

Implementation of human rights and humanitarian law in situations of armed conflict

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INTRODUCTION

Governments are principally responsible for the implementation of international human rights and humanitarian law during periods of armed conflict.¹ During non-international armed conflicts, governments and armed opposition groups each bear responsibility for their obedience to those norms.²

International organizations can encourage the participants in armed conflicts to respect human rights and humanitarian law. The International Committee of the Red Cross (ICRC) has long played a leading role in working for the application of humanitarian law during armed conflicts; it has also begun to refer to human rights law in situations of internal strife or tensions not covered by international humanitarian

¹ See *International Covenant on Civil and Political Rights*, Art. 2, entered into force March 23, 1976, GA res. 2200 A (XXI); 21 UN GAOR, Supp. (No. 16) 49, UN Doc. A/6316 (1967); common Art. 1 of the Geneva Conventions of 12 August 1949: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 6 UST 3114, TIAS No. 3362, 75 UNTS 31 (hereinafter cited as First Geneva Convention); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 6 UST 3217, TIAS No. 3363, 75 UNTS 85 (Second Geneva Convention); Geneva Convention relative to the Treatment of Prisoners of War, 6 UST 3316, TIAS No. 3364, 75 UNTS 135 (Third Geneva Convention); Geneva Convention relative to the Protection of Civilian Persons in Time of War, 6 UST 3516, TIAS No. 3365, 75 UNTS 287 (Fourth Geneva Convention; hereinafter collectively cited as the Geneva Conventions).

² See, e.g., Geneva Conventions, common Article 3.

law.³ The United Nations General Assembly,⁴ the UN Commission on Human Rights,⁵ the International Court of Justice,⁶ and several other intergovernmental organizations have occasionally attempted to secure respect for human rights law during armed conflicts and have referred on an irregular basis to humanitarian law in such endeavors.⁷ The UN Security Council has almost exclusively used humanitarian law in its decisions.

International non-governmental organizations⁸ have recognized that human rights violations within their respective areas of concern may occur during armed conflicts. Indeed, serious human rights violations, including arbitrary killings, detention, and ill-treatment, are likely to increase in times of armed conflict.

In dealing with human rights violations the United Nations and non-governmental organizations have relied principally upon the Universal Declaration of Human Rights⁹ and the International Covenant on Civil and Political Rights,¹⁰ but have also begun to refer more frequently to principles of humanitarian law, for example, those

³ First, Second, and Third Geneva Conventions, common Art. 9; Fourth Geneva Convention, Art. 10; Geneva Conventions, common Art. 3; *The Red Cross and Human Rights*, ICRC, 38-39 (1983); Schindler, Dietrich, "The International Committee of the Red Cross and human rights", 208 *International Review of the Red Cross (IRRC)*, 3 (January-February 1979).

⁴ See General Assembly res. 2675 (XXV), 25 GAOR, Supp. (No. 28), at 77; UN Doc. A/8028 (1970); see also "United Nations action in the field of human rights", UN Doc. ST/HR/2, at 110-16 (1973).

⁵ See UN Doc. E/CN.4/1985/18, at 37-45 (1985); UN Doc. A/39/636, at 28-34 (1984) (Special Rapporteur, El Salvador); UN Doc. E/CN.4/1985/19 (1985) (Special Rapporteur, Guatemala); but UN Doc. E/CN.4/1985/21, at 28-32, 42-45, 47-48 (1985).

⁶ See "Case concerning military and paramilitary activities in and against Nicaragua (Nicaragua v. United States)", (1986) *I.C.J.* 14, 113-15, 129-30; in 25 *Int'l Legal Materials* 1023, 1073-74, 1081 (1986).

⁷ See generally Ramcharan, B. G., "The role of international bodies in the implementation and enforcement of humanitarian law and human rights law in non-international armed conflicts", in 33 *American U. L. Rev.* 99 (1983); Wolf, Francis, "L'OIT et la Croix-Rouge — Convergences de leur action", in *Studies and essays on international humanitarian law and Red Cross principles in honor of Jean Pictet* 1011 (C. Swinarski ed., 1984). For a review of historical efforts to implement the Hague Regulations through international adjudication, see Gross, Leo, "New rules and institutions for the peaceful settlement of international disputes", 76 *Proc. Am. Soc. Int'l L.* 131 (1982).

⁸ See Weissbrodt, David, "The Contribution of international non-governmental organizations to the protection of human rights" in 2 *Human rights in international law* 403 (Meron, Ted, ed., 1984); *ibid* at 436-38 (for bibliography); Shestack, "Sisyphus endures; The international human rights NGO", 24 *N.Y.L.S.L. Rev.* 89 (1978).

⁹ GA res. 217A, UN Doc. A/810, at 71 (1948).

¹⁰ See note 1, *supra*.

found in the four Geneva Conventions of 12 August 1949 and the two Additional Protocols of 8 June 1977.¹¹

This article first reviews selected reports by several non-governmental human rights organizations which illustrate the potential for reliance on humanitarian law in armed conflict situations. The article next discusses United Nations practice regarding humanitarian law, using Security Council resolutions on the situation in Bosnia-Herzegovina as a case study. Third, the article studies reasons why the United Nations and international non-governmental organizations should refer to both human rights and humanitarian law in support of their work in armed conflict situations. Fourth, the article considers what means might improve the implementation of human rights law and humanitarian law in times of armed conflict.

I. APPLICATION OF HUMANITARIAN LAW AND HUMAN RIGHTS LAW BY INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS AND THE UNITED NATIONS IN ARMED CONFLICT SITUATIONS

There is considerable diversity in the way non-governmental organizations and the United Nations use human rights and humanitarian law in their human rights work and how they approach armed conflict situations.¹² An examination of recent reports by several non-governmental organizations and a study of the handling of the Bosnian situation by the United Nations illustrate some of the advantages of relying upon human rights and humanitarian law when analyzing human rights abuses in armed conflict situations.

¹¹ Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977, UN Doc. A/32/144, Annex I, in 16 *Int'l Legal Materials* 1391 (1977); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1977, UN Doc. A/32/144, Annex II, in 16 *Int'l Legal Materials* 1442 (1977).

¹² See Weissbrodt, David, "The Role of international organizations in the implementation of human rights and humanitarian law in situations of armed conflict", 21 *Vand. J. Transnat'l L.* 313 (1988).

A. Reliance on humanitarian law by non-governmental organizations

A comprehensive study of the practice of non-governmental organizations in applying humanitarian law and human rights law in armed conflict situations is beyond the scope of this brief article. Instead, by focusing on a small sample of reports and initiatives by several non-governmental organizations, this analysis will highlight some of the issues arising from the practice of non-governmental organizations in this area.

1. International Commission of Jurists: Report on the Philippines

The International Commission of Jurists (ICJ) has used human rights and humanitarian law in a sophisticated and careful fashion on some occasions and has almost ignored humanitarian law on others.¹³ The ICJ's study entitled *The failed promise: human rights in the Philippines since the revolution of 1986* is an illuminating example of the potential for use of human rights and humanitarian law in reporting on human rights abuse in armed conflict situations.

Initially, the report recommends that both Article 3 common to the four Geneva Conventions and Additional Protocol II should be declared applicable to the current conflict in the Philippines. Despite its ratification of the Geneva Conventions and Additional Protocol II, the Philippine government has not been willing to recognize their application to the non-international armed conflict going on in the country. Through a detailed analysis of criteria set forth in ICRC commentary, the report makes a convincing argument for the applicability of common Article 3 to the conflict. Application of Additional Protocol II is founded upon the more precise definition of "armed conflicts not of an international character" set forth in that document.

After concluding that conditions have been met for application to the conflict of common Article 3 and Additional Protocol II, the report demonstrates the import of that conclusion by enumerating the specific provisions of humanitarian law applicable to the situation. The standards of humanitarian law provide an additional template against which human rights abuses in the Philippines may be judged. For example, the report notes that forced displacements of civilians in the

¹³ *Ibid.*, at 323-25.

Philippines not only result in violations of human rights law but are themselves violations of Article 17 of Additional Protocol II.

2. Human Rights Watch: Report on violence against women in Peru

A recent report by Americas Watch and the Women's Rights Project, *Untold terror: Violence against women in Peru's armed conflict*, provides a second example of the role which humanitarian law can play in human rights reports on armed conflict situations. The report's chapter on international law begins with a discussion of common Article 3. Without addressing the basis for concluding that common Article 3 is applicable to the conflict in Peru, the report turns directly to an analysis of violations of common Article 3 by the Shining Path and the Peruvian government. The authors' findings are forthrightly presented:

"There can be no doubt that the Shining Path violates with remarkable cruelty and abandon the prohibition of common Article 3 against violence to life and person, murder and the passing of sentences and carrying out of executions without previous judgment by a regularly constituted court".

The report's conclusions concerning conduct by the Peruvian government are somewhat more tempered. While noting that research for the report had not revealed murder by security forces of women "with anywhere near the frequency or specific intent of the Shining Path", the report recognizes that "even when a state does not itself perpetrate the abuse" it is accountable under the International Covenant on Civil and Political Rights for failing to protect its citizens from arbitrary deprivation of life.

The most useful aspect of Human Rights Watch's report is its explicit recognition that rape constitutes a violation of common Article 3, despite the omission of rape from the list of abuses expressly prohibited by that article. The authors' conclusion that rape is "commonly understood to constitute both cruel treatment and an outrage on personal dignity" — violations which are explicitly included within the scope of common Article 3 — may seem obvious. Recent events in Bosnia, however, confirm the need to reiterate that rape is, and has been, a violation of the laws of war. Additionally, the report's discussion of rape as a method of torture which violates common Article 3 is equally compelling.

The report stops short of finding that Peru's internal conflict meets the conditions necessary for application of Additional Protocol II. In a

brief footnote discussion, the authors assert that “the objective conditions which must be satisfied to trigger Protocol II’s application contemplate a situation of classic civil war, essentially comparable to a state of belligerency under customary international law”. The conclusion that Protocol II is not applicable to the Peruvian situation is certainly arguable, but the report mitigates the impact of this finding by concluding that Protocol II is “a pertinent authority for interpreting common Article 3’s prohibition on outrages against personal dignity”. Given this conclusion, however, one wonders whether the report’s fleeting foray into the applicability of Protocol II to the Peruvian conflict was either necessary or advisable.

The report calls for both sides to observe the prohibition in common Article 3 against murder, torture, and ill-treatment of noncombatants without any adverse distinction founded on, among other criteria, sex. Accordingly, both parties are charged with “ensuring that all their members abide by the laws of internal armed conflict and that equal protection against abuse is guaranteed to all civilians and combatants who are *hors de combat*”.

3. Amnesty International: A policy concerning abuse by non-governmental entities

In 1991, the International Council of Amnesty International (AI) considered whether the mandate of the organization should be extended to questions concerning abuses by political non-governmental entities or armed opposition groups, such as the Shining Path in Peru. While recognizing that AI should continue to regard human rights as “the individual’s rights in relation to governmental authority”, the Council took its first step towards addressing abuses by armed opposition groups by including within the scope of AI’s concerns the taking of hostages and deliberate and arbitrary killings by non-governmental entities. The decision to include certain abuses by non-governmental entities within the scope of AI’s mandate was explicitly based upon recognition that the principles of international humanitarian law can support AI’s work in armed conflict situations.

AI’s recent resolution also addressed some of the difficult questions which non-governmental organizations face when confronting human rights abuse in armed conflict situations, including who can be considered responsible for human rights abuses, which abuses should be targeted, and what course of action is recommended for the non-governmental organization. Addressing each of these concerns in order, AI first acknowledged that there is “a continuum of political

non-governmental organizations which ranges from those which are very similar to governments to those organizations with little in common with governments". Given this fact, AI chose to focus its resources on "those entities having greater control over people, territory and the use of force". Additionally, the Council called for the development of criteria by which political non-governmental entities could be distinguished from groups falling outside AI's work, such as common criminal organizations. Second, recognizing that "there are many unclear areas in armed conflict situations", AI decided to concentrate its attention on "patterns of abuse by non-governmental entities" which are contrary to principles of international humanitarian law. Third, the organization expressly endorsed opposing the taking of hostages or deliberate and arbitrary killings by non-governmental entities whenever such opposition is practical "using any appropriate technique, including directly addressing the entity".

A sampling of AI's recent reports reflects concern over human rights abuses by both governmental and non-governmental entities in armed conflict situations. For example, in December 1992, Amnesty published a report on South Africa which specifically addressed torture, ill-treatment, and executions in African National Congress camps. In addition, AI updates on conditions in Angola, Sudan, and Liberia have addressed human rights abuses by armed opposition movements in those countries.

B. Use by the United Nations of humanitarian law: A case study

A review of UN Security Council resolutions concerning the situation in Bosnia-Herzegovina in 1992 provides a glimpse into UN practice regarding reliance on humanitarian law. Throughout the first half of the year, Security Council resolutions on the situation in Bosnia-Herzegovina (as well as Croatia) focused on cease-fire violations and the need for humanitarian assistance without emphasizing the role that humanitarian law might play in the ongoing conflict. Security Council resolution 764 (13 July 1992), however, broke this pattern by expressly recalling the obligations imposed by international humanitarian law and reaffirming that "all parties are bound to comply with the obligations under international humanitarian law and in particular the Geneva Conventions of 12 August 1949, and that persons who commit or order the commission of grave breaches of the Conventions are individually responsible in respect of such breaches".

Another Security Council resolution issued one month later, resolution 771, refined the broad declaration of principle contained in resolution 764 in a detailed statement concerning the application of humanitarian law to the Bosnian situation. Resolution 771 begins by “expressing grave alarm at continuing reports of widespread violations of international humanitarian law occurring within the territory of the former Yugoslavia and especially in Bosnia and Herzegovina”. After reiterating resolution 764’s statement that the Geneva Conventions are applicable to the conflict and that they impose individual responsibility for violations, resolution 771 continues by condemning any violations of international humanitarian law, including those involved in the practice of “ethnic cleansing” and “demands that all parties and others concerned in the former Yugoslavia, and all military forces in Bosnia and Herzegovina, immediately cease and desist from all breaches of international humanitarian law”. The resolution also demands that international humanitarian organizations, particularly the ICRC, be given unimpeded access to camps, prisons, and detention centers in the former Yugoslavia. Humanitarian organizations and states are requested to compile information concerning breaches of humanitarian law, “including grave breaches of the Geneva Conventions”, for submission to the Security Council. The Security Council expressly finds that “the Council will need to take further measures under the Charter” should the parties fail to comply with resolution 771.

The Security Council adopted one such further measure on 6 October 1992 in resolution 780. It calls for the establishment of an impartial Commission of Experts to examine and analyze information submitted pursuant to resolution 771, “with a view to providing the Secretary-General with its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia”. Resolution 780 again expressed the Security Council’s “grave alarm at continuing reports of widespread violations of international humanitarian law occurring within the territory of the former Yugoslavia” and reaffirmed the demand made in resolution 771 for all parties to cease and desist from all breaches of international humanitarian law.

The Security Council noted in resolution 787 of 16 November 1992 that the Special Rapporteur’s report on the human rights situation in the former Yugoslavia had made clear that “massive and systematic violations of human rights and grave violations of international humanitarian law continue in the Republic of Bosnia and Herzegovina”. Resolution 787 also again condemns all violations of interna-

tional humanitarian law, including the practice of “ethnic cleansing” and “the deliberate impeding of the delivery of food and medical supplies to the civilian population”. Unfortunately, the Security Council has not regularly used human rights law as well as humanitarian law where both are applicable.

II. SHOULD NON-GOVERNMENTAL ORGANIZATIONS AND UNITED NATIONS BODIES CITE INTERNATIONAL HUMANITARIAN LAW IN SUPPORT OF THEIR HUMAN RIGHTS CONCERNS?

In addressing human rights violations in armed conflict situations, international human rights organizations and UN bodies (except the Security Council) have relied principally upon the Universal Declaration of Human Rights¹⁴ and the International Covenant on Civil and Political Rights.¹⁵ There are at least five reasons why non-governmental organizations and the United Nations should find that principles of humanitarian law provide a useful additional legal foundation for their concerns. First, the Geneva Conventions of 1949 have been ratified by 177 countries¹⁶ while the International Covenant on Civil and Political Rights has been ratified by 108 nations.¹⁷ Second, some of the principles of international humanitarian law are more specific and/or more exacting than the provisions of international human rights law. Third, humanitarian law applies specifically to emergency situations in which abuses are likely to occur; international human rights law permits significant derogations during those same periods.¹⁸ Fourth, military and law enforcement officials often do not take international human rights law seriously, but they consider humanitarian law to be worthy of respect.¹⁹ Fifth, humanitarian law specifically covers abuses by both

¹⁴ GA res. 217A, UN Doc. A/810, at 71 (1948).

¹⁵ GA res. 2200A; 21 UN GAOR, Supp. (No. 16) 49, UN Doc. A/6316 (1967).

¹⁶ As at 30 March 1993.

¹⁷ United Nations, *Multilateral treaties deposited with the Secretary-General* (1993).

¹⁸ See Hartman, W. G., “Derogations for human rights treaties in public emergencies”, 22 *Harv. Int'l L. J.* 1 (1981); Meron, Ted, “Towards a humanitarian declaration on internal strife”, 78 *AJIL* 859 (1984). Although war was the scenario which figured most prominently in the minds of the drafters of the derogation clauses, derogations have been invoked because of internal disturbances (Hartman at 13).

¹⁹ Amnesty International, *Memorandum presented to the Government of Guatemala following a mission to the country in April 1985*, at 34, 37 (1986) (AI Index: AMR 34/01/86).

governments and armed opposition groups, while international human rights law deals principally with the responsibilities of governments.

There are, however, several impediments to the use of international humanitarian law. First, international humanitarian law includes a relatively complex body of rules. Human rights organizations must communicate their concerns in a sufficiently simplistic fashion so as to attract media attention and to use the pressure of public opinion. Humanitarian law adds to the complexity of the legal principles which must be communicated to the media, to the public, and to human rights activists. Both staff and members of human rights organizations have only begun to understand humanitarian law norms sufficiently to use these norms in their reports and campaign work. At first glance international humanitarian law may appear dauntingly complex and therefore difficult for human rights organizations to use. Most of the articles of the Geneva Conventions are not directly relevant to the principal concerns of human rights organizations, although there are a few provisions, such as common Article 3 to the four Geneva Conventions, which are quite brief, straightforward, easily explained, and directly applicable to the concerns of most human rights organizations. Second, armed conflict situations often inhibit the gathering and assessment of information about human rights violations; application of humanitarian law may require even more difficult fact-finding tasks. For example, in order to apply humanitarian law one must ordinarily determine which sort of armed conflict is occurring and therefore which set of humanitarian rules are relevant.²⁰ This decision involves issues which are politically sensitive and facts which are outside the normal research competence of human rights organizations. It also offers the potential for conflicting with ICRC positions.

III. IMPROVING IMPLEMENTATION OF HUMAN RIGHTS AND HUMANITARIAN LAW IN ARMED CONFLICT SITUATIONS

A. The International Red Cross model

Since the Red Cross has long held the leading role in the protection of human rights in armed conflict situations, it is useful for other

²⁰ The Helsinki Watch report on Afghanistan cites various provisions of humanitarian law, but fails to analyze adequately the nature of the conflict and the consequent application of particular instruments of humanitarian law. Helsinki Watch, *"Tears, blood and cries: Human rights in Afghanistan since the invasion, 1979-1984"* (1984). Compare the far more careful approach of Americas Watch, *Violations of the laws of war by both sides in Nicaragua, 1981-1985*, at 11-34 (1985), and the somewhat less complete approach of Americas Watch, *The Miskitos in Nicaragua, 1981-1984*, at 49 (1984).

organizations to study its work so as to draw lessons from its experience and to learn how its activities can be supplemented by the efforts of other organizations.

1. Red Cross work in periods of armed conflict²¹

Article 5, paragraph 2(c) of the Statutes of the International Red Cross and Red Crescent Movement prescribes three categories of duties for the ICRC in armed conflicts:

(1) to undertake the tasks incumbent upon it under the Geneva Conventions, (2) to work for the faithful application of international humanitarian law applicable in armed conflicts and (3) to take cognizance of any complaints based on alleged breaches of that law.

a. Fulfilling the ICRC's duties under humanitarian law

The duties in the first category are related to the specific provisions of the Geneva Conventions and their Additional Protocols by virtue of which the ICRC visits prisoners of war and civilian internees; interviews them without witnesses; repeats such visits to assure that prisoners are not killed or ill-treated; provides assistance to prisoners in some cases, including blankets, medicines, soap, warm clothing, food, educational material, medical care, and recreational supplies; provides relief to the population of occupied territories; has established a Central Tracing Agency (CTA) which collects information on prisoners of war and civilians in occupied territories (particularly those who are interned) so that contact can be established and maintained with their families; searches for persons missing in the event of armed conflict; monitors the return of children to their families; helps to establish and clearly mark hospitals and safety zones protected from international armed conflict under Article 14 of the Fourth Convention; and, in the event of non-international armed conflict, may under common Article 3 of the four Geneva Conventions take humanitarian initiatives to offer its services to the parties in assisting victims and carrying out activities similar to those it performs in the event of international conflict.

²¹ Much of the material in this part of the study comes from *The Red Cross and human rights* (1983) (ICRC Doc. CD/7/1, prepared for the Red Cross Council of Delegates, 13-14 Oct. 1983).

b. Encouraging application of humanitarian law

The second category of duties identified by Article 5 of the Statutes derives from the stipulation that the ICRC should “work for the faithful application of international humanitarian law”. The ICRC thus assesses whether all the provisions of the four Geneva Conventions and two Protocols are implemented by the parties.

The ICRC’s three principal techniques for assessing the fulfillment of these humanitarian law norms are: visiting places of detention, making official or unofficial approaches to the authorities, and making use of its right to take humanitarian initiatives.

(i) Visiting places of detention

In connection with the visits to places of detention, ICRC delegates are able to check whether the detainees are being treated in accordance with the provisions of humanitarian law, to draw the attention of the authorities to any problems, and to ascertain through repeated visits whether appropriate remedial action has been taken.

(ii) Approaches to authorities

Regarding all matters in which the ICRC believes that a violation of humanitarian law may have occurred or may be prevented, the ICRC may make approaches to the relevant authorities. In principle, such representations are made without any publicity. The primary task of the ICRC is aiding the victims of armed conflicts. The ICRC communicates its concerns in confidence to the authorities because it does not wish to become engaged in public controversies which might jeopardize its assistance and protection work for victims.

While the ICRC’s efforts to put an end to violations of international humanitarian law or to prevent such violations are in principle confidential, the ICRC has reserved “the right to make public statements concerning violations of international humanitarian law”²² if the violations are major and repeated; the steps taken confidentially have not succeeded; publicity will help the persons affected or threatened; and the breaches were established by reliable and verifiable sources. In fact, the ICRC’s techniques are far more nuanced. While the ICRC’s approaches to governments are made in confidence, the mere fact that the ICRC has become aware of certain information presents the

²² “Action by the ICRC in the event of breaches of international humanitarian law”, 221 *IRRC* 76 (March-April 1981).

authorities with an implicit threat that the information will somehow become more broadly known — particularly if no remedial action is taken.

(iii) Humanitarian initiative

In order to work for the faithful application of international humanitarian law, the ICRC also reserves the right to take humanitarian initiatives (a) in all situations which come under Article 4(2) of its own Statutes; (b) in international armed conflicts which come under Article 9 of the first three Geneva Conventions, Article 10 of the Fourth Convention, and Articles 5 and 81 of Protocol I; and (c) in non-international armed conflicts which come under Article 3 common to all four Geneva Conventions. The ICRC's right to take humanitarian initiatives is intended to protect and assist persons protected by the Geneva Conventions and Additional Protocol I, as well as all others who may become the victims of armed conflict or internal strife, subject to the consent of the authority concerned. Under its right of humanitarian initiative, the ICRC may provide relief for persons not protected by the Geneva Conventions, organize the exchange of prisoners, reunite families, ask for truces to bring care to the wounded, help refugees, etc.

c. Receiving complaints concerning alleged breaches of international humanitarian law

The ICRC may receive complaints about alleged breaches of international humanitarian law and approach the authorities to prevail on them to correct any shortcomings notified on the spot and reported by its delegates. If the ICRC is unable to take direct action to help the victims, for example because it has no access to the scene of hostilities, the procedure it follows is “not to forward the protests, unless there is no other regular channel for doing so and a neutral intermediary is necessary and where such protests do not come from third parties”.²³

2. The ICRC and other organizations

Other organizations can learn from the ICRC's experience in developing techniques for persuading governments to protect human rights, for example by embarrassing them. The ICRC's skillful use of

²³ *The Red Cross and human rights, op. cit.*

the implicit threat of publicity might be helpful to other human rights organizations. Those organizations must at least consider whether to follow the ICRC's general policy of not relying upon international law in pursuing its humanitarian objectives.

If a human rights organization intends to comment upon the human rights violations committed by the government on one side of an armed conflict, the organization may be expected to include some statements in its reporting about the abuses perpetrated by the other party in the conflict whose misdeeds may be the cause or at least the excuse for the repression. In many cases failure to do so may leave the organization open to charges of prejudice in favor of one side of the conflict — both at the time of the report and possibly in the future. Nonetheless, such efforts to balance human rights reporting may help one party to the conflict to find justification for their previous human rights violations or for their future reprisals. This paradox demonstrates the difficulty of any effort to balance reporting and, indeed, the extremely hazardous character of any increased human rights activity in periods of armed conflict.

If a human rights organization were to publish information about only one side of a conflict alleging that it was responsible for torturing or killing prisoners of war, civilians, etc., the organization would probably be criticized for taking sides in the war or for having purveyed enemy propaganda. For the ICRC such an accusation would be very damaging, because the ICRC attempts in many respects to serve as an intermediary between belligerent parties (the ICRC helps to organize the exchange of prisoners, assist wounded soldiers, forward POW correspondence, etc.) Other human rights organizations do not attempt to play any such intermediary role. If human rights organizations wish impartially to pursue their concern for human rights by criticizing violations by governments even in times of armed conflict, these organizations must at least proceed with the awareness that governments will be particularly quarrelsome and sensitive at such times.

In considering those lessons, one must be aware of the important differences between the ICRC and other organizations in structure, principles, and techniques. Such a comparison between the ICRC and other organizations is, unfortunately, beyond the scope of the present article. The following formulation of the differences between the terms of reference of the ICRC and other human rights organizations would, however, provide a useful guide for further discussion: Most human rights organizations apply human rights law during periods of peace, internal crisis, and armed conflict; in addition, these organizations may refer occasionally to humanitarian law principles where relevant to

their work. In contrast, the ICRC applies humanitarian law during armed conflicts and may take humanitarian initiatives pursuant to its Statutes at any time; it has occasionally made reference to human rights law, but generally does not rely on these legal principles in its work.

Such a formulation leaves a considerable area of overlapping between the work of the ICRC and other organizations. There are, however, significant differences between the techniques ordinarily employed by the ICRC and those used by other human rights organizations. As discussed more fully above, the ICRC makes most of its approaches to governments in confidence. Most other human rights organizations use a range of approaches to governments, including direct contacts, membership appeals, publicity campaigns, etc. The ICRC has both a large central staff and regional offices whose staff regularly visit places of detention, provide relief, work with National Red Cross and Red Crescent Societies, and are generally available to assist the organization in fulfilling its mission. Few non-governmental organizations have either a large central staff or an effective membership or grass-roots campaigning capacity.

Bearing in mind the important differences between the ICRC and other human rights organizations, there remains a question as to how these organizations and the ICRC might continue to work without undue interference with each other. One possible approach would be to recognize the ICRC's long-standing and very successful efforts in periods of armed conflict and internal strife. It might be argued that other organizations should generally leave this field to the ICRC.

Other human rights organizations have, however, increasingly found that human rights violations occur in times of armed conflict. The fact-gathering capacity and diverse methods of action available to these organizations may complement the ICRC's work. Indeed, the ICRC has indicated its acceptance of and appreciation for the role of other human rights organizations in bringing human rights violations to the attention of the ICRC and the public, wherever the ICRC must remain quiet.

The discreet approach of the ICRC is complementary to the activity of other human rights organizations in that the ICRC generally avoids publicity and thus preserves its access to prisoners. Most other human rights organizations publicize violations but such publicity may prevent them from having much access to prisoners.

It is important, however, for all human rights organizations to protect their separate identities. The ICRC would not want to appear to collaborate with more outspoken human rights organizations, since it

would not want to be denied access to prisoners because of statements by unrelated organizations. Similarly, the International Commission of Jurists may have particularly easy access to the authorities of a particular country and may be able to influence those officials towards the protection of human rights, while Amnesty International has publicly criticized the same country and lacks access. For the effectiveness of each organization and for the overall effectiveness of human rights efforts, it is critical that each organization preserve its independence and separate identity.

B. Approaches used by human rights organizations to halt human rights abuses

Human rights organizations use several different approaches to stop abuses in a given situation. They may privately approach a particular government or entity with evidence of abuses and request action by the authorities to stop the violations. The organizations may also publish reports and issue press releases about human rights violations. Publication serves the dual purpose of informing the international community of human rights abuses in the hope of generating widespread pressure on a government which is violating human rights and possibly embarrassing the government into ending its violations. Finally, human rights organizations and their membership may place pressure on some violating governments to induce them to stop abusing human rights.

Those approaches may still be used in periods of armed conflict. They may be less effective, however, for a number of reasons. The private approach to the responsible government may be ignored or given less weight where the authorities are more concerned with fighting a war. This difficulty is particularly great in the case of an internal conflict or war of liberation, because human rights groups may be able to monitor abuses by only one side to the conflict, usually the government. Governments will be particularly sensitive to questions of a balanced approach and impartiality at such times and will be less receptive to private appeals.

Publication of information on human rights abuses may also backfire in times of armed conflict. Although publicity will often help mobilize pressure on a government to stop abuses of human rights, it can become a two-edged sword. Publicity about human rights abuses by one side to a conflict may be used by the other side to justify its own abuses. This difficulty does not arise in times of peace where

authorities are responsible for violations of human rights and are called upon to answer for them.

Finally, approaches by members of human rights groups to the authorities of their own country may also be less effective during times of armed conflict, since those authorities may be less willing to interfere with the decisions made by their government when the country is at war. Human rights groups that are not aware of these problems may have to alter their traditional approaches in order to prevent human rights abuses more effectively during armed conflicts.

C. Assisting victims in national and international tribunals

Human rights organizations have invoked the assistance of international and national adjudicative bodies in attempting to aid victims of human rights violations during periods of armed conflict.

For example, Disabled Peoples' International (DPI) filed a complaint with the Inter-American Commission on Human Rights of the Organization of American States (OAS) on behalf of residents of the Richmond Hill Insane Asylum in Grenada who were killed or injured by United States bombardment during the 1983 conflict in Grenada.²⁴ The complaint alleged violations of Articles 1 and 11 of the American Declaration of the Rights and Duties of Man²⁵ and the fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War.²⁶ DPI argued that the right to life was nonderogable in time of war and that, as there were no domestic remedies to exhaust, the Inter-American Commission had jurisdiction. The Commission accepted the petition as admissible and found at least a *prima facie* violation of the American Declaration's protection of the right to life.²⁷ The Commission has not heard the case on its merits, because the Commission has unsuccessfully sought to visit Grenada to view the site of the bombing. If the Commission proceeds with the

²⁴ Decision of the Commission as to the admissibility: Application No. 9213 by *Disabled Peoples' International et al. v. United States*, OEA/Ser.L./V/II.67 Doc. 6 (April 17, 1986). (Hereinafter cited as *DPI v. US*).

²⁵ "Every human being has the right to life, liberty and the security of his person", Art. 1; "Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources", Art. 11.

²⁶ Geneva Conventions, *supra* note 1.

²⁷ *DPI v. US*, *supra* note 24, at 13.

case, it will need to consider whether the Declaration prohibits killings during periods of armed conflict — killings which might be either forbidden or permissible under humanitarian law.²⁸

In national courts, human rights groups have argued as *amicus curiae* in a number of areas. Human rights advocates have invoked human rights and humanitarian law in many cases,²⁹ for example, arguing that the United States has an obligation to ensure respect for the Geneva Conventions by granting temporary refuge to Salvadorians who fled the killing of civilians in El Salvador's armed conflict.³⁰

In February 1993 the UN Security Council authorized the establishment of a tribunal to try under humanitarian law criminal offenses committed in the former Yugoslavia. The tribunal should have the authority to try offenders for war crimes (including violations of humanitarian law), and crimes against humanity under both the precedents of the Nuremberg Tribunal and Control Council Law No. 10. Indeed, the tribunal should have the capacity to impose administrative and other civil sanctions as well as the ability to consider human rights law.

CONCLUSION

International organizations supplement the work of the International Committee of the Red Cross by playing an important role in assessing whether governments and armed opposition groups are respecting their human rights and humanitarian law obligations. Non-governmental organizations, including, for example, the International Commission of Jurists, Human Rights Watch, and Amnesty International, have effectively relied upon humanitarian law as well as human

²⁸ The Inter-American Commission on Human Rights generally relies upon the provisions of the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights for its operative human rights standards, but the Commission has found violations of common Article 3 of the Geneva Conventions. See, e.g., Inter-American Commission on Human Rights, *Report on the situation of human rights in the Republic of Guatemala*, OAS Doc. OEA/Ser.L/V/II.61, Doc. 47 rev. 1, at 69-70 (1983).

²⁹ See e.g. Letter from Sandra Coliver, Attorney for Human Rights Advocates and California Attorneys for Criminal Justice to the Superior Court of California, January 31, 1985, re *People v. Barbara Bannon, et al.*; *Greenham women against cruise missiles, et al. v. Reagan, et al.*, Brief for Amicus Curiae.

³⁰ See e.g. *In the matter of Jesus del Carmea Medina*, before the US Dept. of Justice, Board of Immigration Appeals (1985) and Paust, Jordan J., "After My Lai: The case for war crimes jurisdiction over civilians in federal district courts", 50 *Tex. L. Rev.* 6 (1971).

rights law in armed conflict situations. The United Nations Security Council has begun to use humanitarian law, but has been less willing to use human rights law. Both non-governmental organizations and UN bodies should continue to rely on humanitarian law in instances in which it can effectively complement human rights law. Given the challenges presented by humanitarian law, however, organizations should also look to the experience of the ICRC in seeking to be more effective in safeguarding human rights during periods of armed conflict.

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