

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-

national humanitarian law were fully and effectively applied in all armed conflict situations.

In non-international armed conflicts, there were few legal rules, and in mixed situations problems arose as to which rules were applicable.

In non-armed conflict situations, the international community was at present confronted with a lack of legal rules for regulating questions of humanitarian assistance.

There had however been a number of positive trends. It was now clearly recognized that human sufferings arising in situations of this kind were of concern to the international community. Moreover, serious violations of human rights could no longer be justified on the basis of state sovereignty.

Finally, when taking enforcement action under Chapter VII of the United Nations Charter, the Security Council had made specific arrangements for the provision of humanitarian assistance. These developments provided an encouraging basis for future efforts to develop international law in this area.

The role of the ICRC in the development and implementation of humanitarian assistance on the basis of international humanitarian law was recognized by all. This law could be interpreted as implying a right to humanitarian assistance. The various activities of UNHCR in providing or arranging for humanitarian assistance to refugees and internally displaced persons were noted with satisfaction. The impact of these activities on the further development of the law was also duly noted and encouraged.

Another important sphere of action which was thoroughly discussed was the role of the UN system, especially in the light of various recent experiences, such as those in Iraq, Somalia and the former Yugoslavia.

The new role of the UN reflected the increased responsibility of the international community in the field of humanitarian assistance. The creation of the Department for Humanitarian Affairs within the UN system was commended by all participants and it was expected that the Coordinator for Humanitarian Activities and his department would develop this increased role of the UN.

In connection with recent UN practice, the Round Table in particular debated whether this practice was in conformity with existing law, whether it was contrary to the law, or whether it contributed to the development of new legal rules. The general view was that it was in conformity with the existing law and also opened new horizons for its further development.

Since large-scale violations of human rights leading to serious human suffering had now become a matter of concern to the international community, the United Nations had been called upon to intervene for humanitarian purposes in various ways, if necessary with the use of force.

Some caution was voiced here. Even if resorted to for strictly humanitarian purposes, the use of force could lead to action contrary to established

humanitarian principles and thus create additional humanitarian problems. There was also a danger that force might be used for other purposes, notably those of a political character. The view was also expressed that the use of force to protect convoys transporting humanitarian assistance was in principle undesirable, but might have to be accepted for purely pragmatic humanitarian reasons.

The participants unanimously expressed the view that all humanitarian operations, including those involving the use of force, must be carried out in conformity with the principles inherent in any humanitarian activity, namely the principles of humanity, neutrality and impartiality.

The discussion, in particular as regards the role of the ICRC and the content of international humanitarian law on the one hand, and the new role of the UN and UNHCR on the other, gave rise to certain basic conclusions:

- (1) victims in emergency situations should have the right to demand and to receive humanitarian assistance, in particular if their life, health or physical integrity are endangered;
- (2) authorized international organizations should have access to the victims, the right to offer humanitarian assistance and to extend it;
- (3) sovereignty remains the basis of international humanitarian assistance operations; however, in the event of severe human suffering and the existence of major obstacles to the provision of assistance, the international community should have the right, through its various bodies, to intervene to protect and assist the victims.

From the examination of these and related questions, it could be concluded that there were two “parallel” sets of legal mechanisms for dealing with the question of humanitarian assistance.

There was, on the one hand, a body of detailed law regulating the provision of humanitarian assistance in armed conflict situations. At the same time, the UN Security Council had taken action relating to humanitarian assistance in the context of enforcement measures under Chapter VII of the Charter. If however a situation calling for humanitarian assistance did not involve a “threat to international peace and security” and was not an armed conflict situation, there was at present no basis on which the UN could act, and General Assembly Resolutions, particularly Resolution No. 43/131 of 1988 concerning humanitarian assistance in the case of natural disasters, did not permit action going beyond the traditional notion of state sovereignty. It was important that future action by the UN in this area should not be of a piecemeal nature and should be harmonized with existing rules relating to armed conflict situations.

It was also recognized that there is a need to strengthen the UN disaster response system.

The role of the NGOs as independent bodies based on humanitarian principles was also emphasized. They should continue to be important factors in extending humanitarian assistance.

It was recognized that a need for humanitarian assistance implied that an abnormal situation had reached an advanced stage. It was therefore essential to address the causes of such situations with a view to taking appropriate preventive action. In this connection, the work of the meeting of experts on "Prevention", convened by the International Institute of Humanitarian Law from 18 to 20 June 1992 under the auspices of UNHCR, was of particular importance.

During the discussions, participants underlined the importance of increased dissemination of the rules of international humanitarian law, which should be drawn to the attention of various target groups as an element of prevention.

The participants unanimously agreed that the point of departure for further development of international law on humanitarian assistance should be the rules and principles which already existed, and that the rules relating to humanitarian assistance in armed conflict situations could provide an appropriate example. It was also felt that such a development of the law could be promoted within the existing legal framework. While it would of course be desirable to draw up an international convention defining specific legal criteria, this would not be realistic at the present stage.

In the meantime, it would be desirable as a first step to work out a body of guiding rules which could, if appropriate, be used in discussions for a future international instrument.

The participants of the Round Table expected that the International Institute of Humanitarian Law would continue to be concerned by this question.

The Institute had already prepared some draft guiding rules on the question of humanitarian assistance, including the right to humanitarian assistance. At the Round Table, a proposal was also made for a code of conduct for the use of non-governmental organizations in disaster relief.

On the basis of the reports presented to the Round Table, of several proposals made and the views expressed during the discussion, the Council of the Institute will examine the various proposed texts, introduce any necessary changes or adaptations and decide on how to proceed further with regard to the subject under consideration.