Thoughts on the relationship between International Humanitarian Law and Refugee Law, their promotion and dissemination

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1. Introduction

From the beginning of the 20th century up to the present, international law has been marked by a profound evolution: it has been progressively humanized. Those responsible for drafting international law have clearly understood that it could no longer disregard the fate of human beings and leave to States and their internal laws the protection of fundamental human rights, both in peacetime and during armed conflicts.

In the period between the two world wars, this new trend was fully justified by events and the need for it was sharply emphasized by flagrant violations of all human rights by totalitarian States. The impotence of international law thus became evident; demands were made and concrete initiatives put forward to extend the scope of international law to include the protection of human rights. The events of the Second World War and the period following it confirmed that it was indispensable, if humanity itself were to survive, to introduce into international law an effective mechanism designed to ensure respect for fundamental human rights and guarantees for the exercise of such rights at the national level.

The reaffirmation of the humanitarian branches of international law, in particular, human rights law, international humanitarian law and the law providing for the international protection of refugees, was a great encouragement for the development of that important body of rules.

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2. The different branches of international humanitarian law

1. Human rights law

The first systematic codification of human rights, based on the Universal Declaration of Human Rights of 1948, is represented by the International Covenant on Economic, Social and Cultural Rights of 1966 and the International Covenant on Civil and Political Rights of the same year. Henceforth, those instruments constituted the international and universal charter governing human rights.

2. International humanitarian law

The development of international humanitarian law, which appeared for the first time in 1864 with the adoption of the First Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, culminated in its major codification in 1949. The Second World War gave new impetus to a tendency already apparent before the war to provide more comprehensive protection for war victims. It is interesting in this connection to recall the remark by the international relations specialist Kunz just before the Second World War: "Everything is perfectly ready for the war except the law of war". The four Geneva Conventions on the protection of the wounded, sick and shipwrecked, prisoners of war and civilians, adopted in 1949 and completed by the two Additional Protocols of 1977, together constitute an impressive humanitarian code of international law.

3. International refugee law

International refugee law, which found its first expression after the First World War in the framework of the League of Nations system, was not prepared to meet the enormous need for protection of millions of refugees and displaced persons before and during the Second World War. The 1951 Convention relating to the status of refugees, the 1967 Protocol relating to the status of refugees and the 1950 Statute of the Office of the United Nations High Commissioner for Refugees codified some principles and fundamental rights of refugees. These instruments were supplemented by a Regional Convention of 1969 governing

specific aspects of refugee problems in Africa. International refugee law is in a phase of rapid development, impelled by the many new and different situations currently producing millions of refugees for whom it is essential to provide international protection.

3. A major obstacle to the implementation of human rights—State sovereignty

The principal obstacle to an international guarantee of respect for fundamental human rights is the idea that States are completely sovereign. It is obvious that if the States are absolute masters in determining their internal policies as they like, no external intervention for the purpose of verifying whether due respect is being accorded to human rights, be it by a foreign State or an international organization, can be envisaged. From a more general point of view, it is also obvious that there can be no international order and no international organizations if the States continue to regard themselves as absolutely sovereign and refuse to acknowledge universal rules established and formulated by international law. The doctrine of State sovereignty has been severely criticized by all who understand that peace can be maintained only by a strongly structured international community and see clearly that such a community cannot be constituted without the surrender by States of at least part of their sovereignty. Within the international community, States are independent, just as individuals are free within their own national communities. Within the latter, individuals may move about freely, but only within the limits fixed by law; within the international community, States are independent, but only on condition that they recognize that none of them is permitted to impose its rule upon the others and on condition that they all submit to the rule of law. Of course the international standard thus constituted, even when embodied in a convention, is in general an imperfect law in that it has no provisions for sanctioning violations, but it is nonetheless legally binding on the States.

If, in the context of international relations, it were possible to replace State sovereignty simply by the power to rule within the limits laid down by law, the situation of the individual, of the human person, under international law should change completely. The main thing we have to bear in mind is that an international guarantee of fundamental human rights depends primarily on whether or not the dogma of

absolute State sovereignty persists; the stricter the limitations placed on State sovereignty, the stronger such a guarantee will be.

Today, effective organization of international protection for fundamental human rights as they are formulated in the great international instruments such as the covenants on human rights, the Geneva Conventions relating to the victims of war and the Convention on the status of refugees, is held up in practice by an exaggerated interpretation of State sovereignty. There are many cases to demonstrate that some governments, when they invoke respect for State sovereignty, are in reality simply attempting to avoid implementation of the international rules set forth in the international instruments regarded as applicable by the community of nations as a whole. The present difficulties of some international organizations responsible for monitoring the applications of humanitarian rules by the States, and for discharging the mandate entrusted to them by the States in the same instruments, are clear evidence of the fragility of the system of guarantees and sanctions relating to international protection of fundamental human rights.

The right of asylum, for example, has today assumed a character quite different from its previous status. Nowadays it appears to be an essential corollary of the right to life itself, for which it is often the supreme safeguard. What was once a moral duty of the State has been transformed into a right of the refugee. As the great specialist in international relations Georges Scelle wrote: "Until international law has extended its organic authority far enough into the constitutional and administrative conduct of States, we shall have to fear the consequences of an impassioned and often criminal interpretation by governments and majority groups of the respect due to the individual".[1] To ensure full protection of the right to life, the Universal Declaration of Human Rights, the Declaration on Territorial Asylum, the African Convention on the protection of refugees, and the American conventions on asylum have all confirmed the right of every individual to obtain asylum on the territory of any State of his choosing.

4. Other obstacles

One of the most striking and perilous characteristics of the present situation with regard to the protection of refugees results from the rapid

[1] George Scelle, *Précis de droit des gens, principes et systématique*, Siray, Paris, 1932, Tome II, p. 49.

expansion of the problem, both qualitatively and quantitatively. It is very difficult for observers of the refugee phenomenon, and particularly for the public in general, to understand its causes, especially in the presence of the notion that all refugees are equal. The qualitative erosion of the most important principle involved in the protection of refugees, that is, *non-refoulement* (the rule that refugees should not be forcibly returned to their country of origin), together with the right of asylum on the one hand and the steady increase in the number of refugees on the other, are now presenting apparently insoluble problems to the international community.

We have to recognize that international law is still at the stage of looking for its own identity, one which would gain it acceptance as a well-integrated and coherent system of principles, rules and legal institutions. Substantial transformations must be made in international law to keep pace with new political, economic and technological conditions that call for a new approach to the progressive development of this law. As integral parts of international law, human rights law, humanitarian law and refugee law are all in the same situation and must take into account this new departure in international law. While we are fully aware of current events that face us and sometimes overwhelm us from all sides, those same events offer opportunities to change or supplement international law as a whole. After all, international law itself stems from the endorsement of existing situations and the formulation of rules corresponding to existing usages and time-tested practices. It is understandable that this effect of duration or repetition should apply also to more recent practices, resulting from the acceptance of new tendencies and new political, economic and ideological obligations.

5. Relationship between international humanitarian law and international refugee law

1. General

It should be emphasized at once that refugee law and international humanitarian law share the same fundamental concern, that is, protection of the individual. However, the two branches differ insofar as international humanitarian law is concerned with protecting *enemy* nationals, while refugee law is concerned with *foreign* nationals. The

law of human rights, on the other hand is designed primarily to protect persons against arbitrary treatment by the State to which they belong. In other words, there is a profound relationship and interdependence between the different humanitarian branches of international law, and an obvious complementarity.

2. International humanitarian law

International humanitarian law is a highly developed system of legal principles and rules. It is designed to provide protection and assistance to the individual exposed to the various situations arising from armed conflict, whether international or non-international. It is a constellation of principles and rules protecting and guaranteeing certain fundamental human rights essential to human survival, such as the right to life, health, physical and mental integrity and maintenance of family ties, whenever those rights are gravely endangered on a substantial scale.[2]

The role of humanitarian law is both to establish standards of conduct based on the principle of humanity and to serve as a basis for positive action in defending fundamental human values. It should make a practical contribution to improving the living conditions of human beings and help individuals and peoples to obtain the protection and assistance they need. Furthermore, it should be recognized that humanitarian action and humanitarian law are even more important in that they provide means of dealing with all the major problems facing the contemporary world.

Humanitarian law contributes to peace insofar as it constitutes an obstacle to any resort to force in international relations and at the same time offers States the possibility of co-operating to solve practical problems relating to armed conflict. By giving emphasis to assisting victims and protecting those who provide such assistance, humanitarian law adds a new dimension to the traditional idea of human rights.

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[2] We may recall here that the definition of international humanitarian law adopted by the ICRC is as follows: "[The] international rules, established by treaties or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts and which, for humanitarian reasons, limit the right of parties to a conflict to use the methods and means of warfare of their choice or protect persons and property that are, or may be, affected by conflict", "Action by the International Committee of the Red Cross in the event of breaches of international humanitarian law". *International Review of the Red Cross*, No. 221, March-April 1981, p. 76.

The *Protocols additional to the Geneva Conventions* have contributed to the progressive development of international humanitarian law and its adaptation to new situations in which human beings, the victims, need assistance and protection. The Protocols reaffirmed and developed the links between the *law of the Hague* and the *law of Geneva*. They also confirmed the application of the fundamental human rights set out in international instruments on human rights in situations of armed conflict. We may say that with the Additional Protocols, humanitarian law reached a higher plane and level of applicability which strenghthens the protection of individuals, that is, the victims of armed conflict. The sentiment of humanity, which focuses on protection of the individual, is one of the fundamental principles of humanitarian law and also serves as the basis for human rights instruments and refugee law.

The part of the *law of the Hague* that deals with methods and means of warfare, new weapons, the prohibition of perfidy, protection of the civilian population, distinguishing between civilian objects and military objectives, the definition of attacks, etc. is reaffirmed, adapted and developed in the new rules set forth in the Additional Protocols. The law of the Hague and the law of Geneva constitute an inseparable entity. We must also recognize that humanitarian law, through the Additional Protocols, reaffirmed its origins and its interdependence with fundamental human rights, thus assuming a new dimension.

When we speak of a new dimension of humanitarian law in its widest sense, that is, referring to its applicability not only in international and non-international armed conflicts but also in situations which are not covered by the Geneva Conventions and their Additional Protocols, we see that humanitarian law, regarded as a *protective* law (providing protection for different categories of war victims) and a *prohibitive* law (prohibiting methods and means of warfare that cause unnecessary suffering), may also be regarded as a *preventive* law which contributes to the maintenance of peace and its restoration in the event of armed conflict.

With regard to the protection of refugees, who are considered by humanitarian law as protected persons, especially in the context of international armed conflict, we find in the Fourth Geneva Convention of 1949 relative to the protection of civilians and also in Protocol I a direct relationship between humanitarian law and refugee law. The Fourth Geneva Convention has several provisions that protect refugees who find themselves on the territory of parties to the conflict and in occupied territory. However, the fundamental rule providing protection

for refugees in international armed conflicts is laid down in Article 73 of Protocol I. This article gives a definition of the persons who are regarded as refugees during hostilities and who have the same rights as persons protected under the Fourth Geneva Convention relating to the protection of civilians.

3. International refugee law

Refugee law, based primarily on the 1951 Convention relating to the status of refugees, its 1967 Protocol and the 1950 Statute of the Office of the United Nations High Commissioner for Refugees, is a rather rudimentary system of legal rules and principles designed to protect refugees. These instruments stemmed chiefly from the experience of European countries which had to cope with great numbers of refugees during and after the Second World War. The dynamics of the refugee phenomenon, which has spread from Europe to Africa, Asia and Latin America, has demonstrated the urgent need for development of refugee law in order to extend the protection it affords to new categories of refugees. On the regional level, in 1969, African countries adopted the OAU Convention governing specific aspects of refugee problems in Africa. This text constitutes the effective regional complement for Africa to the United Nations Convention of 1951 on the status of refugees. In addition, a large number of resolutions adopted by the United Nations General Assembly have extended the mandate of the United Nations High Commissioner for Refugees to protect refugees in situations not provided for in the 1951 Convention.

The further codification of refugee law has now become a priority task in the field of international law. The experience and pragmatic work of the HCR have also demonstrated this need. Refugee law must be updated and tailored to new needs which call for more effective and comprehensive legal protection for all the refugees scattered in all corners of the world, without discrimination.

As we have already emphasized in discussing content, there is also an evident complementarity between humanitarian law and refugee law on the subject of the protection of refugees. A considerable number of rules in humanitarian law provide for the protection of refugees in armed conflicts and fill in gaps left by refugee law. On the other hand, the rules of refugee law afford protection for refugees in non-international armed conflicts and in situations of internal disturbances and tension, such protection not being provided by the rules of humanitarian law.

4. Co-operation between the ICRC and the HCR

This quite natural relationship is confirmed by the practical work of both institutions. The ICRC, guardian and promoter of humanitarian law, and the HCR, promoter of refugee law and body responsible for monitoring the application of the Convention on the status of refugees, co-operate in an exemplary manner, both in providing assistance and protection to refugees and in ensuring implementation of the humanitarian rules applicable to refugees, while at the same time remaining within the mandates assigned to them by their own respective statutes.

The Twenty-fourth International Conference of the Red Cross in 1981 adopted an important resolution on International Red Cross aid for refugees which was accompanied by a statement of International Red Cross policy in that domain. This was resolution No. XXI, which reaffirmed the natural relationship between humanitarian law and refugee law, the complementarity of the two institutions and the importance of co-operation between them as the bodies responsible for international protection of and assistance to refugees.

The resolution recalls the primary function of the Office of the UNHCR in the field of international protection and material assistance to refugees, displaced persons and returnees, as laid down by its Statute, the UN Conventions and Protocols relating to the status of refugees and relevant resolutions of the United Nations General Assembly. In view of the fact that the ICRC, the National Societies and the League all have their respective roles to play in the co-ordination of international relief operations for the benefit of refugees, especially when the latter do not fall within the mandate of the HCR, the resolution pledges the unremitting support and collaboration of the Red Cross with the HCR in their respective activities to help refugees and displaced persons.

Among the ten paragraphs of the Red Cross statement of policy on aid to refugees, two paragraphs deal with the relationship between humanitarian law and refugee law and co-operation between the Red Cross and the HCR:

> "1. The Red Cross should at all times be ready to assist and to protect refugees, displaced persons and returnees, when such victims are considered as protected persons under the Fourth Geneva Convention of 1949, or when they are considered as refugees under article 73 of the 1977 Protocol I additional to the Geneva Conventions of 1949, or in conformity with the Statutes of the International Red Cross, especially when they cannot, in

fact, benefit from any other protection or assistance, as in some cases of internally displaced persons.

. . .

10. The international institutions of the Red Cross will have regular consultations with the Office of the United Nations High Commissioner for Refugees on matters of common interest and, whenever considered useful, will co-ordinate their humanitarian assistance in favour of refugees and displaced persons in order to ensure complementarity between their actions."

Bearing in mind the humanitarian nature of the activities of the HCR and the ICRC, designed exclusively to protect refugees and the victims of armed conflicts, a comparable strategy could be established for refugee law and humanitarian law, based on the experience of the two institutions. The main objective of such a strategy would be to establish direct contact with the victims in need of protection and assistance, as is already done, for example, by the ICRC Central Tracing Agency.

6. Promotion of international refugee law and international humanitarian law

1. General

The promotion of humanitarian instruments in the widest sense covers all aspects of promotion, including encouragement to accede to and ratify them, ways of making their content known in all circles and all sections of the population, methods to be used for their dissemination, widespread and effective teaching of humanitarian principles and rules and, of course, the organization of research work with a view to the progressive development of humanitarian law and refugee law in national, regional and universal terms.

Major humanitarian institutions such as the ICRC and the HCR are already deeply involved in the dissemination of humanitarian law and refugee law. In the framework of the International Red Cross and Red Crescent Movement, the ICRC is the focal point for carrrying out a plan of action for dissemination of humanitarian law, not only within the Movement but also among the public at large and particularly

military circles. The HCR has also begun to put into effect a plan of action for dissemination of refugee law on regional and national levels by organizing seminars and conferences on the protection of refugees.

2. Role of the International Institute of Humanitarian Law

In the field of dissemination, the International Institute of Humanitarian Law in San Remo, Italy, has established a close relationship with the ICRC and the HCR. For almost 15 years the Institute, in co-operation with the ICRC, has been organizing 10-day courses once a year—three times a year since 1987—for members of the armed forces. Officers of various ranks from all parts of the world follow intensive courses on the law of armed conflict and the applicability of humanitarian law in armed conflict. There is an open dialogue between the teachers, mostly career officers, and the participants, concentrating on pragmatic aspects. Another objective of these special courses is to train teachers belonging to military circles on the national level.

In co-operation with the HCR, the institute also organizes regular courses, twice a year, on refugee law. These courses are addressed to government officials involved in or responsible for national activities to assist and protect refugees. This constitutes an especially practical form of dissemination of refugee law, dealing in particular with how to apply, on the national level, the instruments that protect refugees, and training people to launch and carry out campaigns to disseminate and teach refugee law.

With regard to dissemination of humanitarian law and refugee law on a larger scale, the Institute organizes its traditional annual Round Table every September on current problems of international humanitarian law. Experts from governments, the Red Cross and Red Crescent Movement and other international and national organizations hold talks in order to clarify and define the major problems of humanitarian law. They offer proposals and suggestions dealing with the questions considered and discussed. During the Round Table discussions, dissemination of humanitarian law is always a subject for special attention.

7. Conclusion

In the new international order now emerging there will be an increasing need to identify, in relation to the liberty of States and the

liberty of men, personal liberty, which springs from one of the most vital qualities of the human being. The rivalry and hatred which ultimately lead to bloody conflicts no longer have any place in international life nor in social life and must be eliminated. They must be replaced by co-operation, both regionally and world-wide, through the United Nations and regional organizations serving order and peace.

International law must be strengthened by a sound system of guarantees and sanctions designed to maintain peace and prevent bloody confrontations between States. At the same time, however, we shall need more effective humanitarian law and well-developed refugee law to protect the victims of armed conflicts and the refugees who, unhappily, are still very much present on the contemporary scene.

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