

Sixteenth Round Table of the International Institute of Humanitarian Law

(San Remo, 3-7 September 1991)

The 16th Round Table on current international humanitarian law problems, organized by the International Institute of Humanitarian Law, was held in San Remo from 3-7 September 1991.

Held under the auspices of the International Committee of the Red Cross (ICRC), the United Nations High Commissioner for Refugees, the United Nations Centre for Human Rights, the International Organization for Migration and the League of Red Cross and Red Crescent Societies, the meeting was attended by some 150 participants, including representatives of about fifteen National Red Cross and Red Crescent Societies, academics, and representatives of diplomatic missions and non-governmental organizations.

The ICRC was represented at the Round Table by Mr. Cornelio Sommaruga, President, Mr. Paolo Bernasconi, member of the Committee, and Mr. Yves Sandoz, member of the Executive Board and Director of the Department of Principles, Law and Relations with the Movement, as well as by Ms. Denise Plattner, Mr. Angelo Gnaedinger, Mr. Jean-Philippe Lavoyer, Mr. Jacques Meurant, Mr. Jean-Claude Risse and Dr. Rémi Russbach.

As is customary, the meeting was divided into three parts, including the actual Round Table, which discussed the protection of prisoners of war and civilians, compliance with rules governing the conduct of hostilities, the implementation of international humanitarian law and the repression of violations, and reviewed certain problems that have arisen in recent conflicts, in particular the Gulf war. The meeting also included a day-long Red Cross and Red Crescent Symposium, and Refugee Day.

REFUGEE DAY

(3 September 1991)

The meeting was opened by the President of the International Institute of Humanitarian Law, Mr. Jovica Patrnogic, who pointed out that it was the 40th anniversary of the adoption of the 1951 Convention relating to the Status of Refugees, before introducing the theme of Refugee Day: "The evolution of protection of refugees with regard to the 1951 Convention and the development of the international protection function of the United Nations High Commissioner for Refugees (UNHCR)".

Chaired by Mr. Michel Moussali, Director of UNHCR's Division of International Protection, this opening session took the form of a panel of experts. Ten experts took it in turn to show how important and relevant the provisions of the 1951 Convention and those of the 1967 United Nations Protocol relating to the Status of Refugees remain today, and how they can be adapted to current refugee problems.

The debate developed into a lively exchange of opinions on the refugee question, which is increasingly complicated by new migratory movements swelling the ranks of asylum seekers. On this subject, participants felt that it was up to the various governments to take measures to make the labour market more accessible to these migrants, while promoting development in the countries from which they come.

Speakers also stressed the need for specific analyses on the nature and origins of these migrations, and called for improved cooperation among the different United Nations organizations and non-governmental organizations.

What possible solutions are there to the various problems relating to refugee movements? Participants noted that the principle of international solidarity should continue to be applied to ensure that such solutions as voluntary repatriation, settlement in the country of first asylum, or resettlement in third countries remain open to refugees. But the important thing is to deal with the causes of refugee flows, and in particular the root causes which involve human rights violations. In this context, participants felt that certain "coordinating mechanisms" might be established within UNHCR, UNDP and FAO, as well as within other United Nations bodies and non-governmental organizations concerned either with human rights or with refugees.

RED CROSS AND RED CRESCENT SYMPOSIUM
(4 September 1991)

The Red Cross and Red Crescent Symposium was devoted to a general presentation of the 26th International Conference of the Red Cross and Red Crescent, to the coordination of relief activities, and to humanitarian assistance in armed conflicts.

The introductory speeches by Dr. Ahmad Abu-Goura, Chairman of the Standing Commission of the Red Cross and Red Crescent, Mr. Mario Villarroel, President of the League of Red Cross and Red Crescent Societies, and ICRC President Cornelio Sommaruga all highlighted the importance of the 26th International Conference of the Red Cross and the Red Crescent. The Conference, they felt, should mark a new step forward in humanitarian "mobilization", striving to improve the effectiveness of humanitarian aid and protection while avoiding politicization; it would also be an opportunity to give new momentum to humanitarian law by rendering it even more universal and promoting its dissemination and application. Mr. Yves Sandoz outlined the main topics on the agenda of Commission I at the 26th Conference: respect for international humanitarian law, the law's implementation, its promotion and its reaffirmation, notably in relation to non-international armed conflicts. He also spoke of the importance of solving any problems to do with participation in advance of the Conference, to avoid politicization of the debates.

The League's Secretary General, Mr. Pär Stenbäck, expressed his concern about the politicization, indeed the militarization of humanitarian aid, before going on to outline the agenda for the Conference's Commission II relating to the development of National Societies, to natural and technological disasters, etc.

The role of the League in preventing natural and technological disasters, as well as the role of communications in disaster situations, was discussed by Mr. Peter Walker, head of the League's Disaster Policy Department, who spoke of the different levels of preparation and prevention, in their local, national and international dimensions. Particular stress was laid on the need to coordinate the activities of non-governmental organizations working in the field (sometimes competitively), and on the urgent need to improve international co-operation in the area of communications.

The last subject dealt with by the Symposium, humanitarian assistance in armed conflicts, was divided into two topics. The first concerned "The prohibition of famine as a method of combat" and was introduced by the ICRC's Chief Medical Officer, Dr. Rémi Russbach,

who referred to the conclusions of the seminar held in March 1991 in Annecy on the theme of "Famine and War"¹, conclusions which were the basis of a draft resolution to be submitted to the International Conference.

Participants in the subsequent discussion reaffirmed the provisions of humanitarian law concerning the prohibition of famine as a method of combat and the duty to allow the free passage of medical, food and clothing supplies for the victims. Blockades and their consequences for the civilian population, and the problems of access to victims and of supervision of aid distribution were extensively discussed. Many participants stressed the importance of contingency measures which the authorities of a country can take to be ready in case of famine, acknowledging at the same time that the question of supervision is a difficult one and requires further thought.

The second topic, concerning the right to humanitarian assistance, was discussed by Ms. Denise Plattner of the ICRC's Legal Division, with reference to the provisions of the Geneva Conventions and the Protocols additional thereto. She demonstrated that the right to assistance is recognized by international humanitarian law, and that an offer of relief consistent with the law does not constitute interference. She also stressed the conditions underlying humanitarian activities for the victims of armed conflict, notably impartiality and non-discrimination.

ROUND TABLE (5-6 September 1991)

1. Protection of civilians

The first Round Table topic was introduced by Prof. Salah El Din Amer (Egypt), Prof. Florentino Feliciano (Philippines) and Mr. Jean-Claude Risse (ICRC).

The protection of civilians, who suffered greatly during the Gulf war, was considered in the light of the Fourth Geneva Convention. This was applied in the following cases:

- protection of the population of occupied territories (i.e., Kuwait and the north and south of Iraq);

¹ See *International Review of the Red Cross* No. 284, September-October 1991, "Famine and War", pp. 549-557.

- general protection of Iraq's civilian population under Articles 13-26 of the Fourth Geneva Convention (as regards the international armed conflict), and under Article 3 common to the four Geneva Conventions (as regards the internal conflict);
- protection of foreigners inside Iraq.

Several instances of violation of the Fourth Convention were mentioned: in particular Iraq's refusal to allow the ICRC to enter Kuwait in order to carry out its mandate of protection and assistance; violations by the Iraqi armed forces inside Kuwait; the deportation of Kuwaiti civilians to Iraq; and the illegal detention of foreigners by Iraq.

Participants were reminded that the International Red Cross and Red Crescent Movement had been able to conduct a large-scale relief operation for displaced persons in the neighbouring States.

Finally, the Round Table focused its attention on the dramatic consequences, in both the short and the long term, of recent damage to the environment, and on the various legal measures applicable to ensure protection of the environment, particularly in times of armed conflict.

2. Protection of prisoners of war

Major Richard Austin (United Kingdom), Prof. Wolfram Karl (Austria), Mr. Fahmi Al Qaisy (Iraq) and Mr. Jean-Philippe Lavoyer (ICRC) took it in turn to discuss the provisions of the Third Convention as they apply to prisoners of war, and the nature of activities undertaken in behalf of prisoners of war from Kuwait and the coalition forces held in Iraq, and in behalf of Iraqi civilian and military personnel interned by certain coalition or neutral nations.

The difficulties encountered in applying the relevant provisions of the Third Convention were also discussed. The ICRC was given access to Kuwaiti prisoners in Iraq only at the beginning of March 1991, though since then some 6,300 prisoners and deported civilians have returned home with the help of the ICRC. Similarly, prisoners of war belonging to the coalition forces and held in Iraq could not be repatriated before March and April 1991.

More than 70,000 Iraqi prisoners of war held by the coalition forces were visited by the ICRC and have been repatriated with its help. As for Iraqi citizens, both civilian and military, interned by some of the coalition States, the ICRC was able to visit these in the United Kingdom and France. And finally, Iraqi soldiers interned by countries

which had declared themselves neutral, such as Turkey and Iran, also benefited from treatment as prisoners of war.

The debate highlighted certain cases involving non-compliance with the Third Convention, in particular failure to notify the ICRC of prisoners and its difficulty to obtain access to them, and the exposure of prisoners to public curiosity.

One unexpected consequence of the conflict was the repatriation under ICRC auspices of about 75,000 prisoners of war from the earlier Iran-Iraq conflict.

3. Conduct of hostilities

This subject, with its grave consequences, was a matter of lively debate.

The panelists included Mr. Kenneth Roth (USA), Lt. Col. Dominic McAlea (Canada), and Mr. Edward Cummings (USA), who discussed the rules governing the conduct of hostilities and pertaining to the protection of civilians. In view of certain violations, they placed particular emphasis on the following aspects:

- the need for acquainting the armed forces of all nations with international humanitarian law;
- the importance of certain rules, including the obligation to distinguish between combatants and non-combatants (civilians), the precautions that must be taken before launching attacks (e.g., forewarning), the principle of proportionality, and the ban on causing superfluous injury and unnecessary suffering;
- the use of certain weapons, in particular indiscriminate weapons, and the choice to be made between high-precision weapons and less precise ones.

The debate showed just how difficult it is to reach conclusions as to the application of humanitarian law, in view of the difficulties of interpretation and the paucity of confirmed factual information. The discussion did however manage to promote a better understanding of this law and its applications.

4. Applicability and implementation of international humanitarian law and repression of breaches of humanitarian law

Introduced by Prof. Konstantin Obradovic (Yugoslavia), Dr. Bernard Kouchner (France) and Mr. Angelo Gnaedinger (ICRC), this subject and the ensuing debate found full consensus as to the funda-

mental importance that must be attached to implementation of international humanitarian law.

Despite this, participants agreed to look further at certain weaknesses in the implementation and monitoring mechanisms, in particular with regard to the Gulf conflict. Consequently, attention focused on various approaches for improving the implementation of international humanitarian law:

- the importance of the collective responsibility of States, stemming from Article 1 common to the Geneva Conventions, which stipulates that “the High Contracting Parties undertake to respect and to ensure respect for the Conventions in all circumstances”;
- the right to humanitarian assistance, a consequence of the increasing interdependence of all the world’s nations and an expression of international solidarity;
- the repression of violations of international humanitarian law through an international tribunal. It was furthermore pointed out that each State should assume its own responsibility for bringing IHL violations to an end;
- recourse to the International Fact-Finding Commission provided for in Article 90 of Protocol I and recently established;
- better coordination of the humanitarian agencies;
- the need to make humanitarian law more dynamic, to mobilize the media and through them public opinion, so as to promote knowledge of this body of law.

The ICRC’s role in implementing international humanitarian law was made clear, with emphasis on the fact that this role is particularly conducive to dialogue with all parties concerned.

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At the closing session on 7 September, the conclusions of Refugee Day, the Red Cross and Red Crescent Symposium and the Round Table were presented to all delegates. Thereupon the participants, considering that many of the humanitarian law aspects of the Gulf conflict still require detailed analysis, suggested that an in-depth study be made of the application of international humanitarian law, so that the necessary lessons can be learned.

In conclusion, the International Institute of Humanitarian Law's prize for the promotion, dissemination and teaching of international humanitarian law was awarded to the Sofia *Youth Club on International Humanitarian Law*, represented by Ms. Christina Terzieva.

J. M.

Twenty-sixth International Conference of the Red Cross and Red Crescent postponed

The 26th International Conference of the Red Cross and Red Crescent, which was scheduled to take place in Budapest from 29 November to 6 December 1991, has been postponed. A press release was issued to this effect on 26 November by the Standing Commission of the Red Cross and Red Crescent:

"The Standing Commission of the Red Cross and Red Crescent regrets to announce that it has been forced to postpone the 26th International Conference of the Red Cross and Red Crescent due to the risk that political disagreement between governments on participation could jeopardize its outcome.

The International Red Cross and Red Crescent Movement stresses that it is bound by its Fundamental Principles to avoid becoming involved in political issues and deplors that the parties concerned have been unable to find a solution to the question of Palestinian participation.

The Red Cross and Red Crescent Movement will continue its meetings during the coming days in Budapest without the participation of governments to discuss the urgent humanitarian issues with which the international community is confronted".
