COMITÉ INTERNATIONAL DE LA CROIX-ROUGE

THE LEGAL FRAMEWORK OF INTERNATIONAL RELIEF IN SITUATIONS OF ARMED CONFLICT

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at the meeting on "Conflict and International Relief in Contemporary African Famines"

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The legal framework of international relief in situations of armed conflict

1. **Introduction**

The point of view that I have chosen in order to outline the legal framework of international relief is a very traditional one. Taking into consideration the existence of a very large body of international rules, on the one hand, and the current volume of humanitarian assistance activities, on the other, I propose to examine whether there is a relationship between the law governing humanitarian assistance in time of armed conflicts and the actual practice of the ICRC, the international organizations and the non-governmental organizations involved in relief activities. More simply, the question is the following: is international humanitarian law relevant to the activity of the organizations concerned, and can it be assumed that these organizations are interested in abiding by its rules, or is humanitarian law a branch of international law whose constraints are applicable only to the ICRC?

Before I begin this talk, I would like to give a brief overview of international humanitarian law.

International humanitarian law is part of public international law and is composed of rules intended to alleviate the suffering of the victims of armed conflict. These rules restrict the choice of the belligerents with regard to the means and methods of combat they use and are therefore applicable to military operations as such. They also protect persons who are in the power of the enemy, like prisoners of war or the *inhabitants* of a occupied territory. Most of these rules are contained in the four Geneva Conventions of 1949 and in the two Additional Protocols of 1977, all these texts being international treaties.

International *humanitarian* law differs from human rights law. Unlike international human rights law, it applies only in situations of armed conflict and therefore creates obligations geared to the specific needs of the victims of armed conflict.

2. The position of international and non-governmental organizations under international humanitarian law

In 1949, there were few international agencies in existence. Moreover, the maintenance of peace, and not international relief, was considered as being the primary aim of the organizations that had been set up just after the Second World War. *Although* non-governmental organizations appeared on the scene of international relations before intergovernmental organizations, there was at this time considerable scope for charitable activities inside these organizations' own countries of origin, and they were therefore not so much interested in external activities. It is thus hardly surprising that Article 59 of the Fourth Geneva Convention, which deals with relief actions undertaken in favour of the civilian population of an occupied territory, *mentions,* besides "impartial humanitarian organizations such as the International Committee of the Red Cross", only the States. Article 23 of the same Convention obliges States to allow the free passage of relief supplies to another State, an obligation that is meaningful only if the States concerned would be tempted not to authorize the passage of such goods, in particular in the event of a blockade.

This provision therefore refers only to goods that can be sent by any individual or any entity, and not to the personnel that are generally included in the concept of relief "action".

Sufficient changes occurred between 1949 and 1977 to be reflected in the law. The two 1977 Protocols contain almost identical texts whose wording corresponds to present-day assistance procedures and whose content meets the expectations of the States and the humanitarian organizations with regard to this new form of international activity. Whereas Article 59 of the Fourth Geneva Convention relates only to assistance in an occupied territory, Article 70 of Protocol I regulates relief actions that take place within the national borders. This provision thus implies that in certain circumstances a belligerent State must accept relief operations undertaken in favour of its own population. Article 18 of Protocol II deals with relief actions in the case of non-international armed conflict. It constitutes a major improvement over Article 3 common to the four Geneva Conventions, as it creates the obligation for the State concerned to give its consent if the civilian population, whether under its control or otherwise, is in need of essential supplies and if the offer of relief satisfies the conditions laid down by international humanitarian law.

The object of the obligations contained in Article 70 of Protocol I and Article 18 of Protocol II is a "relief action", without any specification as to the entity that is supposed to undertake such a relief action. The rules of interpretation nevertheless require that Article 70 of Protocol I be read together with Article 59 of the Fourth Geneva Convention; and Article 18 of Protocol II together with Article 70 of Protocol I. This leads to a first conclusion, i.e. that, as well as the ICRC and any other impartial humanitarian organization, States too can undertake relief actions in favour of the population of a State party to a conflict. The opinion of legal experts must also be taken into account, and that opinion generally closely follows State practice. In 1989, the Institute of International Law stated in a resolution on the protection of human rights and the principle of nonintervention in internal affairs of States, that an offer of food or medical supplies by "a State, a group of States, an international organization or an impartial humanitarian body such as the ICRC" cannot, if certain conditions are fulfilled, be considered as unlawful intervention in the internal affairs of the State concerned. This leads to a second conclusion, i.e., that not only the States and the ICRC but also the international organizations can carry out a relief action within the meaning of the relevant provisions of international humanitarian law.

Are non-governmental organizations excluded from the application of international humanitarian law? Even though the 1989 resolution of the Institute of International Law does not mention them, I would argue that the non-governmental character of an agency should not affect the duty of the State concerned to accept an offer of relief that fulfills the necessary conditions.

2. Concessions and limits to State sovereignty in the regulation of international relief

Article 70 of Protocol I, as well as the resolution of the Institute of International Law mentioned above, provides for an offer of services. Does this mean that the government concerned has the discretionary power to accept or refuse that offer? Having regard to the relevant provisions of international humanitarian law, the

answer is certainly in the negative. The government must agree to the beneficiaries receiving food and medical supplies, if the conditions required by the law are fulfilled.

Is the condition of an offer of services a pointless concession to State sovereignty? If the right interpretation is given regarding the power of the State concerned to refuse the offer, that question should not be answered too quickly.

It is true that no mention of an offer of services is made either in Article 23 or in Article 59 of the Fourth Geneva Convention. But, as we have seen, Article 23 provides only for the free passage of relief supplies, and not for a relief operation such as those that are undertaken today. Article 59 is worded in a rather imperative way; but the obligation it creates is aimed at the Occupying Power and governs relations between this authority and a foreign population. However, although the Occupying Power seems to have no choice other than to accept the proposed action - insofar as this action is in conformity with the usual conditions laid down by international humanitarian law - due consideration must be given to the fact that, unlike the case with actions undertaken in the State's own territory, supervision of the distribution of relief by the ICRC or the Protecting Power is mandatory.

Notwithstanding these two examples, it is doubtful whether an undertaking on the scale of a relief operation requiring material and human resources such as means of transport, means of communication and personnel involved in the evaluation of needs and the transport and distribution of relief supplies, could take place without the agreement of the local authorities. We can therefore conclude that although the condition of the offer of services is included in the law as a *concession* to State sovereignty, from the practical point of view an undertaking of this type without some form of prior negotiation would seem unthinkable.

The government must accept the offer of services if the action proposed is of a humanitarian, non-discriminatory and impartial nature. It should be noted that the Geneva Conventions of 1949 do not mention these conditions. The fact that they are mentioned in the 1977 must, however, not be considered as a change in the law. Indeed, as seen earlier, control of the distribution of relief by an impartial and humanitarian organization such as the ICRC, or by the Protecting Power, is already mandatory in the 1949 text.

Both Article 70 of Protocol I and Article 18 of Protocol II set the condition that the civilian population must be in need of supplies essential for its survival. This condition must not be given too much importance. On the one hand, an offer that does not correspond to the needs of the civilian population would probably not be in accordance with the principle of humanity. On the other hand, as violations of international humanitarian law do unfortunately take place during armed conflicts, such situations usually lead to a rapid deterioration of the population's standard of living. However, present-day possibilities in the field of international relief and law that have resulted therefrom the general duty of the see that its own population is Dr. Kouchner has pointed out, governed by the principle of the developments in the should not detract from belligerent State to adequately supplied. As international relief is subsidiarity

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If the proposed action is humanitarian, non-discriminatory and impartial, the offer of services cannot be considered as unlawful intervention in the internal affairs of the State concerned. This principle applies, according to the legal experts and to the International Court of Justice (see the "Nicaruagua" case), whatever the situation.

It is extremely difficult to define the prohibitions and the injunctions that are implied by each principle separately. Is discriminatory behaviour humanitarian? According to the Commentary on Article 70 of Protocol I, impartiality is "a moral quality which must be present in the individual or institution called upon to act for the benefit of those who are suffering" (p. 818, para. 2800). Together with the condition of the humanitarian nature of assistance and the principle of non-discrimination, it guarantees that relief work is intended solely for the purpose of assisting the victims according to their needs and of giving priority to the most urgent cases of distress.

Indeed, a relief operation whose purposes are not exclusively humanitarian would not comply with the condition of neutrality and would therefore not be in accordance with the said principles.

Article 70 of Protocol I not only creates an obligation for the State to accept an offer of relief when certain conditions are met; it also sets out, together with Article 71, the obligations that derive from its consent. It is interesting to note that, whereas the party to the conflict shall in no way whatsoever delay the forwarding of relief consignments, "except in cases of urgent necessity in the interest of the civilian population concerned", the participation of relief personnel is subject to the approval of the party concerned. Once their participation is accepted, their activity can be limited or their movements restricted - temporarily - only in case of imperative military necessity. The relief personnel, for their part, must not exceed the terms of their mission and shall take account of the security requirements of the party; otherwise their mission may be terminated.

These rules, like other relevant provisions of Protocol I, constitute a prime example of the balance struck by the States between considerations of humanity and military necessity. In general, assistance should not be presented as being in conflict with sovereignty. Relief operations need the cooperation and the good will of the local authorities. Efforts should be aimed at convincing all concerned that international law reflects sovereignty and that there should be no contradiction between the rule of law and that sovereignty.

4. **Means of implementing international humanitarian law**

The refusal of a relief action in situations where the conditions laid down by the law are fulfilled is an act contrary to international humanitarian law and must be dealt with as such. This leads us to examine what means can be used in order to prevent or repress violations of international humanitarian law.

I am not going to elaborate on the subject of the measures that can or must be taken to prevent violations of humanitarian law. This branch of international law suffers from the fact that there is widespread ignorance of its rules, also among the public. The United Kingdom, thanks notably to the efforts of the British Red Cross, is one of the few exceptions. Dissemination of humanitarian law should be developed, and

anyone complaining about non-observance of its rules should be encouraged to ask for wider dissemination of the Geneva Conventions and their Additional Protocols.

According to the Statutes of the International Red Cross and Red Crescent Movement, which have been approved by the States, the ICRC must work for the faithful application of international humanitarian law applicable in armed conflicts. This sentence reflects in a general way the mandate conferred on the ICRC by international humanitarian law. Indeed, in international armed conflicts, the ICRC has the right to visit prisoners of war and to have access to civilian persons protected by the Fourth Geneva Convention (for example, inhabitants of occupied territory). In exercising these rights, the ICRC is entitled to supervise the application of the Geneva Conventions by the parties to an international conflict. It has also the responsibility to perform the functions of the Central Tracing Agency, i.e., the centralization of all information regarding prisoners of war and civilians interned or arrested and the forwarding of this information to their countries of origin, so that the authorities can inform their relatives of their whereabouts.

In situations of non-international armed conflict, the ICRC has a right of initiative that allows it to carry out similar tasks in favour of the victims.

Thus we see that the ICRC is entitled by the law to engage, as soon as an armed conflict arises, in activities that are essentially aimed at preventing violations of international humanitarian law. When necessary, it can make representations to the parties to a conflict to encourage them to act in accordance with the rules of international humanitarian law.

Besides the ICRC, the United Nations, and, more especially, the bodies that have set up to promote human rights can also contribute to improving respect for *humanitarian* law. States, for their part, can discourage a third State from violating humanitarian law by exerting diplomatic pressure or taking other measures in conformity with international law. The ICRC is nevertheless the sole body that is expressly entitled to act in favour of the victims of an armed conflict and which has the duty to do so in every situation qualified as an armed conflict. This means that its activities must be based on purely *humanitarian* considerations and have to respect the principle of impartiality.

Assistance that is not provided in compliance with the principles of humanity, non-discrimination and impartiality does not respect the framework of humanitarian law and has consequences that endanger the aims of this law as well as the values it sets out to protect. It is therefore quite understandable that the rules concerning international assistance to victims of war also provide for the control of the distribution of relief, and that the body the States may ask to exercise such control is the same as the one *which* is entitled to supervise the application of humanitarian law, that is, the ICRC (and the Protecting Power, should one have been designated by the parties to the conflict).

5. The remllation of international relief during non-international armed conflicts

As far as non-international armed conflicts are concerned, the situation is a little different, as there is no institution expressely empowered to monitor the application

of humanitarian law by the parties. The ICRC of course has a right of initiative and under the Statutes of the International Red Cross and Red Crescent Movement has the duty to do its utmost to ensure respect for humanitarian law, whatever the nature of the conflict. However, even if State practice shows that the principle of the presence of the ICRC in internal armed conflicts is recognized, the means to be employed in ensuring observance of humanitarian rules in such conflicts have yet to be clearly determined.

This situation is paradoxical, since on the one hand these conflicts are now predominant, and on the other, they usually give rise to numerous and grave violations of humanitarian law.

The underdeveloped state - so to speak - of the law applicable to internal armed conflicts is also apparent from the fact that very few rules, in comparison to the hundreds that must be observed in international armed conflicts, govern this type of conflict. Indeed, only Article 3 common to the Geneva Conventions of the 1949 and Protocol II additional to those Conventions, to which almost a hundred States are now party, apply to these situations.

As this kind of conflict is now the most common, the law applicable to the non-international armed conflicts constitutes the legal framework of most contemporary relief operations in favour of conflict victims. In this respect, Article 18 of Protocol II, which is the sole provision dealing with international relief under the law applicable to non-international armed conflicts, deserves special attention.

This provision is formulated in a very similar way to Article 70 of Protocol I, and the same general conditions for the legality of an international relief action are laid down. However, Article 18 has been criticised for the fact that the authority that must give its consent to an offer of services is the legal government, even if the action proposed is in favour of the civilian population of an area controlled by rebels. A complete transposition of the rules applicable to international armed conflict seems, however, given the nature of internal armed conflict, difficult. A resolution adopted recently by the Council of Delegates, a body composed of representatives of the ICRC, of the Red Cross and Red Crescent Societies and of the Federation of these Societies, urges the States "to allow free passage of medicines and medical equipment, foodstuffs, clothing and other supplies essential to the survival of the civilian population of another Contracting Party, even if the latter is its adversary, it being understood that they are entitled to ensure that the consignments are not diverted from their destination".

These considerations must not obscure the fact that, if consent is not given in a situation where the conditions for a relief action are fulfilled, such refusal constitutes a violation of humanitarian law. Means that are compatible with international law and that do not jeopardize its aims and values can be used to convince the party concerned to act in conformity with the law. Refusal to accept a relief action should nevertheless be treated like another breach of humanitarian law. There is no reason for it to give rise to a stronger reaction on the part of the international community than others violations. On the contrary, it could be said that the civilian population is often in need of relief supplies because of previous violations of humanitarian law, leading

to dependence on international relief, and frequently those previous violations did not arouse the interest of the international community.

6. Conclusion

International relief during armed conflicts enters in a legal framework which ensures that relief benefits only the victims of the armed conflict and does not jeopardize the aims and values safeguarded by the Geneva Conventions and their Additional Protocols. If that is the case, international relief contributes to one of the most generous fields of human activity, that is, alleviating the suffering of the victims of war. The solutions to problems arising out of a situation of armed conflict are as interdependent as the problems themselves. What is needed is a comprehensive approach that takes into account all the factors that hinder, or on the contrary favour, the observance of humanitarian law.

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