

# African States and the promotion of humanitarian principles

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## INTRODUCTION

It is well known that African societies are shaped by custom and tradition. African thought, deeply imbued with humanism, has given birth to concepts and practices that place these societies among the world's humanitarian civilizations. With the advent of the colonial era and the establishment of institutions based on foreign values, the manifestations of African ideas was put into abeyance. Subsequent independence, while giving African States the opportunity to participate alongside other nations in constructing a universal civilization, paradoxically brought the continent face to face with a dilemma in regard to economic, political, social and cultural matters: the choice between the wholesale adoption of foreign, particularly European, models, or a radical return to ancestral traditions. However, humanitarian concerns are among the few that can—and should—transcend such Manichean considerations.

This article is part of a general effort to rediscover the universal nature of the principles of humanitarian law, which are echoed by African traditions, and to study African humanitarian traditions “as a means of promoting a better understanding and acceptance of humanitarian law by African societies, states and peoples”.<sup>1</sup>

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<sup>1</sup> “Dissemination of international humanitarian law. Fifth African Regional Seminar on International Humanitarian Law”, *International Review of the Red Cross (IRRC)*, No. 256, January-February 1987, p. 106.

## I. TRADITIONAL AFRICAN SOCIETIES AND THE LAW

Most authors, be they historians, ethnologists or sociologists, agree that traditional African societies, particularly in precolonial times, had certain common features.

Politically, these societies were organized into *hierarchical* but non-discriminatory *communities*. At their head was a chief flanked by notables and “griots” (witchdoctors-*cum*-minstrels). The other members of the community were classified according to occupation (blacksmiths, herders, farmers) and age (the elderly, the young). Reliance on *oral* communication, in the absence of a written language, explains the importance attributed to words and sound (tam-tams, balaphons). These deeply religious societies, instilled with belief in the hereafter, attached great value to human life and considered it man’s duty to live in harmony with his community and to place collective welfare above individual happiness.<sup>2</sup>

Predominant features of African culture such as these have left an indelible stamp on the continent’s legal system.<sup>3</sup> Traditional African rights strongly reflect the lifestyle, the nature of social relations, in short the entire civilization of traditional societies.

Such rights are above all communal. Individuals possess rights and obligations only as members of a group, with which they entertain a mutually complementary relationship. These rights are shaped by oral tradition and religious empiricism.<sup>4</sup> Their implementation emphasizes protection and rehabilitation rather than repression, which is an exceptional measure. This explains the key role attributed to dialogue and to reconciliation through discussion.<sup>5</sup>

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<sup>2</sup> Tempels, P., “La philosophie bantoue”, 5th edition, *Présence africaine*, Paris, 1965; “Société africaine et culture. Les religions africaines comme source de valeurs de civilisation”, Cotonou Symposium, 16 July-2 August 1970, *Présence africaine*, 1972, 472 pp.

<sup>3</sup> Olawale, T. E., “La nature du droit coutumier africain”, *Présence africaine*, Paris, 1961.

<sup>4</sup> Kalongo, M., “Individualisation et collectivisation du rapport juridique de responsabilité civile en droit privé zaïrois”, *Annales de la Faculté de Droit*, vol. I., 1972, pp. 39-40.

<sup>5</sup> Bayona-Ba-Meya, “Authenticité, droit et développement”, in *Authenticité et développement*, Présence africaine, Paris, 1982, pp. 133-134; Balanda Mikuin Leliel, “Les tribunaux de paix au Zaïre — fonctionnement, procédure et compétence”, exposé présenté dans le cadre des Deuxièmes Journées juridiques organisées par l’Association des jeunes avocats du Zaïre, *Revue juridique du Zaïre*, Nos. 1-3, January-December 1984, pp. 46-49.

Despite the diversity of African legal traditions,<sup>6</sup> many authors, such as Cheik Anta Diop, have succeeded in demonstrating their conceptual unity within the framework of the common cultural heritage shared by the peoples of the Islamic Sahel and of the sub-Saharan regions.<sup>7</sup> It is within this specific context that different humanitarian concepts, the existence of which can no longer be questioned, have emerged and developed.

## II. PROTECTION OF THE INDIVIDUAL IN TRADITIONAL AFRICA

The rights of individuals and their communities were guaranteed not only in time of peace but also and especially in time of armed conflict.

### A. Theory and practice of human rights in Africa

Many authors have shown that traditional African societies, as opposed to those ruled by a dog-eat-dog mentality, were essentially based on harmony between men. This concept, expressed in the Wolof proverb "Nit nit garabam" meaning "man is man's remedy"<sup>8</sup>, implied respect for human beings. Despite their subordination to the group, which was in any event non-alienating, Africans traditionally enjoyed the right to life, initiation and work, and the freedom of expression, religion, association and movement.<sup>9</sup> Those rights were guaranteed not only by the legal system, but also by the political, economic and social systems. Nevertheless, it was above all in time of war that humanitarian precepts and behaviour took on their full significance in traditional Africa.

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<sup>6</sup> Kuassigan, G. A., *Quelle est ma loi? Tradition et modernisme dans le droit privé de la famille en Afrique noire francophone*, Librairie générale de droit et de jurisprudence, Vol. XI, Pédone, Paris, 1974.

<sup>7</sup> Cheik Anta Diop, "L'unité africaine, condition de survie des peuples africains" in *Problèmes actuels de l'Unité africaine*, Algiers Symposium, 25 March—12 April 1971, SNED, Algiers, 1973, pp. 410-417.

<sup>8</sup> Adama Dieng, "Les droits de l'homme en Afrique", *Zaire-Afrique*, No. 191, January 1985, p. 7.

<sup>9</sup> Keba M'Baye and Birame Ndiaye, "The Organization of African Unity (OAU)", in Karel Vasak, ed., *The international dimensions of human rights*, Vol. 2, Unesco, Paris, 1982, pp. 588-590; Ngom, S. B., *Les droits de l'homme et l'Afrique*, Editions Silex, Paris, 1984, pp. 21-26.

## **B. Protection of individuals and the environment in time of armed conflict**

The rules governing the waging of war, capitulation and surrender, the end of hostilities, reprisals, peace treaties, the fate of prisoners, asylum, neutrality, interventions and alliances were numerous, and varied from tribe to tribe, yet they converged in spirit. The same was true of the rules concerning the treatment of persons in time of war according to their role before and after hostilities (special envoys, mediators), their special duties (priests, magicians, medicine men), their physical condition (women, children, the elderly, the disabled), their status (non-combatants) and also of the rules ensuring the protection of sites and property that either had symbolic value (burial grounds, sacred forests) or were of vital importance (water sources, crops, cattle).

### **1. Protection of persons and property in time of armed conflict**

It must be recognized first of all that certain persons fulfilled a social role of prime importance. *Priests* accumulated great strength through experience, knowledge and position. They were patriarchs from the oldest families, magicians who had proven their merit and learned the religious rites during years of trials and asceticism, either in monasteries, as in Dahomey (Benin) and Nigeria, or under the wing of a certain elder, as in most tribes. They had learned the art of interpreting the will of God and regularly performed the rite that entailed the sacrifice of a cock in a burial ground.

*Diviners* or *medicine men*, also called *magicians* or *fetish men*, were able to detect disease through invocations and cure the sick by giving them talismans to wear or decoctions to drink. They were not to be confused with sorcerers, who were possessed with an evil lust for power. Great importance was also attributed to the *elders* (old people) who were close to the ancestors and guardian spirits.<sup>10</sup>

Certain persons were thus protected from the effects of war by virtue of either their sacred mission (magicians and priests) or their important historical role (elders and witchdoctors). The former even benefited from double protection since the sites at which they performed their duties were sacred and therefore also protected. Old people, who were the repositories of oral traditions and therefore veritable “living lib-

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<sup>10</sup> Genet, L. et al., *Les civilisations du monde contemporain*, Hatier, Paris, 1966, pp. 375-395.

raries”, were also spared. As a Zairian proverb says: “You can destroy the pirogue but not the port”.

Because of the vital spiritual role played by nature in Africa, great importance was attached to property such as water, cattle and land, which were therefore collectively owned and exploited.<sup>12</sup> Cattle, crops and water sources were generally spared from despoliation and destruction in time of war because of their traditional role in ensuring the survival, not only of their owners and the community, but also of strangers, if only passing through, and even of enemies.

Professors Kappeler and Kakooza have pointed out in this connection that, among the lakeside peoples of East Africa, belligerents were prohibited from considering cattle, crops and water holes as military targets.<sup>13</sup>

Women, rightly considered as the “cradle” of African society, and children, regarded as inherently innocent, were also entitled to special protection in time of war.<sup>14</sup>

## 2. The conduct of war

While specific rules existed to protect non-combatants, there were others, equally strict, which combatants had to observe. This constituted a sort of law of war limiting the injury which could be inflicted. In Senegal, writes Diallo, “there was a genuine ethics of war which was taught to any young nobleman for his future calling as a warrior. He was taught never to kill an enemy on the ground...”.<sup>15</sup>

War could be declared only after negotiations had been undertaken and had failed and, in many regions, only by the King or Chief and in solemn form. Professor Emmanuel Bello cites the example of the Kabaka of Buganda. It was, moreover, an established rule that emissaries who declared war were inviolable and protected by a sort of diplomatic immunity.<sup>16</sup>

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<sup>11</sup> Verdier, R., “Féodalités et collectivisme africain”, *Présence africaine*, 4th quarter, 1961, pp. 79-100.

<sup>12</sup> Particular importance is attributed to these sites in Nigeria and Ashanti territory. See Diallo, Y., *African traditions and humanitarian law*, ICRC, Geneva, 1976, p. 11.

<sup>13</sup> Kappeler and Kakooza, papers presented to the Fifth African Regional Seminar on International Humanitarian Law organized jointly by the Henry Dunant Institute and the Institute of International Relations of Cameroon in Yaoundé from 26 November to 4 December 1986 (unpublished).

<sup>14</sup> Ndam Njoya, A., “La conception africaine”, in *Les dimensions internationales du droit humanitaire*, Unesco/Pédone/Institut Henry Dunant, Paris, Geneva, 1986, p. 24.

<sup>15</sup> Diallo, *op. cit.*, p. 10.

<sup>16</sup> Bello, E., *African customary humanitarian law*, Oyez Publishing Ltd./ICRC, Geneva, 1980, p. 19.

Yolande Diallo's study on African traditions and humanitarian law points to the prevalence, despite isolated instances of cruelty, of restrictions on the choice of both weapons and methods of combat. Among East African peoples, tradition prohibited the use of dangerous weapons against adversaries from the same ethnic group as well as the use of arrows and poisoned spears. Sages taught that "brothers do not kill each other". Furthermore, ambushes were allowed only under specific circumstances.<sup>17</sup>

As in other ancient civilizations, the problem of compensation for damages arose at the close of hostilities. Traditionally, the chiefs of the belligerent parties met in the presence of a member of a neutral group to settle the matter by payment in cash or kind.<sup>18</sup>

### 3. Places of asylum and truces

Sacred trees, called *Mogouma-Manjathi*, were central to the institutions and culture of the Kikuyus of Kenya. Tribal unity, family continuity and communion with the earth, rain and nature depended on these trees. Areas where they grew were considered places of sanctuary where no man could be pursued. For the Masai of Kenya and Tanzania, the site used for the yearly circumcision of the young was sacred and could not be entered with belligerent intentions. In East Africa, as in West Africa, the place of sanctuary varied by ethnic group. They could be burial grounds, communal places, the sites of certain sacrifices or even entire districts. The burial grounds reserved for members of the Rwandese dynasties were considered inviolable places of asylum. Most ethnic groups also recognized truces during combat. "For example, among the Lugbara of Uganda, the suspension of hostilities came just before the periods for sowing and harvesting the crops".<sup>19</sup>

### 4. Prisoners and non-combatants

Striking examples of indulgence are to be found among the traditional attitudes of African peoples towards combatants taken prisoner. Moslems respect the principles of reciprocity and avoidance of unnecessary suffering. Scholars agree that Islamic belief forbids the degrading or inhuman treatment of captured enemies. Hadith texts contain several

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<sup>17</sup> Diallo, Y., *African traditions and humanitarian law*, II, ICRC, Geneva, 1978, pp. 4-5.

<sup>18</sup> Ndam Njoya, *op. cit.*, p. 25.

<sup>19</sup> Diallo, *op. cit.*, II, p. 9.

relevant passages in this respect. The Prophet is therein said to have advised his fellow combatants to treat with compassion the prisoners taken at the Battle of Badr. After noticing that captives had been left in the sun during a battle, he ordered that they thenceforth be spared from enduring the heat of the sun in addition to the heat of combat.

Scholars also agree that the execution of non-combatants is prohibited. This opinion is based on Verse 190, Chapter II (The Cow) of the Koran: "Fight for the cause of God those who fight you, but transgress not, for God loves not transgressors". There are also precise directives concerning women, children, old people and monks or men of religion. In this respect, Abu Bakr recommended to Yazid Ibn Abi Soofian, 'Amr Ibn al 'As and Sharhabil Ibn Hassanah, before the conquest of Syria: "Do not attack children, women or elders; and you will find people who have sought seclusion in towers, leave them to devote themselves to what they are seeking".<sup>20</sup>

Tradition among animist populations, in Upper Volta (Burkina Faso) for example, ensured the protection not only of women, children and old people, but also of non-combatants.<sup>21</sup> Christianized populations adopted the Church's teachings concerning love of one's neighbour. During the era of Christian and colonial expansion, inter-ethnic and inter-tribal conflicts generally provided an opportunity for converted indigenous populations to demonstrate their adherence to such principles. The influence of biblical principles thus limited the human and material losses suffered during inter-ethnic conflicts, latent and open, in the Congo.<sup>22</sup>

### **C. The colonial era and the decline of humanitarian values**

The colonial period, transitory as it was, was marked by the introduction of formal education, the spread of the Christian religion, the creation of regular armies under the direct command of the State and the emergence of firearms and weapons of mass destruction.

Ambassador Adamou Ndam Njoya notes that colonial politics dealt a severe blow to African humanitarian concepts that was hardly offset by the preaching of Christian love. Colonialization isolated Africa from

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<sup>20</sup> Yadh Ben Ashoor, "Islam and international humanitarian law", *IRRC*, Geneva, No. 215, March-April 1980, p. 67; see also Sultan, H., "La conception islamique", in *Les dimensions internationales du droit humanitaire*, *op. cit.*, pp. 47-60.

<sup>21</sup> Ndam Njoya, *op. cit.*, p. 24.

<sup>22</sup> Mutombo, D., *La victoire de l'amour*, Bibliothèque de l'Etoile, Leverville, 1957.

the international community, stunting the development of political thought and the evolution of concepts and principles across the continent. This state of stagnation lasted from the late seventeenth century to the nineteen sixties. It was a period of colonial aggression that debased human values and trampled man's traditional nature. The face of the political system changed, becoming increasingly alienated from human and family concerns. A new form of aggression emerged which thrust members of the same community or family into opposite camps, fighting for objectives which they did not fully understand and which were designed to strengthen foreign dominion. The desecration of man and the destruction of the natural order shattered the prevailing belief in human values, filling many minds with doubt.<sup>23</sup>

It was during this very period that the 1949 Geneva Conventions were adopted, to be completed by two Additional Protocols in 1977. Those texts today constitute the foundations of international humanitarian law (IHL), a set of international legal provisions, written and customary, that ensure respect for human beings during armed conflicts. IHL draws its inspiration from feelings of humanity and rests on the principle that belligerents must not inflict on their enemy suffering out of proportion to the objective of war, namely to destroy or weaken the adversary's military potential. IHL comprises the Law of Geneva, designed to protect wounded and captured members of the armed forces and persons who are not taking a direct part in hostilities, and the Law of The Hague, which establishes the rights and obligations of belligerents in the conduct of hostilities and limits the choice of methods and means of warfare.<sup>24</sup>

By ratifying or acceding to these international legal instruments, States undertake not only to respect them, but also to spread knowledge of them and promote them. We shall now examine the implications for African States, taking into account their specific context, of the obligation to promote contemporary humanitarian rules.

### III. AFRICAN STATES AND THE PROMOTION OF INTERNATIONAL HUMANITARIAN LAW

Although African States made an outstanding contribution to the Diplomatic Conference on the Reaffirmation and Development of

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<sup>23</sup> Ndam Njoya, *op. cit.*, p. 27.

<sup>24</sup> "Basic rules of international humanitarian law in armed conflicts", in *Basic rules of the Geneva Conventions and their Additional Protocols*, ICRC, Geneva, 1983, p. 7.



International Humanitarian Law Applicable in Armed Conflicts (Geneva, 1974-1977)<sup>25</sup>, the conditions prevailing on the continent today are far from conducive to the harmonious development of humanitarian principles.

### **A. Obstacles to the development of international humanitarian law in Africa**

Such obstacles are very diverse, being linked to historical, economic, cultural, social and political factors.

**Historically**, the failure of IHL to take root in Africa is largely due to its European origin. Africans strongly distrust any European-inspired legal system, let alone one, such as humanitarian law, that proved ineffective during the colonial wars.<sup>26</sup>

The continent is at present in the throes of such grave **economic** difficulties that little interest can be aroused in efforts to promote general culture, not to speak of humanitarian issues. The dissemination of IHL therefore appears as a distant concern of low priority.<sup>27</sup>

In the **cultural** sphere, efforts to develop modern education have failed, in the face of rapid demographic growth, to reduce the high illiteracy rate. Moreover, as pointed out in numerous Unesco reports, Western education has proven on the whole unsuited to the mentality and needs of African people.

The radical modification of human relations brought about by the colonialist "divide and rule" policy generated **social** ills such as acute antagonism among both ethnic groups and States. As a logical consequence, Africa's current political climate is rife with tribal and international conflicts which take a heavy human toll.

However, the determining factor seems to be **institutional difficulties**. Among these, Professor Owona points to the lack of instruction and dissemination efforts directly or indirectly related to humanitarian law, the diversity of cultural traditions and the new national legal and political systems influenced by African ideologies that leave little room for humanitarian concerns.<sup>28</sup>

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<sup>25</sup> Wodie, V. F., "Africa and humanitarian law", *IRRC*, No. 254, September-October 1986, pp. 261-267.

<sup>26</sup> Hentsch, T., *Face au blocus. La Croix-Rouge internationale dans le Nigeria en guerre (1967-1970)*, Graduate Institute of International Studies, Geneva, 1973, pp. 5-8.

<sup>27</sup> Bello, *op. cit.*, p. 82.

<sup>28</sup> Owona, J., "Droit international humanitaire", in *Encyclopédie juridique de l'Afrique*, N. E. A., Paris, Dakar, 1982, pp. 381-382.

However, even the existence of all these obstacles does not relieve African States of the obligation to ensure the dissemination of humanitarian rules on their continent. On the contrary, many factors speak in favour of a policy of active promotion of contemporary humanitarian principles.

## **B. Foundations of a policy to promote international humanitarian law in Africa**

Such a policy must have sound political, moral, legal, social, cultural and technical bases.

In the *political and moral* spheres, the unconditional commitment of African States to the international instruments of IHL and the fact that these States face numerous problems arousing humanitarian concern (situations created by civil strife, national liberation wars, the presence of mercenaries and refugees, etc.) justify attributing high priority to the development of the humanitarian domain.

Furthermore, African States are under a moral obligation to implement the resolutions of International Conferences of the Red Cross. As underscored by one author, "the State must in all good faith abide by the resolutions and refrain from deliberately betraying their intents and purposes".<sup>29</sup> In its Resolution IV on the "Dissemination of international humanitarian law and the principles and ideals of the Movement in the service of peace", the Twenty-fifth International Conference of the Red Cross, in which African States played an active role<sup>30</sup>, requested "governments within their competence to continue the dissemination of the Geneva Conventions and other agreements containing rules of international humanitarian law applicable in international and non-international armed conflicts, not only within the armed forces but also within government circles, universities, schools, the medical profession, the general public and the mass media".<sup>31</sup>

In this connection the Council of Ministers of the Organization of African Unity (OAU), at its Forty-fourth Ordinary Session, invited "...Member States, in co-operation with their National Societies, to

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<sup>29</sup> Perruchoud, R., *Les résolutions des Conférences internationales de la Croix-Rouge*, Henry Dunant Institute, Geneva, 1979, p. 360.

<sup>30</sup> Moreillon, J., "Suspension of the government delegation of the Republic of South Africa at the Twenty-fifth International Conference of the Red Cross (Geneva 1986) — Different perceptions of the same event", *IRRC*, No. 257, March-April 1987, pp. 133-151.

<sup>31</sup> "Resolutions of the Twenty-fifth International Conference of the Red Cross", *IRRC*, No. 255, November-December 1986, p. 345.

support efforts to make public opinion more familiar with all the activities of the International Red Cross and Red Crescent Movement” (Resolution CM/Res. 1059 [XLIV] on the International Committee of the Red Cross).

**Legally**, the obligation to disseminate and promote the rules of IHL derives from the 1949 Geneva Conventions and their Additional Protocols of 1977. “It is understood that the States (parties to the aforementioned instruments) are under obligation to respect the commitments they have undertaken—*pacta sunt servanda!*” (Article 1 common to the Geneva Conventions and Article 80 of Protocol I of 1977) and “must contribute to ensuring respect for the Conventions wherever they apply, even in conflicts to which the said States are not a party”.<sup>32</sup>This obligation is unfortunately not complied with to any satisfactory degree.<sup>33</sup>

In the **social and cultural** realm, ancestral heritage appears to be regaining ground as the colonial era, unforgettable as it may be, recedes into the past. This is demonstrated by the popularity of ideologies promoting a return to African values (black pride, authenticity, African socialism, etc.), the emphasis placed on traditional thought and culture, the boom in African studies and the resurgent interest in African languages.

A propitious climate has thus been created for educators to recall traditional African humanitarian principles and thereby pave the way for greater acceptance of contemporary rules and a better adaptation of these rules to the African mentality. This constitutes a psychological factor of great importance in mobilizing support for the humanitarian cause.

In the field of **technology**, the mass media, particularly audio-visual means of communication (TV, radio), have entered a phase of slow but sure development. They offer a powerful means of reaching people in all walks of life (farmers, workers, urban populations, etc.).

This combination of factors forms an ideal framework for the implementations of an effective policy to promote humanitarian rules in Africa.

### C. Strategy to promote humanitarian rules in Africa

The cultural assimilation of contemporary humanitarian rules by African societies should be a major goal of dissemination. To do this,

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<sup>32</sup> Sandoz, Y., “Bilan de recherches de la section de langue française du Centre d’Etude et de recherche de l’Académie” in *L’application du droit humanitaire*, Centre d’étude et de recherche de droit international et des relations internationales, Académie de droit international (1986 session), The Hague, 1987, p. 25.

<sup>33</sup> Sandoz, Y., “Promotion et diffusion du droit international humanitaire”, *Annales de droit international médical*, No. 32, Monaco, 1985, p. 46.

African peoples must be convinced that these rules (Law of Geneva and Law of The Hague), despite their formal imported character, are remarkably similar to African traditions, the virtues and merits of which are currently being extolled across the continent.

To take the example of religion, the increasing use of "African rites" by the African Catholic Church today has stimulated Christian faith beyond any point achieved during the heyday of Roman liturgy, before Vatican II and the Africanization of the clergy.<sup>34</sup>

As for *methods of dissemination*, they must be chosen with discernment and take into account the duality of contemporary African society.

### 1. Among the educated

Greater use must be made of the customary channels of dissemination, the three main target groups being universities, the medical professions and the armed forces.

#### a) *Universities*

In this connection, Professor Eric David rightly considers that "Universities are not only 'temples of knowledge'; they are also places where humanism is taught. A university's mission is to train human beings, not just mental athletes. It must remind each succeeding generation of students which passes through it that even in war, when all rules seem to have been abolished, a certain amount of law remains and must be respected. If, as André Malraux wrote, humanism means rejecting that which the animal in us wants, and seeking out human values wherever one finds conditions which threaten to overwhelm them, the steadfast observance of international humanitarian law is a way of achieving this and preserving human values even amidst shot and shell.

If the duty of each of us towards our fellow man is to propagate such humanism, then it is, *a fortiori*, one of the basic obligations of any institution of learning".<sup>35</sup>

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<sup>34</sup> Ela, J. M., "Identité propre d'une théologie africaine", in Greffé, ed., *Théologie et choc des cultures*, Symposium of the Institut catholique de Paris, Editions du Cerf, Paris, 1984, pp. 23-54; Lufuluabo, "Mentalité religieuse africaine et christianisme", *Revue du clergé africain*, 1967, vol. 22, pp. 318-340; Ngindu Mushiete, "L'histoire de la théologie en Afrique. De la polémique à l'irénisme critique", *Libération ou adaptation? La théologie africaine s'interroge*, Accra Symposium, L'Harmattan, Paris, 1979, pp. 30-48; Mulago, V. *Un visage africain du Christianisme. L'union vitale bantu face à l'unité vitale ecclésiale*, Présence africaine, Paris, 1965.

<sup>35</sup> David, E., "Dissemination of international humanitarian law at university level", *IRRC*, No. 257, March-April 1987, p. 156; see also Meurant, J., "Dissemination and education", *Australian Yearbook of International Law*, Vol. 9, Sydney, 1985, pp. 364-383; Junod, S., "La diffusion du droit international humanitaire", in *Studies and essays on international humanitarian law and Red Cross principles—in honour of Jean Pictet*, Swinarski, C., ed., ICRC, Geneva, and M. Nijhoff Publishers, The Hague, 1984, p. 367.

In addition to the efforts needed in Africa at the national level, Professor Bello proposes the creation, at the continental level, of an “African Institute of International Humanitarian Law (AIIHL)” which “would be constituted so as to enjoy the intellectual stature of an authoritative centre (...) for legal understanding and the development of the norms, principles and ideals of the ICRC and the principles of human rights in international armed conflicts”. As a regional centre, it would advise African governments and it would inspire credibility by remaining neutral and outside politics.<sup>36</sup>

**b) *Military academies, headquarters and barracks***

States party to the humanitarian conventions have the obligation to teach the principles contained therein to the members of their armed forces. Lieutenant-Colonel Frédéric de Mulinen is adamant in this respect: “The States which have accepted international treaties on the law of war are bound ‘to respect and to ensure respect for these treaties in all circumstances’. This general principle, stated in the 1949 Geneva Conventions, has to be put into practice. For that reason, States ‘undertake, in time of peace as in time of war, to disseminate the text of the treaties as widely as possible and, in particular, to include the study thereof in their programmes of military (...) instruction, so that the principles thereof may become known to the entire population, in particular to the armed forces’. Proper instruction in the law must take place in peacetime, but must take account of the realities of armed conflict: ‘each Party to the conflict, acting through its commanders-in-chief, shall ensure the detailed execution of the treaties and provide for unforeseen cases, in conformity with the general principles of the law of war’.”<sup>37</sup>

Combatants must therefore receive appropriate instruction and training enabling them to assimilate the humanitarian principles, apply them over and above the rules of discipline and follow the dictates of their conscience in agonizing moments of genuine conflict between humanitarian and military necessities.<sup>38</sup>

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<sup>36</sup> Bello, E., “A proposal for the dissemination of international law in Africa pursuant to the 1977 Protocols additional to the Geneva Conventions of 1949”, *The Military Law and Law of War Review*, Vol. XXIII, Nos. 1-4, Brussels, 1984, pp. 311-323. The Henry Dunant Institute and the Institute of International Relations of Cameroon have organized regularly since 1977 regional seminars in Yaoundé for lawyers, diplomats, teachers, etc.

<sup>37</sup> De Mulinen, Frédéric, “Law of war training within armed forces—twenty years experience”, *IRRC*, No. 257, March-April 1987, p. 168.

<sup>38</sup> Verri, P., “Institutions militaires: le problème de l’enseignement du droit des conflits armés et de l’adaptation des règlements à ses prescriptions humanitaires” in *Studies... in honour of Jean Pictet, op. cit.*, p. 618.

### c) *Medical, paramedical and health institutions*

Let us see what Médecin Général Inspecteur J. Miné has to say on this point. He feels strongly that medical services must teach the principles of international humanitarian law to doctors and other medical personnel, then verify through practical training courses, exercises and even examinations whether they have acquired a firm understanding of these principles and a true commitment to the ensuing responsibilities. These include the duty to collect, respect, protect and care for the sick, wounded and shipwrecked to the best of one's ability; the duty not to discriminate, that is to make no distinction other than medical between the wounded, whether friend or foe; the duty to set medical priorities on the sole basis of emergency and the duty not to abandon the sick or wounded who fall into enemy hands.<sup>39</sup>

## 2. In predominantly oral cultures

Oral dissemination must make use of the talent of "griots" (minstrels), where they still exist, and of other resources of traditional folklore; popular gatherings may be organized with the support of local chiefs; radio programmes may be broadcast and films projected in local languages; recourse may also be had to popular tales and stories and works of naive art.

Government efforts along these lines may be supplemented as needed by those of non-governmental organizations, as suggested by the Senegalese lawyer Adama Dieng in his proposal for "popular instruction and dissemination" of human rights: "(...) How can this be achieved on a continent where the majority of people live in rural areas? (...) How can legal experts make their contribution, which seems essential, when such a wide gap separates them from rural people who, more often than not, consider them as agents of their oppression? Such difficulties, although undeniable, can be overcome with the assistance of development-oriented NGOs which have gained the confidence of rural people. This form of dissemination requires a permanent commitment on the part of human rights activists known as paralegal workers or barefoot lawyers. To borrow the words of President Abdou Diouf of Senegal, it is a way for State institutions to both bring the law to the people and draw it from the people".<sup>40</sup>

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<sup>39</sup> Miné, J., "The Geneva Conventions and medical personnel in the field", *IRRC.*, No. 257, March-April 1987, pp. 183-194.

<sup>40</sup> Adama Dieng, "Promotion et diffusion des droits de l'homme dans le contexte africain", *Annales de droit international médical*, Monaco, No. 32, 1985, pp. 43-44.

## D. Literature, mass media and the dissemination of humanitarian principles in Africa

As already mentioned, both written and audio-visual means of communication are essential components of an effective State policy for the dissemination of humanitarian law and principles in Africa. The written material to be put across consists primarily of the *basic texts*, that is, the 1949 Geneva Conventions and the 1977 Additional Protocols. These documents should be translated into local languages to ensure their more widespread dissemination among the general public which, although it may be literate, is not always familiar with the languages of Voltaire and Shakespeare. Universities should supply their faculty libraries with *works on IHL*, both *general* (treaties), *didactic* (textbooks) and *specialized* (doctoral theses, undergraduate papers, dissertations). Importance should also be attached to *texts for the layman* (magazines, pamphlets, bulletins, press articles) and these should be distributed equitably among urban and rural populations to ensure that the humanitarian message reaches as many people as possible. As for *military and paramilitary forces*, African States should overcome the prevailing lethargy and consider publishing military manuals and adopting national provisions for the application of IHL. To our knowledge, few of them have taken such steps as yet.<sup>41</sup>

Schools and academic institutions seem at present to constitute the most effective channel for dissemination owing to the far-reaching effects of formal education. In this respect, *occasional* measures (organizing symposia and seminars) should alternate with *intermittent* events (special teaching sessions) and particularly *permanent* efforts (courses, academic seminars), first of all at the national level. However, regional and sub-regional meetings, organized in co-operation with the ICRC and the Henry Dunant Institute, should also be encouraged and, despite financial constraints, receive increased support from African governments.

Care should be taken, however, to avoid an elitist training policy in promoting humanitarian principles, which stand to gain most from popularization. In this respect, African universities have an important role to play in stimulating public interest in literature, preferably of African origin, which is deeply committed to furthering contemporary humanitarian values by highlighting their similarity to ancestral pre-

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<sup>41</sup> *Bibliography of international humanitarian law applicable in armed conflicts*, ICRC and Henry Dunant Institute, 2nd ed., Geneva, 1987, pp. 453-460.

cepts.<sup>42</sup> Research on African humanitarian traditions is currently being carried out at university level with this goal in mind. The working group appointed in this connection by the Fifth African Regional Seminar on International Humanitarian Law held in Yaoundé (26 November to 4 December 1986) comprises Professors Nahum (Ethiopia), L. P. Ngongo (Cameroon), D. Kappeler (Switzerland), M. L. Balanda (Zaire), M. Rwelamira (Tanzania), Lifanu (Zambia), Nwogugu (Nigeria), A. Mahiou (Algeria), K. El Madmad (Morocco) and M. Kourouma (Senegal).

Dissemination in Africa cannot succeed without the mass media. Local newspapers, both governmental and non-governmental, should be used by African scholars to express the basic principles of IHL in lay terms. Articles such as those written by J. Owona and Kontchou-Kouogmeni, pointedly entitled "International humanitarian law: non-destabilizing rules for the protection of humanity that carry specific sanctions" and "International humanitarian law: neither a Trojan horse nor a demotivating illusion"<sup>43</sup>, which appeared in the "Cameroon Tribune" on 13 and 8 December 1977, are conducive to the effective mobilization of large numbers of people in support of humanitarian issues, people who, *volens volens*, cannot all benefit from the bibliographical resources of the Institute of International Relations of Cameroon or of the University of Yaoundé.

*Music* is an ideal means of dissemination. The song *Ancien combattant*, which was recorded by the Congolese composer Zao and has dominated the African hit-parade for several years, has successfully drawn the attention of music-lovers and public opinion in general to the dire consequences of a possible third world war.

Effective use could also be made of *comic strips*, preferably to tell *stories*, considering the appeal they hold for the African public in general and schoolchildren in particular. In this respect, the pamphlet entitled *Les histoires de Noko Lisapo*, published by the Togolese Red Cross, should be used experimentally in other African nations. *Radio and television* broadcasts of conferences, discussions and interviews on humanitarian questions should also be encouraged and expanded.

The view, shared by many Africans, that the ICRC alone is responsible for the dissemination of humanitarian principles must be corrected.

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<sup>42</sup> On the future of African literature in general, see Kimoni, Y., *Destin de la littérature négro-africaine ou problématique d'une culture*, P.U.Z., Kinshasa, 1976.

<sup>43</sup> Owona, J., *op. cit.*, p. 381.



It is certainly true that the institution, by virtue of its Statutes, functions and experience, is called upon to “participate actively in the effort to disseminate knowledge of international humanitarian law by (...) circulation of appropriate information for the dissemination of the Geneva Conventions and the [Additional] Protocols” and by “organizing, on its own initiative or when requested by Governments or National Societies, seminars and courses on international humanitarian law, and co-operating for that purpose with States and appropriate institutions”.<sup>44</sup> However, this should not serve as a pretext for other members of the international community, including the African elite and governments, to consider dissemination as the exclusive domain of the “residents of the Avenue de la Paix” or their delegates in the field. The ICRC’s activities in this area should be considered as a contribution to local participation in a broad-based humanitarian campaign.

## CONCLUSION

From the foregoing it appears essential to place heavy reliance on both popular African culture and modern means of communication in spreading the humanitarian message. In any event, whatever the strategy adopted, the promotion of humanitarian principles warrants as much attention as, for example, economic development. As stressed by His Excellency François-Xavier Ngoubeyou at the Twenty-fifth International Conference of the Red Cross: “Knowledge of international humanitarian law is not a luxury in Africa, a continent that holds the grim record for numbers of refugees and contains among the world’s largest numbers of prisoners of war, political detainees and gravely wounded and displaced persons. Assisting these people, protecting them and finding solutions to their problems requires knowledge of the basic principles enshrined in the international rules governing their situations. (...) Awareness of the rules of international humanitarian law leads to better treatment and improved conditions for the unfortunate victims of political and military upheavals and facilitates their

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<sup>44</sup> Tschiffeli, A., “Dissemination—a concept of long standing”, *Dissemination*, No. 1, April 1985, p. 12.

return to a normal life. In other words, we are convinced that the dissemination of international humanitarian law must be considered as an indispensable complement to material relief".<sup>45</sup>

### **Mutoy Mubiala**

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**Mutoy Mubiala** was born in Zaire in 1959. He holds a law degree from the University of Kinshasa (1984) and a diploma from the International Institute for Peace Research in Geneva (September 1988). He has been a barrister, a consultant to the ICRC regional delegation and a legal adviser to the *Contentieux des relations internationales du département des droits et libertés du citoyen* in Kinshasa (1985-88). As an assistant professor at the University of Kinshasa Faculty of Law since 1986, he has participated in and made valuable contributions to several seminars and study sessions on international law, particularly at the International Institute of Human Rights in Strasbourg in July 1985, the Institute of International Relations of Cameroon in Yaoundé in December 1986 and the Ministry of Foreign Affairs of Senegal in Dakar in May 1988. The author was also a trainee at the *Section internationale de l'Ecole nationale de magistrature* in Paris in June 1985 and the ICRC Principles and Law Department in Geneva in October 1987. He is currently engaged in postgraduate studies on humanitarian issues at the Graduate Institute of International Studies in Geneva.

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<sup>45</sup> Ngoubeyou, F. X., excerpt from the address given at the Twenty-fifth International Conference of the Red Cross (Geneva, October 1986); Annex V to the *Report on the Fifth African Regional Seminar on International Humanitarian Law* held in Yaoundé from 26 November to 4 December 1986.