not be ruled out.

He concluded by stating that international humanitarian law could not be used as an alibi to ignore the underlying problems: poverty, illiteracy, overpopulation and the disintegration of structures. Those questions must therefore be tackled as a matter of priority if we wanted to move towards solving them and improving respect for the law.

Mr. Hans Thoolen, Chief of the Centre for Documentation on Refugees, representing Mr. Leonardo Franco, Director of International Protection, referred to Security Council decisions taken during recent conflicts and which were gradually eroding the distinction between humanitarian assistance and humanitarian intervention. One of the crucial problems facing the United Nations was how to reconcile the need for more effective international measures with the principle of sovereignty. He cited Resolution 46/182 adopted by the United Nations General Assembly on 19 December 1991 entitled "Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations" and the guiding principles it contained on humanitarian assistance, i.e. the need for it to be provided in accordance with the principles of humanity, neutrality and impartiality. He went on to describe and assess UNHCR operations in several countries of the world to help refugees displaced both within and outside their national borders, pointing specifically to the establishment of "corridors of tranquillity" in Sudan and "zones of peace" in Angola, Ethiopia, Iraq and, most recently, in the former Yugoslavia.

He concluded by stressing that the establishment of a well-defined and internationally accepted right to assistance could be of major importance for the work of UNHCR.

Mr. Carlos Villa Durán, on behalf of Mr. Ibrahim Fall, Director of the Human Rights Centre, spoke of the right of access for humanitarian purposes during an armed conflict, and the problems involved.

To exercise this right required the consent of the State (which was expected to act in good faith). In that connection, he drew attention to the provisions under humanitarian law concerning the right to humanitarian assistance and the relevant resolutions adopted by the United Nations General Assembly and the Security Council. He also pointed out that the only possibility for having recourse to force under the United Nations system was to be found in Chapter VII of the Charter ("Action with respect to threats to the peace, breaches of the peace, and acts of aggression"). The precedents established in Bosnia-Herzegovina and Somalia demonstrated the Council's determination to resort to force, if necessary, to get aid through to the victims. He concluded by commenting that, although humanitarian assistance had long been provided for in humanitarian law, the conditions governing access to victims still needed to be improved in order to render such aid more effective.

On behalf of the International Federation of Red Cross and Red Crescent Societies, *Mr. Göran Bäckstrand*, Adviser, International Affairs, described how the effects of natural and man-made disasters were becoming ever more complex: they were bringing about the collapse of political and administrative structures, seriously disrupting economic and social activities and leading to violence, famine, epidemics and mass population displacements. Moreover the provision of aid was often seen as a political act.

As a result we faced, he said, a most serious humanitarian gap: since States were either curtailing their commitments for various reasons or requirements were in excess of agencies' means, there was a growing number of vulnerable groups which the humanitarian agencies were unable to assist.

To remedy this situation, the Federation was proposing a Code of Conduct to help non-governmental organizations set a base-line of ethical and behavioural standards for their work during disasters and to improve information-sharing and cooperation between humanitarian agencies. Stressing that the prime motivation for any humanitarian response was — and must continue to be — concern to alleviate human suffering, the Code laid down a series of obligations for non-governmental organizations and a series of commitments sought from disaster-affected governments (for instance, NGOs should be granted rapid access to victims). Also specified were commitments sought from donor countries and intergovernmental organizations.

Mr. Richard Perruchoud, representing the International Organization for Migration (IOM), spoke of the relationship between the right to humanitarian assistance and State sovereignty. He believed that the

main question was to determine what measures States, individually or collectively, were entitled to adopt *vis-à-vis* a State which no longer complied with its obligations. Could assistance be imposed upon a recalcitrant State, if necessary by force? The answer had to be in the affirmative since the purpose of supplying humanitarian assistance was to remedy a situation which threatened international peace and security.

He accordingly made the following points:

(1) Humanitarian assistance was not an end in itself; it could not be dissociated from other measures already or still to be taken to eradicate the cause of such grievous situations.

(2) Above all, humanitarian aid should not become an alibi for political inaction.

(3) Humanitarian assistance should not be counterproductive and undermine existing humanitarian law: for example, setting up humanitarian corridors might give combatants the impression or assurance that all kinds of excesses were permitted and/or lawful outside such corridors.

(4) Humanitarian assistance must henceforth be systematic, as opposed to the previous empirical approach, lest it become selective and attributed solely according to subjective and/or arbitrary criteria. The adoption by the San Remo Institute of a Code of Conduct (or minimum standards of behaviour) would be an initial step in that direction.

(5) For the international community the human being was and remained its foremost concern: the State and State sovereignty, international bodies and their mandates should not stand in the way of providing people with humanitarian assistance, but should facilitate it.

H.E. Dr. Mounir Zahran, Permanent Representative of Egypt to the Office of the United Nations at Geneva, delivered a paper on the subject "Humanitarian assistance and the maintenance of peace". He thought that the concept of peace maintenance as defined in the Charter of the United Nations had evolved in recent years and was tending to extend the peace-keeping mandate to cover the protection needs of relief convoys and any humanitarian assistance organized or coordinated by intergovernmental and non-governmental organizations. The purpose was to restore peace and facilitate the peaceful settlement of conflicts.

He went on to analyse the experience of the United Nations in the Bosnia-Herzegovina and Somalia conflicts. In conclusion he stated, like the United Nations Secretary-General, that massacres and torture

systematically carried out for racial, ethnic or religious reasons could no longer be tolerated and that the notion of sovereignty could no longer serve to shield certain acts committed by governments.

Mr. René Kosirnik, Head of the ICRC Legal Division, spoke about the implementation of humanitarian law in terms of humanitarian assistance.

He first drew attention to the legal provisions in the Geneva Conventions and their Additional Protocols which laid down the right to humanitarian assistance and defined the conditions governing it. If provided in conformity with IHL, such assistance, which must be humanitarian, impartial and non-discriminatory, could not be considered as interference; on the contrary, it was above any such reproach.

On the practical level, he deplored the serious breaches of IHL and the fact that the humanitarian organizations' efforts to help were continually being hampered. The way in which aid was being provided during the conflict in the former Yugoslavia and Somalia was untypical: where widespread anarchy and hazardous conditions prevailed the ICRC was prepared to accept a minimum of protection from the armed forces in order to reach the victims. However, such measures should be the exception rather than the rule.

He felt that those who played a major part in providing aid during armed conflicts should have a keener awareness of their role: it was up to States to respect and ensure respect for humanitarian law, to defend the emblem of the red cross and red crescent, to implement monitoring mechanisms and apply existing sanctions and to step up dissemination of that law, especially within the armed forces. In short, all the bodies involved should act in compliance with strict ethical rules (indeed according to the Code of Conduct proposed at the meeting).

Dr. Bernard Kouchner, French Minister for Health and Humanitarian Action, noted that concern for humanitarian problems was increasingly being expressed in United Nations texts and work. He quoted a series of resolutions adopted by UN bodies, ranging from Resolutions GA 43/129 and 43/131 of 8 December 1988 on the new international humanitarian order, which endorse the role of non-governmental organizations working alongside States (whose role is "primary") and the need to have free access to victims "in the event of natural disasters and similar emergency situations", to Resolution SC 771 (1992) of 13 August 1992 which reaffirms that all parties to the conflict in the former Yugoslavia are bound to comply with their obligations under international law and that persons who commit or order the commission "of grave breaches of the Geneva Conventions" are individually responsible.

Paying tribute to the work of UNHCR and the ICRC, he pointed to a change in attitude on the part of humanitarian organizations: they were becoming more actively involved and more forthright.

In his opinion, humanitarianism was an attitude which was motivating people more and more strongly, a form of action which reconciled them with their political responsibilities, and a policy — because humanitarianism was an integral part of diplomacy.

After describing how the duty to assist (making war less inhumane) and the right to assist (the right to life) had evolved, the speaker made a case for what he termed the *droit d'ingérence* — the right to intervene (preventing war), a right still to come which would be expressed by the international community's ability to intervene without prior consent from an oppressor State. He then went on to outline a policy of prevention through diplomacy whereby international instruments would be genuinely respected, dialogue would start before war actually broke out, and the international community could send in civilian observers wherever tension was running high.

Mr. Mohamed Ennaceur, Permanent Representative of the Republic of Tunisia to the United Nations, outlined two concepts: the integration of humanitarian issues into United Nations law, and State intervention in humanitarian activities. He began by stressing the United Nations' increasing interest in humanitarian work and pointed to the relationship thereby established between violations of the Geneva Conventions and threats to peace and international security; military intervention in implementing the right to humanitarian assistance had been a tangible expression of that relationship.

Apropos of State intervention in humanitarian activities, he believed that there was an inherent danger in the tendency to subject humanitarian work to political considerations: the right to assistance might find itself bound by conditions capable of suspending it, and humanitarian action, which is supposed to be universal, would become selective and would lose its credibility for donors and recipients alike.

He therefore thought that the United Nations system, the States party to the Geneva Conventions and the intergovernmental and non-governmental humanitarian organizations would in future have to allocate their respective roles in such a way that the right to humanitarian assistance could be given the necessary effect, while at the same time broadening its scope and ensuring that humanitarian action retained its specific character and its independence.

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The following points emerged during the lively discussions initiated by each of these introductory reports:

- to be humanitarian, assistance must comply with the principles of humanity, impartiality and neutrality;
- military intervention, even for assistance purposes, is not an assistance operation within the meaning of international humanitarian law;
- apart from very exceptional cases, humanitarian relief missions must not be of a military nature;
- by virtue of international humanitarian law, sovereignty may not stand in the way of humanitarian action when imperative needs exist;
- the law governing international armed conflicts is well developed and quite sufficient; this is not the case for non-international armed conflicts and still less so for other situations which are not covered by the Conventions;
- guiding rules or a practical code of conduct for assistance operations would be useful.

At the closing session, Professor Patnogie presented the conclusions of the work of the Round Table. The full text is published below.

THE EVOLUTION OF THE RIGHT TO ASSISTANCE

Closing statement

It was generally recognized that humanitarian assistance was becoming an issue of great importance because of the recent developments in many parts of the world which had given rise to grave human suffering. There was a great diversity in the situations which could arise and the specific cases of Iraq, Somalia and the former Yugoslavia were not necessarily typical.

Certain general conclusions could be drawn from the debate. It was the view of all participants that international humanitarian law regulates in detail all basic questions related to humanitarian assistance activities in international armed conflicts. There was, however, a need to ensure that the rules of inter-