

# **IMPLEMENTING HUMANITARIAN AND HUMAN RIGHTS OBLIGATIONS: THE ROLE OF THE INTERNATIONAL COMMUNITY**

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## **The importance of “implementation”**

This conference deals with the three main international pillars of protecting the basic rights of people, as individuals and as entire communities: (1) human rights in war and peace, (2) protection and humanitarian action in times of war, as defined in international humanitarian law, and (3) the protection of refugees and other victims of forced migration.

What is special about these three “pillars” is that, on the one hand, the rights and protection of individuals and groups are not subordinated to their citizenship and to the whims of their governments (hence the international and even universal character); and, on the other hand, it is the obligation of the states not to violate these rights and to provide protection.

The last fifty years have witnessed a remarkable deepening and broadening of universal international obligations in the field of human rights, humanitarian rules of behavior during war and the protection of refugees.

This was the result of the creation of new rules and instruments, covering an increasing number of rights and of potential violations, and of ratification by a growing number of states of the various instruments and acceptance, in principle, to respect the obligations they contain. Moreover, as has been said at this conference before, some of the obligations in this field have become part of customary law and thus the obligation to respect them does not depend on ratification.

I am not an international lawyer and my purpose here is not to attempt a legal analysis. However, law is also an eminently political subject. Not only because law is the result of legislation which is a political process, but also because the implementation of law, the respect of legal obligations is also a major political issue in the broadest sense.

The question whether in a given political system, or society, the effective organizing principle is the respect of laws by all, or conversely, legal obligations are not implemented and are meaningless, is not a purely legal question, but an eminently political one.

The respect or the disrespect of laws (in particular of the laws dealing with human rights) is one of the fundamental issues that distinguishes various types of political systems and regimes.

This issue assumes particular importance in the international context. Today it is generally recognized that the implementation of, or lack of respect for human rights and humanitarian obligations will determine to a significant extent the quality of the future international order.

The fact is that, whereas the principles are covering a growing range of specific rights and the obligations are becoming quasi universal either through ratification or through the mechanism of customary law, respect of obligations has been far from universal.

Faced with massive violations and crises, for the international community implementation has been the central issue in the 1990s. The current crisis in Kosovo and Yugoslavia is a tragic illustration that the debate about implementation of the humanitarian and human rights obligations is not an abstract, theoretical one, but one that involves the essence of international relations and the future of international order.

Thus, as was pointed out by Yves Sandoz at the 1987 Webster seminar on Humanitarian Standards, the question of implementation, rather than new codification, is the central issue: implementation with respect to the obligations of individual governments and to the role of the international community as a whole.

When we talk about improving implementation there are three questions that we have to be kept in mind:

1. what are the different types of obligations and the hierarchy of these obligations
2. what are the potential measures of dealing with violations and the right and obligations to apply coercive measures
3. who decides and who should carry out these measures.

Although we are speaking about international obligations, it is clear that these obligations and their implementation have both a domestic and an international dimension.

### **The “domestic” dimension of implementation**

The “domestic dimension” is the duty of all states to respect general and specific human rights and humanitarian obligations. This is the obligation to refrain from human rights and humanitarian violations. This includes, obviously the obligation to refrain from persecution that can lead to individual or massive movements of forced migration, to internal displacement, and to refugee flows across borders. Thus, we all know that ethnic cleansing, like genocide, are very high on the list of prohibited actions by states or non-state groups.

Similarly, the respect of international humanitarian law is an absolute obligation: refraining from taking hostages, from mistreating and executing prisoners, military or civilian, are among those absolute obligations to which there must be no exceptions. There can be no excuses for a state carrying out or tolerating such actions by its agents.

Another, general obligation, the importance of which is brought home to us every day when we read the news and watch our television screens, is the duty to allow the humanitarian workers to carry out freely their tasks:

- their task of monitoring the respect of human rights and of humanitarian rules, and
- the task of bringing relief and assistance to the victims of violence and persecution

### **The international dimension**

The second dimension of “implementation” is what we can call the international dimension. Obviously, the domestic dimension is the most important one: respect for rights, like charity, begins at home. However, these obligations also have an important international dimension. Not only because they have been codified in international conventions (or are the result of international customary law that also binds those states that have not signed and ratified specific conventions).

It is because the international community also has a right and duty to watch over the respect or the violations of these obligations, and a right and duty to act.

Faced with the major crises of the 1990s, which have all involved massive violations of the “domestic dimension” of implementation, i.e. massive violations of human rights and humanitarian law and have led to more than 50 million people becoming victims of forced migration in the last ten years, this international dimension has assumed much greater importance.

Today there is a broad consensus that implementation is an international concern, which must not be limited by the sacrosanct principle of sovereignty. In fact, by now it is generally recognized that there are important limitations not only on the external dimension of sovereignty, but also on the domestic dimension of sovereignty, i.e. limitations on how a government can treat its own citizens.

Thus, in the 1990s the international community had the right and duty to respond. We all know that this response has also led to intensive debate and recriminations. Major criticisms have included the argument that the response came too late, was insufficient or was ill-coordinated. In particular, there was extensive criticism that the response of the international community was not forceful enough to prevent or to sanction massive violations – ethnic cleansing and genocide – in the Great Lakes region or in former Yugoslavia.

There is also a division of labor and a convergence of tasks in the involvement of the international community among:

- public opinion
- the humanitarian community
- other international organizations and
- national governments.

The international community has active and passive rights and duties of concern and action. What are the main dimensions of these rights and duties of the international community concerning the obligations in our context? The following seem to be the most important ones, with an increasing order of urgency and an increasing order of cost and severity:

1. information and monitoring
2. moral pressures and suasion
3. prevention and deterrence
4. relief and assistance to the victims of the violations of these rights
5. providing protection (legal and physical) to actual and potential victims
6. sanctions short of the use of force
7. the use of force to prevent, to stop and to punish violations.

For effective international action, we need:

- moral and legal justification (clear violations)
- clarity
- transparency
- predictability
- reliability
- graduation
- proportionality, and finally
- efficient decision-making capabilities.

What is the degree of “implementation” at the international level of the “three pillars” defined above? What are the instruments and the actions of the international community in these areas?

### **The implementation and limitations of the international refugee regime**

Of the three “pillars” of obligations and instruments, the international refugee regime is the most recent and the most specific. And I will submit, despite what seems to be widespread evidence to the contrary, that this is an area where respect of international obligations has been relatively satisfactory and international action relatively effective.

How can I say this, faced with what is going on in Kosovo, and the massive refugee crises of the last ten years? The answer is simple: the current refugee regime deals not with the behaviour and the obligations of the perpetrators, but with those of the countries of asylum and with the international community at large.

In fact, during all the major refugee crises of recent years, we have witnessed relatively few examples of the massive violations of the cornerstone of the refugee regime, i.e. of the principle of “non-refoulement”, of not sending back asylum seekers to the countries of persecution, where their life and freedom were being threatened.

If the refugee regime as it stands today is relatively effective, in terms of both providing a minimum of (legal) protection and a certain standard of relief and assistance, this is due to the fact that its scope, both legal and practical is outside countries and regions of perpetrators.

In fact the protection against the perpetrators falls under the humanitarian, the Red Cross and the human rights "regimes". And we have seen how difficult the work of HCR becomes when it has to carry out its protection and assistance mandates in areas of conflict and violence and when it has to face the obstinate resistance of the persecutors of their own people.

Moreover, there are other issues that have weakened the efficiency of the international refugee regime in the recent past, or are likely to do so in the future. The following issues should be briefly mentioned here:

- the actual or potential general weakening of refugee protection because of a narrow interpretation of the full refugee status,
- the weakening of the right of voluntary return (and in some cases turning it into non-voluntary, i.e. forced repatriation), and,
- in general the refusal of the international community to provide the necessary resources for UNHCR and other humanitarian actors to carry out efficiently and safely their mandate of both protection and assistance. This problem includes the concentration of the donor countries on high-visibility crises and their unwillingness to provide long-term resources to deal with all crises of forced migration, whether recent or long-standing, as well as, in some cases, to provide sufficient physical protection for humanitarian workers and refugees alike (e.g. former Zaire).

### **The Red Cross and international humanitarian law**

The ICRC, the international Red Cross and Red Crescent Movement face particular challenges, but they also have special strengths and assets.

The main challenge is that the ICRC and the movement are directly present in the most violent environment: they are face to face with the actual or potential perpetrators. They are present to monitor the respect and the violations of international humanitarian law, and they are present to provide relief and assistance to the victims of war and violence: to the wounded, to the prisoners and to the civilian population and increasing civilian targets of violence.

However, as we all know, they also have strengths and assets that have proven effective in some of the most hopeless situations. I would like to stress three of these assets:

- the first one is obviously that their action and presence are based on the oldest and most complete set of obligations and rules of behaviour in conflict situations, rules and action which aim to work in favour of all parties and victims of a conflict;
- the second one is that what constitutes violations and what is the nature of humanitarian action and protection can be determined by straightforward and objective criteria, which leaves little or no room for political or subjective interpretation;

- and finally, the determination of violations when they occur, and what should be the scope and conditions of humanitarian action are carried out by an independent and neutral body.

The 1990s have witnessed widespread violations of international humanitarian law. The conditions of carrying out the protection and the relief and assistance mandates of the Red Cross and Red Crescent have been very difficult during the 1990s, especially in so-called internal conflicts. The origin and the nature of these violations of the Geneva conventions and protocols were to a large extent connected with the general disregard of the perpetrator groups or governments for the human rights of their adversaries or of their own citizens.

While there is here an important issue of convergence and co-operation, the answer has to be a strengthening of the international human rights regime. To try to solve this problem by diminishing the neutrality and independence of the ICRC and of the movement would be a dangerous initiative indeed.

### **The human rights regime**

The explicit recognition of human rights as a central element of political systems goes back at least two hundred years. At least since the late 18th century, since the American and French revolutions we have come to judge the characteristics of any political system, of any government, by the way it treats human rights. We distinguish between regimes and governments that respect human rights in the most fundamental sense, and those that do not.

Also, there is no doubt that human rights were the central issue of domestic and international political debate, and the issue at the centre of most of the wars throughout the 20th century.

Human rights were both important and controversial, both during the first half of the century when there were few or no explicit international rules in this field, and during the last fifty years which has seen such extensive codification of international codification of human rights.

This thesis may be illustrated with a few major examples: fundamentally World War II, the cold war, decolonization, the bloodless victory of freedom over the communist system ten years ago, were all about human rights. In a different context, the qualification for becoming a candidate and ultimately a member of the European Union or the less institutionally defined "Western community", has been closely connected with the issue of human rights.

Obviously, international human rights obligations have the broadest scope, (and not only because of the number and detailed definitions of the various conventions and declarations). In fact, most of the violations of international humanitarian law or of the refugee regime, also constitute violations of international human rights obligations. And many of the human rights obligations go well beyond the scope of the first two regimes.

While no one would deny the importance, the centrality of the issue (not only at the domestic level, but for the international community and international order as a whole), there is also no doubt that despite all this, today the international human rights regime still represents the weakest link.

There are a number of fairly simple and straightforward explanations for this situation.

In the first place, there is still a relatively large number of governments and political parties (I would emphasise governments, groups and political parties rather than countries or states) that believe that even major violations of human rights ought to continue to be effectively ignored because of the principle of national sovereignty. These governments often include not only actual or potential perpetrator countries, but also other members of the international community.

In the second place, we have failed to establish a workable hierarchy of international human rights obligations, and thereby also of the scale and the gravity of human rights violations that would have to trigger an international reaction.

Finally, we have not given sufficient thought, because of the sanctity of the nation state and of national sovereignty, to what should be the effective, graduated and predictable responses of the international community to prevent massive human rights violations, to protect the victims and to sanction the actual perpetrators.

## **Conclusions**

I think one can draw two main conclusions from the preceding brief analysis.

The first one is that the both the international refugee regime and international humanitarian law and action have a crucial role to play also in the future. They should be maintained and strengthened as much as possible. At the same time, it would be an illusion to believe that they can deal with the central problem which is the wholesale violation of human rights obligations.

Thus, and this is the second conclusion, the main task is to strengthen the international human rights regime. As suggested above, in order to achieve this, a number of major conditions have to be fulfilled. These include:

1. the recognition by the governments and the public in developed and in developing countries alike that massive human rights violations are of a direct concern to all of them;
2. an effective or objective scale or hierarchy of human rights violations by governments and non-government groups alike, that would trigger a graduated and effective response by the international community; and finally,
3. the definition and the implementation of an effective range of measures to prevent and to sanction massive human rights violations.

It is to be hoped that the lessons that we will have learned from the tragic and dangerous developments in the 1990s, will lead to a concerted effort by large and small, rich and less privileged nations alike, to develop a more effective international human rights regime.