

Books and Reviews

Luigi Condorelli, Anne-Marie La Rosa and Sylvie Scherrer (eds): *Les Nations Unies et le droit international humanitaire/The United Nations and international humanitarian law*, Proceedings of the international symposium held on the occasion of the 50th anniversary of the United Nations (Geneva, 19, 20 and 21 October 1995), Éditions Pedone, Paris, 506 pp.

In its early days the United Nations' relationship with international humanitarian law was fraught with distrust and ambiguity. Dietrich Schindler, in his conclusions to the deliberations of the symposium's first session on the development of humanitarian law, distinguishes three phases in this relationship. The first ended with the watershed proclamation of the International Conference on Human Rights held in Tehran in 1968. In the second phase the United Nations took the concept of humanitarian law on board, within the limits imposed by the Cold War. The third and current phase began with the Gulf war and is characterized by broad recognition of humanitarian law on the part of the United Nations and the resulting confusion between *jus in bello* and *jus contra bellum*. Like the organizer of the symposium, Professor Luigi Condorelli, we feel that this analysis offers ample food for thought.

There could not have been a better time — the 50th anniversary of the United Nations — or place — Geneva, the cradle of humanitarian law — to hold a symposium on the United Nations and international humanitarian law. During the inaugural session reference was made to this fact by several of the distinguished participants gathered under the auspices of the Geneva University Faculty of Law, and in particular by ICRC President Cornelio Sommaruga and Vladimir Petrovsky, Director of the United Nations Office in Geneva. For the President of the ICRC, the most important task was to "strengthen respect for international humanitarian law"; Mr Petrovsky felt that we must "realistically acknowledge the need to manage crises".¹

¹ The English versions of quotations from participants who spoke in French are ICRC translations.

This set the tone for the discussions, which focused on the United Nations' three roles in connection with international humanitarian law: (1) development of the law; (2) its implementation; and (3) United Nations involvement in armed conflicts. The Proceedings follow this structure. I found them to contain a wealth of information and new ideas, and understand why at the end of the presentations Eric Suy went so far as to describe the symposium as "absolutely extraordinary". Its principle merit lay in the judicious choice of speakers — a successful combination of practitioners and academics — and the high quality of the reports and papers presented, all of which are reproduced in full in the Proceedings.

The three roles of the United Nations

Development of international humanitarian law — After outlining the methods used by the United Nations to develop international humanitarian law, Eric David in his introductory report described in detail the world body's most significant contributions in this respect. I found this enumeration extremely useful for reference purposes and was particularly interested in three issues highlighted by the presentations and subsequent discussions.

The first of these issues to be debated was the 1994 Convention on the Safety of United Nations and Associated Personnel. The treaty is ambiguous, even dangerous, because, in the words of Mahnoush H. Arsanjani of the UN Office of Legal Affairs, "oscillating between different statuses inevitably creates confusion". Although it is indeed necessary to safeguard United Nations personnel, humanitarian workers must not be confused with UN combatants or they will risk losing the special protection to which they are entitled. Some people have such grave reservations regarding the 1994 Convention that they even wish it would be "forgotten altogether" (Condorelli).

Next my attention turned to the debate surrounding the growing number of rules produced by the United Nations, which Eric David, not without irony, compared to toothbrushes, ranging as they do from "extra-soft to extra-hard". The Security Council has been especially prolific at the "soft" end of the scale. Quantity, however, is not necessarily quality — which led Ms Laurence Boisson de Chazournes to criticize the selectiveness of the Security Council and to warn of the risk that humanitarian law may become "hostage to political and diplomatic interests". Professor Schindler concluded in this regard that "international humanitarian law needs both the input of independent and impartial humanitarian

organizations, which have the necessary field experience, and the unflinching support of States and the United Nations”.

I was pleased to note that, in the discussion which followed Christian Dominicé's presentation, the participants acknowledged that the basic rules of humanitarian law constitute *jus cogens*. In other words, in the event of conflict between decisions based on the Charter of the United Nations and the principles of humanitarian law, the latter would prevail.

Implementation of humanitarian law — I must confess that for me, with my longstanding commitment to the ICRC, this was the most disappointing part of the Proceedings and thus probably of the symposium itself. In fact, there is very little analysis of the impact, the strengths and the weaknesses of UN operations, apart from a sound introductory report by Michael Bothe, which on the basis of five concrete examples (Israel and the occupied territories, Iran-Iraq, the former Yugoslavia, Rwanda, and Burundi) examines the various types and forms of action taken by the United Nations to ensure compliance with and respect for international humanitarian law.

Quite understandably, most of the attention was devoted to a recent breakthrough in the area of enforcement, namely the establishment of the international criminal tribunals for the former Yugoslavia and Rwanda. The presentations given by the Presidents of the two tribunals, Antonio Cassese and Laïty Kama, underscored the favourable developments resulting from what Professor Condorelli called the “jurisdictionalization” of humanitarian law. Uppermost in everyone's mind, of course, was the endeavour to make serious violations of humanitarian law committed in the course of non-international armed conflicts criminal offences at the international level. The most significant contribution, however, to the development of humanitarian reflection and standards must surely be what Cassese described as the “tremendous amount of thought, analysis and commentary” to emanate from the tribunals. In only two years, both in the tribunals themselves and within other bodies acting under their stimulus, more new analyses have been produced and more new ideas proposed than during the preceding twenty years.

Regarding other aspects of implementation, however, there was little to satisfy, even if Hans-Peter Gasser did stress the need for complementary action and cooperation between the United Nations system and the ICRC, and even though Mario Bettati presented a convincing argument in favour of unrestricted access to conflict victims. The crucial question, as posed by two students during the discussions, remains this: where was the United Nations and where were the other humanitarian organizations during the

Srebrenica massacre? What can we learn from such events to ensure better respect for humanitarian law in the future?

United Nations involvement in armed conflicts — Ms Daphna Shruga (United Nations Office of Legal Counsel) introduced this subject in masterly fashion in her report entitled “The United Nations as an actor bound by international humanitarian law”. Her presentation was followed by the pragmatic views of Jean de Courten, Director of Operations at the ICRC, who spoke about the ICRC’s perception of United Nations field operations. The report by Ms Shruga, together with several other communications and presentations, offered a critical analysis of the applicability of humanitarian law to United Nations forces. It was good to see that no one disputed this principle, there being unanimous agreement that all the basic rules of behaviour in warfare must be observed by soldiers enlisted under the UN flag. Differences of opinion remained concerning the applicability of the humanitarian treaties in their entirety. Regarding civil wars — whether or not the involvement of the United Nations gives them international status in formal terms — Ms Shruga stated that the United Nations “will consider itself bound by not a lesser minimum standard of humanitarian treatment than that which is applicable in international armed conflicts”. There is thus broad consensus in this regard. That is why we, like Professor Condorelli and Jovica Patrnogic, believe that what is still lacking today is a clear, solemn declaration by the United Nations to that effect and, more particularly, the adoption of the “Guidelines for UN forces regarding respect for international humanitarian law” prepared by legal experts of the ICRC and of the UN secretariat.

The next speaker was Ms Françoise Hampson, who presented a highly stimulating analysis of the difficulties encountered by the different types of operations authorized or delegated by the United Nations. She concluded that the following steps were necessary:

- adoption of a set of rules accepted by all;
- cooperation in the provision of training and information for the various players involved;
- re-examination of the principles of “neutrality” and “impartiality” so as to promote better understanding of their meaning and ensure that the same perception is shared by all concerned;
- acknowledgement that if during the Gulf war the Coalition forces largely complied with humanitarian law, this was not due to a sense of responsibility vis-à-vis the United Nations, which gave them their

mandate, but “to the need to keep a diverse coalition together, (...) also (...) to public accountability through CNN”.

There is therefore still some way to go, even though we may agree with Michael Bothe that in United Nations strategy peace-keeping and international security have priority over the implementation of humanitarian law.

If there is one area in which we share Theodor Meron’s view that the United Nations could do better, it is in regard to the “protective role of the United Nations forces”, notably their practical role as agents responsible for ensuring respect for humanitarian law. Although the symposium did highlight this point, it offered no new ideas on the matter.

Key points emerging from the symposium

The Proceedings end with the general conclusions of the man who was the driving force behind the symposium and its principal moderator, Professor Luigi Condorelli. His text reflects not only the intensity of the discussions and his clarity of vision, but also his modesty. His conclusions offer more than a summary; they contain a plan of action which is as useful for people working in the field as it is for policy-makers. As an illustration, some passages are reproduced below:

- the obligation arising from Article 1 common to the Geneva Conventions of 1949 has “the merit of expressing effectively the idea that it is in everyone’s moral, political and also legal interest to respect international humanitarian law, which implies that all States, as well as the United Nations, have a right and a duty to demand such respect”;
- “international humanitarian law must be seen by the [Security] Council as forming an integral part of the ‘principles of justice and international law’ with which all United Nations operations have to comply in accordance with Article 1, para. 1, of the Charter”;
- “it is essential to safeguard the domain of ‘neutral’ humanitarian action by avoiding any risk of confusion between the activities of purely humanitarian organizations and those of the United Nations, which inevitably have a political dimension”;
- and lastly, “we must take advantage of all opportunities presented by the law of Geneva (notably the International Conferences of the Red Cross and Red Crescent and future periodical meetings of the High Contracting Parties ...) to improve existing mechanisms or bring them into operation if they have remained in abeyance”. Regarding this last

point Professor Condorelli mentioned in particular the extremely useful services that could be rendered by the International Fact-Finding Commission, constituted under Article 90 of Protocol I additional to the Geneva Conventions.

The Proceedings comprise some 500 pages and, rather surprisingly for this type of publication, are presented in a manner that is easy to follow. For us they constitute not just a reference document but a veritable manual on the United Nations and international humanitarian law. The texts are in French or English, depending on the language in which the presentations were made. Those who speak both will appreciate the excellent bilingual index.

This book deserves a prominent place in any collection of works on humanitarian affairs.

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Greg Hansen and Robert Seely, *War and humanitarian action in Chechnya*, Occasional Paper No. 26, Thomas J. Watson Jr. Institute for International Studies, Providence, R.I., 1996, 106 pp.

This work by Greg Hansen and Robert Seely is a political analysis of the Chechen conflict, of the reaction of the international community to an internal conflict in a key State on the global scene and of the strengths and weaknesses of humanitarian action. This very well documented study, methodical, lucid and severe in its judgements, ends with specific recommendations which remain of interest despite the passage of time.

The time frame extends up to August 1996. It thus covers a period of intense fighting in Grozny and large-scale population movements out of the city, until the signing of a cease-fire led, if not to a political settlement of the dispute, at least to a suspension of actual hostilities.