

The challenges for humanitarian law and action at the threshold of the twenty-first century: An African perspective

by
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PERHAPS never in human history and seldom in modern times has mankind been so close to and yet so far from achieving its humanitarian objectives as it is now. This paradox arises mainly from the fact that humanity is once again at a crossroads. An exploration is therefore in order of the salient features of both this paradox and the challenges it poses for humanitarian law and action at the threshold of the twenty-first century.

In modern times no event has been more traumatic than the Second World War. Much more than the First World War, World War II brought about cataclysmic changes in all spheres of life and affected mankind as nothing had done before. The war years and their aftermath saw the demise of certain ideologies and the flourishing of others, the explosion of terrifying weapons, the collapse of existing systems and the formation of new States,

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the displacement of entire populations, and an attempt to normalize shattered economies and the lives of millions. At the end of that war it took the States meeting in Geneva only four months to come to agreement on the humanitarian agenda, and thus the Geneva Conventions of 1949 were born. Traumatic experiences, it seems, have a way of concentrating minds and making priorities clear. To the States assembled in Geneva, war and its consequences had become so distasteful that humanitarian objectives could easily be embraced on behalf of all mankind.

In contrast, the Diplomatic Conference that finalized the Protocols additional to the 1949 Geneva Conventions took four years, from 1974 to 1977, to reach a consensus.¹ In the quarter century between the Conventions and the Protocols, clarity of vision and the setting of priorities with respect to humanitarian objectives had given way to considerations of a political, economic and social nature. In particular, the bipolar ideological war, the final throes of the colonial era and the growing economic disparity between the poor and the rich had become the major concerns for States.

Today, a decade after the remarkable end of the Cold War and at the turn of the millennium, the fact that the humanitarian objective is seemingly not at the top of the international agenda makes one wonder whether the magic moment is again slipping away and mankind will have to go on painfully picking up the pieces of the numerous conflicts that continue to flare up around the world. If this is so – and unfortunately it seems to be the case so far – what will be the challenges for humanitarian law and action this time?

The constant objective

It is important not to lose sight of the main objective of humanitarian law and action, which is constant: the protection of victims and potential victims of conflicts and similar disasters.

The shifting configuration of world power at macro and micro levels, the rapid advances in science and technology that make yesterday's science fiction today's reality, and the fact that the information technology revolution has made the world exceedingly small, spectacular as they are, do not change this main objective. Nor do the major problems that arise in

¹ See R. Kosirnik, "The 1977 Protocols: A landmark in the development of international humanitarian law", *IRRC*, No. 320, September-October 1997, p. 483.

connection with environmental, economic, population, political and socio-cultural developments. The victims and potential victims may change, the manner in which and the extent to which they are affected may vary, and problems of identification, access and delivery of aid may become more difficult and thus require different tactics and strategies, but the ultimate aim remains the same.

Thus the purpose of examining the new world at the threshold of the twenty-first century from the perspective of humanitarian law and action is not to find new objectives, but to serve humanity better by finding ways and means of achieving those already established.

Our era has seen the end of a certain world order characterized by a bipolar political struggle. The end of the Cold War has necessarily meant the beginning of a new world order and a different paradigm. This new world order, however, is not yet clearly defined. The change in paradigm seems to be a shift away from broad ideological confrontation towards a myriad of ethno-cultural micro-confrontations. The ongoing juxtaposition of peoples, their attempts to define and redefine themselves along ethnic, cultural, religious and similar lines and the concomitant struggle to establish appropriate political formations necessarily create conflict situations. The disintegration of large political entities and the emergence of new States, together with the unconventional manner in which today's conflicts are conducted and their internal nature, mean that constant re-examination is needed of the tactics and strategies that humanitarian law and action have to adopt in order to be relevant and effective.

Referring to tactics and strategies is not to suggest that the predicament humanity finds itself in is simple and easily resolved. The purpose of using these terms is on the one hand to make crystal clear the objective of humanitarian law and action, which is constant, and on the other hand to determine how to go about achieving that objective, which is the crux of the matter. Doing so, moreover, may require a new outlook, a different mindset or a qualitative change in mankind's approach to the problem. If this amounts to more than tactics and strategies, so be it.

The humanitarian balance-sheet

On the credit side of the balance-sheet of humanitarian law and action a number of major items can be set down. First and foremost is the issue of prescription. Prescription is crucial as it signifies the authoritative,

rational and sober affirmation of humanity's nobler values and raises legitimate expectations of compliance. The written prescriptions are in place. They have been carefully drafted and have the force of law. Thus there is no major problem to be tackled in that regard.

This statement, however, should be qualified in two important respects so as to avoid confusion. First, the substantial efforts being made to improve the legislation governing internal conflicts have not yet come to fruition. Indeed, the fine-tuning of humanitarian law in general has to be seen as an ongoing process. Secondly, international instruments adopted within the United Nations system to deal with humanitarian issues, particularly human rights and refugees, have to be considered as falling within the humanitarian sphere. And here more work of a specialized nature in terms of prescription can be expected. The point which can be emphatically made, however, is that the bottleneck today is not at the level of prescription.

The plethora of organizations working within and around the humanitarian sphere is amazing. There has never been a better time for the mushrooming of humanitarian agencies in the field and support institutions elsewhere. The human resources available, the prospects for funding and the heightened public concern shown via the mass media and popular organizations is quite encouraging.

The United Nations Economic and Social Council has registered an enormous number of international non-governmental organizations of various types that are active in the humanitarian area, as broadly defined. To these can be added many more non-governmental organizations recognized by States' domestic law. In terms of financial resources, it has been reported that "the internationally engaged financial resources for humanitarian issues and inter-linked peace-keeping activities are up to 12 billion US dollars, an astonishing growth from 3 billion US dollars only some ten years ago". The report goes on to state: "World and governments' mindfulness for humanitarian issues seem to grow even more".²

On the debit side of the balance-sheet, however, are the constant images of horrific brutality and incomprehensible outrages inflicted on innocent children, women, the elderly, the sick and the suffering. Wanton

² J. TOMAN, *A few remarks on present humanitarian issues*, Unpublished report for an expert meeting organized by the Henry Dunant Institute, Geneva, 9-10 March 1998, p. 22.

disregard for and senseless destruction of ecosystems necessary for the sustenance of life are commonplace. Moreover, this is directly and deliberately caused by the inhumanity of man to man. Instead of such intolerable situations being brought under control, they intensify and spread like contagious diseases. Like resistant viral and bacterial strains and incurable diseases, they defy humanitarian prescriptions and institutions and continue to cause havoc for mankind. The number of conflicts worldwide has increased from 39 in the late 1980s to 55 today. In the same ten-year period the number of refugees has also soared from 20 million to about 50 million.³ With the shift from international to internal conflicts, the number of internally displaced persons has also risen to unprecedented levels. Moreover, whereas 30 years ago it was combatants who bore the brunt of military operations, owing to the unconventional nature of today's conflicts it is civilians, i.e. mothers and children, the elderly and the sick, who make up the majority of victims.⁴ This is the contradiction that has to be understood if an effective humanitarian approach is to be developed.

Beyond the clear-cut items on the credit and debit side of the balance-sheet of humanitarian law and action, what makes our entry into the twenty-first century hazardous are the many unknown quantities that have to be entered in the account books.

Globalization

One very obvious development that followed the end of the Cold War is globalization, and its handmaid regionalization. Globalization emerges most clearly as an economic reality. Raw materials, finished products, funds, commodities such as minerals, petroleum and the like in current or future markets are moved around in the international marketplace as never before. They are bought and sold instantly in centres such as New York, London and Tokyo. At the push of a button huge transactions take place and profits and losses occur in astronomical figures. The resulting boom and doom scenarios affect whole regions and threaten economic and political stability.

Regionalization groups States and economies together and, without entirely doing away with the strong competitive spirit of individual

³ UNHCR, *The state of the world's refugees 1997-98: A humanitarian agenda*, Oxford University Press, 1997, p. 2.

⁴ *Ibid.*, pp. 2 and 22.

members within each region, raises the economic and semi-political or political confrontation among regions to higher levels. Currently the tripolar regionalization of Western Europe, America and East Asia is particularly noticeable, and the ineffective regionalization of other parts of the world is just as obvious.

Globalization, as seen through the Uruguay trade rounds which established the World Trade Organization, the drive for world economic integration, the intellectual property agreement and so forth, has become a major force to be reckoned with. Beyond economics and politics, globalization has far-reaching implications for humanitarian law and action. The expansion of the media, new methods of production and consumption and other related factors have the effect of enhancing the globalization of cultural values. This is generally a favourable development for humanitarian law and action, which firmly uphold and propagate the universality of the principles on which they are founded.⁵ What must be ensured is that the globalization of cultural values assigns them their proper place and their due share.

However, humanitarian law and action have to prepare for and even anticipate the failure of globalization and regionalization, which can lead to the economic and political weakening of States. The globalization and regionalization of cultural values can also prompt strong resistance based on the determination to conserve particular values. Where these processes do not meet great expectations of equality or prosperity, the reaction can realistically be expected to lead to violence and conflict.

So far violence and conflict are at the micro level, with small but nevertheless terrifying eruptions here and there. The ethnic cleansing in the former Yugoslavia, the genocide in the Great Lakes region of Central Africa and the fratricidal struggle in Afghanistan all point both to the inadequacy of the previous global macrosystems and to the failure of the embryonic new world order. If these conflicts were just problems of transition from one order to the other, terrible as they are they would be but a fleeting moment in the history of humanity. But they are not. There is more.

⁵ The humanitarian principles on which the International Red Cross and Red Crescent Movement is founded were confirmed by the 20th International Conference of the Red Cross (Vienna, 1965) as humanity, impartiality, neutrality, independence, voluntary service, unity and universality. As correctly pointed out by Jean Pictet in

The Fundamental Principles of the Red Cross: Commentary, Henry Dunant Institute, Geneva, 1979, p. 10, these humanitarian principles are expressions of humanity's "long-term wisdom, indifferent to the ebb and flow of popular opinions and ideologies of the moment".

In every corner of the world there are what have come to be known as “forgotten conflicts”, unspent fires whose live embers are deceptively covered with ash. A little breeze would fan them into further carnage and destruction.

Where globalization is seen from below as an economic zero-sum game whereby the rich get richer at the expense of the poor who get poorer, violence and conflict become inevitable. Most forgotten conflicts smoulder against the background of globalization. If the phenomenon is seen as a new dimension of age-old *laissez-faire* capitalism, driven by profit and profit alone on the side of the entrepreneur, the underprivileged will inevitably find ways and means of trampling on each other. Obviously, the consequences do not end there. Depending on factors such as historical connections, geographical proximity and cultural and ethnic affinities, as well as communication and transportation possibilities, whole communities are constantly migrating and resettling in distant lands. And they generally come burdened with their poverty and other problems.

Moreover, many of these forgotten conflicts, like newer ones, are acquiring new characteristics. Observers and humanitarian organizations increasingly refer to “anarchic conflicts”.⁶

These disorganized struggles, involving many armed factions, are generally a murderous free-for-all, with not even a minimum semblance of order or the most tenuous chain of command. Under such circumstances central governments fall victim to the process of State disintegration. Unbridled carnage and destruction hold sway; the civilian population and civilian property become legitimate targets and suffer the worst effects. The distinction between criminal elements and other members of society becomes confused and confusing. In this situation, the more urgent the need for humanitarian action, the more difficult – if not impossible – it becomes to deliver the necessary assistance.

A holistic approach

The eve of the twenty-first century is as good a time as any in human history to take stock of the humanitarian situation and arrive at conclusions that allow the taking of pre-emptive measures to limit the suffering of humanity. Even though, owing to the fluidity of the emerging world

⁶ See *Armed conflict linked to the disintegration of State structures*, Preparatory document of the International Committee of the Red Cross for

the First Periodical Meeting on International Humanitarian Law organized by the Swiss government, Geneva, 19-23 January 1998.

order, it is difficult to foresee its full import, it is obviously here to stay. In addition to the marked trend towards globalization and regionalization, it may be anticipated that the opportunities for self-determination arising from the redefinition of peoples at micro levels and resistance to the values of globalization will increase humanitarian problems in the foreseeable future.

A holistic approach to the immediate future of humanity that seriously addresses the humanitarian objective would be the preferred solution. After all, mankind has progressed significantly in this area in terms of legal prescriptions. Now sufficient will has to be generated to ensure their effective application. The globalization and regionalization that are being put in place with great effort would serve humanity better and for much longer if a holistic approach were adopted in discussing basic issues.

Such a holistic approach to problems will naturally involve difficult decisions in terms of value trade-offs. A detailed analysis of such trade-offs is beyond the scope of this paper, but by way of conclusion two major issues can be outlined:

- the encouragement of maximum self-determination of peoples, by whatever means, versus minimum public order and security in society is one such trade-off that will continue to tax the intelligence and problem-solving capacity of humanity;
- increased globalization of cultural values versus the promotion of parochial values, as these affect humanitarian issues, is another major item on the agenda. For instance, the problem of the emblem(s) of the International Red Cross and Red Crescent Movement may be considered as a sub-item here.

The humanitarian dialogue envisaged cannot be a closed shop. It would have to involve, in an ongoing process, decision-makers and potential victims as well as the international humanitarian community. Such a dialogue would be neither simple nor quickly achievable, but can be timely. It would require all the acumen that its leaders could muster, but the attempt and hopefully the result would be well worth the effort.

Résumé

Les défis pour le droit et l'action humanitaires à l'aube du XXI^e siècle : une perspective africaine

par FASIL NAHUM

Après avoir examiné les différents défis qui se posent à « l'humanitaire » à l'aube du XXI^e siècle, notamment en Afrique, l'auteur constate que, même si la codification des règles humanitaires est bien avancée, les violations du droit sont toujours endémiques. Le bilan est donc peu réjouissant. Toutefois, il ne s'agit pas de changer d'objectifs, mais bien plutôt de trouver les moyens de mieux les atteindre. La mondialisation des rapports internationaux peut avoir de profondes conséquences sur l'action et le droit humanitaires, pour autant qu'elle tienne compte de la régionalisation qui doit se développer en parallèle. La politique humanitaire doit être prête à intervenir quand l'échec de la mondialisation engendre de nouveaux conflits. L'auteur conclut en appelant les pouvoirs politiques à adopter, face aux défis humanitaires, une approche qui prenne en compte tous les facteurs (« approche holistique »). Le dialogue humanitaire ne peut pas se dérouler « en vase clos ».

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