IHL and Humanitarian Assistance

Introductory text

Humanitarian assistance is a topic that may be dealt with the rules on the conduct of hostilities or the rules on the treatment of persons in the power of a party to an armed conflict. This is because humanitarian assistance also largely benefits to persons who are not protected persons and because one of the sources of the provisions related to it is to be found in the prohibition of starvation against civilians as a method of warfare. [1] From that prohibition it results that IHL recognizes the right for the civilian population of a State affected by an armed conflict to receive humanitarian assistance. Rules governing humanitarian assistance regulate in particular the conditions for providing humanitarian assistance, in the form of food, medicines, medical equipment or other vital supplies, to civilians in need. While a distinction has to be made between international armed conflict and non-international armed conflict under treaty law, the customary rule, as drafted in the ICRC Study on customary IHL, attempts to offer a unifying wording.

During an international armed conflict, parties to an armed conflict are under the obligation to permit relief operations for the benefit of civilians, including enemy civilians. Art. 23 of Convention IV outlines the basic principles applicable to relief assistance, which is only intended for civilians – do they belong to the party controlling them, allies or to enemies – and which is limited to “all consignments of medical and hospital stores and objects necessary for religious worship”. It also provides for the delivery of all “consignments of essential foodstuffs, clothing and tonics”, but only intended for children under fifteen and pregnant and nursing mothers. This provision is therefore rather restrictive. In addition, it also grants the States concerned the right to inspect the contents and verify the destination of relief supplies, as well as to refuse the passage of relief goods if they have well-founded reasons to believe that they will not be distributed to the victims but rather used in the military effort.

According to Art. 59 of Convention IV applicable to occupied territories, the occupying power has to make sure that the population receives adequate medical and food supplies. [2] If this proves impossible, the occupying power is obliged to permit relief operations by third States or by an impartial organization, and to facilitate such operations. [3] Art. 70 of Protocol I, which supplements the Geneva Conventions, has considerably developed the right to humanitarian assistance outside occupied territories. Under this provision, relief operations must be carried out for the benefit of the entire civilian population if there is a general shortage of indispensable supplies. However, Art. 70 contains a severe limitation: it states that the consent of all the parties concerned – including that of the State receiving the aid – is necessary for such

assistance.

The rules regulating humanitarian assistance during non-international armed conflicts are far less developed. However, Art. 18(2) of Protocol II provides that: “If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned.”

Although Art. 18 undoubtedly enhances the protection of the civilian population in non-international armed conflicts, it has been strongly criticized because it also makes relief actions contingent on government consent.

Consent has been at the heart of fierce controversy in recent armed conflicts. Indeed, if under conventional IHL, in all situations other than occupied territories (where the occupying power has an obligation to consent) the delivery of humanitarian assistance is subject to the consent of the party concerned, the questions in particular of who must consent and whether consent must be given in certain circumstances have arisen, because of the restrictive wording of the relevant provisions. In international armed conflicts, consent is required from a State on whose (non-occupied) territory the assistance must be delivered as well as the adverse and neutral State through the territory of which the assistance must pass or from which the assistance is initiated.

As for the question whether consent must be given in certain circumstances, it is today well established that consent may not be arbitrarily withheld if the conditions enumerated at the relevant provisions outlined above are fulfilled. This however leaves open the question of when a denial of consent is arbitrary. A way to answer this question, some suggest, is to remember that a denial of consent would only be justified if either the civilian population does not actually need the humanitarian assistance, or if the entity offering it is unable to carry out relief actions that are exclusively humanitarian and impartial in character without any adverse distinction. Others point out that a denial of consent is certainly arbitrary if it only concerns or affects beneficiaries of a certain race, colour, religion, faith, sex, birth or economic class or if the denial of consent violates any other obligation of the denying party, including the prohibition of starvation of civilians as a method of warfare.

Finally, in an attempt to unify all the obligations and controversies that have emerged over time, rule 55 of the ICRC Study on customary IHL reads: “The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control”. [4] There is no reference to a “High Contracting Party” and the terms “must allow” imply that the consent has to be asked but should not be denied, while recalling the conditions explained above.

SPECIFIC BIBLIOGRAPHY

Suggested reading:

- AKANDE Dapo & GILLARD Emanuela-Chiara, Oxford Guidance on the Law Relating to Humanitarian Relief Operations in Situations of Armed Conflict, UN Office for the Coordination of Humanitarian Affairs, 2016, 62 pp.
- BRAUMAN Rony, *L'action humanitaire*, Paris, Flammarion, 2000.
- MOORE Jonathan (ed.), *Hard Choices: Moral Dilemmas in Humanitarian Intervention*, New York, Rownan and Littlefield, 1998, 322 pp.
- RYFMAN Philippe, *L'action humanitaire*, Paris, La Documentation française, coll. Problèmes politiques et sociaux. Dossiers d'actualité mondiale, No. 864, October 2001, 84 pp.
- STOFFELS Ruth-Abril, "Legal Regulation of Humanitarian Assistance in Armed Conflict: Achievements and Gaps", in *IRRC*, No. 855, September 2004, pp. 514-546.
- ZANETTI Véronique, *L'intervention humanitaire : droits des individus, devoirs des États*, Genève, Labor et Fides, 2008, 345 pp.

Further reading:

- BETTATI Mario & KOUCHNER Bernard, *Le devoir d'ingérence, peut-on les laisser mourir?*, Paris, Denoël, 1987, 300 pp.
- CHOMSKY Noam, *The New Military Humanism : Lessons from Kosovo*, Monroe, Common Courage Press, 1999, 199 pp.
- CORTEN Olivier & KLEIN Pierre, *Droit d'ingérence ou obligation de réaction?*, 2nd ed., Brussels, Bruylant, 1996, 309 pp.
- DENNE Sarah R., "Re-Thinking Humanitarian Aid in the Post-Gulf War Era: the International Committee of the Red Cross Takes the Lead", in *Case Western Reserve Journal of International Law*, Vol. 39, No. 3, 2007, pp. 867-895.
- DOMESTICI-MET Marie-José, "Aspects juridiques récents de l'assistance humanitaire", in *AFDI*, 1989, pp. 117-148.
- DOMESTICI-MET Marie-José, "Aspects récents du droit et de l'assistance humanitaires", in *L'observateur des Nations Unies*, No. 10, printemps-été 2001, pp. 1-99.
- KRÄHENBÜHL Pierre, "Conflict in the Balkans: Human Tragedies and the Challenge to Independent Humanitarian Action", in *IRRC*, No. 837, March 2000, pp. 11-29.
- MACALISTER-SMITH Peter, *International Humanitarian Assistance, Disaster Relief Actions in International Law and Organization*, Dordrecht/Geneva, M. Nijhoff /Henry-Dunant Institute, 1985, 244 pp.
- MICHELETTI Pierre, *Humanitaire : s'adapter ou renoncer*, Paris, Marabout, 2008, 245 pp.
- PASQUIER André, "Action humanitaire : une légitimité en question?", in *IRRC*, No. 842, June 2001, 311-321.
- PATTISON James, "Humanitarian Intervention, the Responsibility to Protect and Jus in Bello", in

Global Responsibility to Protect, Vol. 1, No. 3, 2009, pp. 364-391.
- PEROUSE DE MONTCLOS Marc-Antoine, *L'aide humanitaire, aide à la guerre ?*, Brussels, Complexe, 2001, 207 pp.
- PFANNER Tony, "Asymmetrical Warfare from the Perspective of Humanitarian Law and Humanitarian Action", in *IRRC*, Vol. 87, No. 865, March 2005, pp. 149-174.
- REFSLUND SORENSEN Birgitte, "Violence and Humanitarian Assistance: Reflections on an Intricate Relationship", in *Journal of Humanitarian Assistance*, September 2006, 24 pp.
- RYNIKER Anne, "The ICRC's Position on 'Humanitarian Intervention'", in *IRRC*, No. 842, June 2001, pp. 527-532.
- SANDOZ Yves, "'Droit' or 'devoir d'ingérence' and the right to assistance: the issues involved", in *IRRC*, No. 288, June 1992, pp. 215-227.
- STUDER Meinrad, "The ICRC and Civil-Military Relations in Armed Conflict", in *IRRC*, No. 842, June 2001, pp. 367-391.
- SUHRKE Astri & KLUSMEYER Douglas, "Between Principles and Politics: Lessons from Iraq for Humanitarian Action", in *Journal of Refugee Studies*, Vol. 17, No. 3, 2004, pp. 273-285.
- WILLS Siobhan, "Military Interventions on Behalf of Vulnerable Populations: The Legal Responsibilities of States and International Organizations Engaged in Peace Support Operations", in *Journal of Conflict and Security Law*, Vol. 9-3, Winter 2004, pp. 387-418.
- ZWITTER Andrej, "Humanitarian Action on the Battlefields of Global War on Terror", in The Journal of Humanitarian Assistance, October 2008, pp. 1-23.

CASES AND DOCUMENTS

- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 [paras 127-149]

1. Principles

CASES AND DOCUMENTS

- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 (Para. 130)

a) **starvation of civilians: a prohibited method of warfare**

P I, 54(1); P II, 14 [CIHL, Rule 53]

CASES AND DOCUMENTS

- Angola, Famine as a Weapon
- The armed conflict in Syria
- Israel, Blockade of Gaza and the Flotilla Incident
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 (Para. 76)

SPECIFIC BIBLIOGRAPHY

Suggested reading:

- DOMESTICI-MET Marie-José, "Contre la faim provoquée, les outils du droit", in *Action contre la Faim, Géopolitique de la faim*, Édition 2000, Paris, PUF, 1999, pp. 285-294.
- MACALISTER-SMITH Peter, "Protection of the Civilian Population and the Prohibition of Starvation as a Method of Warfare – Draft Texts on International Humanitarian Assistance", in *IRRC*, No. 283, September-October 1991, pp. 440-459.
- MAYER Jean, "Starvation as a Weapon", in ROSE Steven (ed.), *CBW: Chemical and Biological Warfare*, London conference on CBW, London, Harrap, 1968, pp. 76-84.
- PEJIC Jelena, "The Right to Food in Situations of Armed Conflict: The Legal Framework", in *IRRC*, No. 844, December 2001, pp. 1097-1110.

Further reading:

- DINSTEIN Yoram, "Siege Warfare and the Starvation of Civilians", in DELISSEN Astrid J.-M. & TANJA Gerard J. (eds), *Humanitarian Law of Armed Conflicts, Challenges Ahead, Essays in Honour of Frits Kalshoven*, Dordrecht, M. Nijhoff, 1991, pp. 145-152.
- SHOTWELL Charles B., "Food and the Use of Force, the Role of Humanitarian Principles in the Persian Gulf Crisis and Beyond", in *Revue de Droit Pénal et de Criminologie*, Vol. 30, 1999, pp. 347-377.

b) **the right of the civilian population to be assisted**

[CIHL, Rules 55 and 56]

CASES AND DOCUMENTS

- France/Opinion on Humanitarian Exemptions in Sanctions Regimes and Counterterrorism Measures
- Myanmar, Escalation of the Conflict
- Central African Republic/Incidents of Violence Against Humanitarian Organizations
- UN, Secretary-General's Reports on the Protection of Civilians in Armed Conflict
- France, Accession to Protocol I [Part B., para. 17]
- Israel/Gaza, Operation Cast Lead [Part II, paras 311-326, 1305-1331]

- ICRC, Iran/Iraq, Memoranda
- UN Security Council, Sanctions Imposed Upon Iraq
- UN, Security Council Resolution 688 on Northern Iraq [Para. 3]
- UN, UN Forces in Somalia
- Case Study, Armed Conflicts in the former Yugoslavia [3 and 13]
- Bosnia and Herzegovina, Constitution of Safe Areas in 1992-1993
- UN, Security Council Resolution on the Conflict in Syria
- Somalia, the fate of Children in the conflict
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2011
- Israel, Blockade of Gaza and the Flotilla Incident
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 [paras 130, 136]
- Libya, Report of the Office of the UN High Commissioner for Human Rights (2014/15)
- Yemen: Naval Blockade
- Yemen, Potential Existence and Effects of Naval Blockade

SPECIFIC BIBLIOGRAPHY

Suggested reading:

- PLATTNER Denise, “Assistance to the Civilian Population: The Development and Present State of International Humanitarian Law”, in *IRRC*, No. 288, May-June 1992, pp. 249-263.
- SANDVIK-NYLUND Monika, *Caught in Conflicts: Civilian Victims, Humanitarian Assistance and International Law*, Turku/Åbo, Åbo Akademi University, Institute for Human Rights, 2003, 2nd ed., 174 pp.

Further reading:

- JAKOVLJEVIC Bosko, “The Right to Humanitarian Assistance: Legal Aspects”, in *IRRC*, No. 259, 1987, pp. 469-484.

c) the belligerents bear primary responsibility

CASES AND DOCUMENTS

- ICRC, Assistance Policy
- Israel, Power Cuts in Gaza
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2011
- Israel, Blockade of Gaza and the Flotilla Incident
- UN, Report of the Secretary-General for the World Humanitarian Summit

- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 [Paras 130, 132]
- Yemen, Potential Existence and Effects of Naval Blockade

SPECIFIC BIBLIOGRAPHY

Suggested reading:

- BELLAMY Alex J., *Responsibility to Protect: the Global Effort to End Mass Atrocities*, Cambridge, Polity, 2009, 249 pp.
- BOISSON DE CHAZOURNES Laurence & CONDORELLI Luigi, "Quelles perspectives pour la responsabilité de protéger ?", in *Les droits de l'homme et la constitution : études en l'honneur du professeur Giorgio Malinverni,* Geneva, Schulthess, 2007, pp. 329-337.
- EVANS Gareth, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*, Washington, Brookings Institution Press, 2008, 349 pp.
- International Commission on Intervention and State Sovereignty, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*, Ottawa, International Development Research Centre, 2001, 91 pp.
- PATTISON James, "Whose Responsibility to Protect? the Duties of Humanitarian Intervention", in *Journal of Military Ethics*, Vol. 7, Issue 4, 2008, pp. 262-283.

Further reading:

- HOFMANN Claudia, "Engaging Non-State Armed Groups in Humanitarian Action", in *International Peacekeeping*, Vol. 13, No. 3, September 2006, pp. 396-409.

d) medical assistance may benefit civilians or combatants

CASES AND DOCUMENTS

- Gaza: Health situation in the Gaza Strip
- Yemen, Obstructing Medical Care
- South Sudan: Medical Care Under Fire
- Health Care in Pakistan's Tribal Areas
- Syrian Statement at the UN on the Medical Treatment of Enemy Fighters
- Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health
- Afghanistan, Attack on Kunduz Trauma Centre

2. Definition and characteristics of humanitarian assistance

[CIHL, Rule 55]

CASES AND DOCUMENTS

- South Sudan/Attacks on Humanitarian Personnel
- ICRC, Assistance Policy
- UN, Guiding Principles on Internal Displacement [Principle 24(1)]
- ICJ, Nicaragua v. United States [Paras 242 and 243]
- UN Security Council, Sanctions Imposed Upon Iraq [Part B.]
- United States of America, Holder v. Humanitarian Law Project
- Yemen: Naval Blockade
- Yemen, Potential Existence and Effects of Naval Blockade

SPECIFIC BIBLIOGRAPHY

Suggested reading:

- BRAUMAN Rony, *L'action humanitaire*, Paris, Flammarion, 2000.
- SLIM Hugo, "Doing the Right Thing: Relief Agencies, Moral Dilemmas and Moral Responsibility in Political Emergencies and Wars", in *Studies on Emergencies and Disaster Relief*, No. 6, Nordiska Afrikainstitutet, Uppsala, 1997, 18 pp.

Further reading:

- MINEAR Larry & WEISS Thomas G., *Mercy under Fire, War and the Global Humanitarian Community*, Oxford/San Francisco, Boulder/Westview Press, 1995, 260 pp.
- MODIRZADEH Naz K., LEWIS A. Dustin & BRUDERLEIN Claude, "Humanitarian engagement under counter-terrorism: a conflict of norms and the emerging policy landscape", in *IRRC*, Vol. 93, No. 883, 2011, pp. 623-647.
- PLATTNER Denise, "ICRC Neutrality and Neutrality in Humanitarian Assistance", in *IRRC*, No. 818, March-April 1996, pp. 161-179.
- RUSSBACH Rémi & FINK Daniel, "Humanitarian Action in Current Armed Conflicts: Opportunities and Obstacles", in *Medicine and Global Survival*, Vol. 1/4, 1994, pp. 188-199.

3. The rules of treaty law

SPECIFIC BIBLIOGRAPHY

Suggested reading:

- BARBER Rebecca, “Facilitating Humanitarian Assistance in International Humanitarian and Human Rights Law”, in *IRRC*, Vol. 91, No. 874, June 2009, pp. 371-399.
- ROTTENSTEINER Christa, “The Denial of Humanitarian Assistance as a Crime under International Law”, in *IRRC*, No. 835, September 1999, pp. 555-582.

Further reading:

- BOTHE Michael, “Relief Actions: The Position of the Recipient State”, in KALSHOVEN Frits (ed.), *Assisting the Victims of Armed Conflict and Other Disasters*, Dordrecht, M. Nijhoff, 1989, pp. 91-98.
- LUOPAJÄRVI Katja, “Is There an Obligation on States to Accept International Humanitarian Assistance to Internally Displaced Persons under International Law?”, in *International Journal of Refugee Law*, Vol. 15/4, 2004, pp. 678-714.
- REY Francisco, CARBONNIER Gilles & BOUCHET-SAULNIER Françoise, *Puertas cerradas: el acceso a la víctimas en la acción humanitaria*, Barcelona, Icaria, 2001, 214 pp.

a) the starting point: Art. 23 of Convention IV

aa) addressed to all “High Contracting Parties”, not only the parties to the conflict

bb) but limitations

-
  - with regard to the beneficiaries
  - with regard to the kind of assistance
  - conditions

CASES AND DOCUMENTS

- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 (Para. 148)

b) in occupied territories: Art. 59 of Convention IV: the occupying power has an obligation to accept relief

CASES AND DOCUMENTS

- Israel/Gaza, Operation Cast Lead [Part II, paras 311-326, 1305-1331]

- Israel, Power Cuts in Gaza [Part A., paras 15-17]
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2011
- Israel, Blockade of Gaza and the Flotilla Incident

c) **a broad right to assistance: Art. 70 of Protocol I and Art. 18(2) of Protocol II**

aa) but subject to the consent of the State concerned

CASES AND DOCUMENTS

- UN, Security Council Resolution 688 on Northern Iraq
- Sri Lanka, Conflict in the Vanni [Paras 24-26]
- UN, Security Council Resolution on the Conflict in Syria
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2011
- Israel, Blockade of Gaza and the Flotilla Incident
- UN, Report of the Secretary-General for the World Humanitarian Summit
- Yemen, Potential Existence and Effects of Naval Blockade

bb) the conditions on which a belligerent may make its agreement to humanitarian assistance contingent

CASES AND DOCUMENTS

- ICJ, Nicaragua v. United States [Paras 242 and 243]
- UN Security Council, Sanctions Imposed upon Iraq
- Case Study, Armed Conflicts in the former Yugoslavia [13 and 36]
- UN, Security Council Resolution on the Conflict in Syria
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2011
- Yemen, Potential Existence and Effects of Naval Blockade

cc) is the State concerned obliged to give its consent if the conditions are fulfilled?

CASES AND DOCUMENTS

- UN, Security Council Resolution 688 on Northern Iraq
- Sri Lanka, Conflict in the Vanni [Paras 24-26]
- UN, Security Council Resolution on the Conflict in Syria
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2011
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in

2015 [Paras 141-144]

- Yemen, Potential Existence and Effects of Naval Blockade

4. Protection of those providing humanitarian assistance

[CIHL, Rules 31 and 32]

CASES AND DOCUMENTS

- South Sudan/Attacks on Humanitarian Personnel
- Central African Republic/Incidents of Violence Against Humanitarian Organizations
- The International Criminal Court [Part A., Art. 8(2)(b)(iii)]
- ICRC, Protection of War Victims [Para. 3.3.]
- ICRC's Approach to Contemporary Security Challenges
- First Periodical Meeting, Chairman's Report [Part II. 1]
- UN, Secretary-General's Reports on the Protection of Civilians in Armed Conflict [Part B., paras 58-60]
- UN, UN Forces in Somalia
- Somalia, the fate of Children in the conflict
- Israel, Blockade of Gaza and the Flotilla Incident
- United States of America, Holder v. Humanitarian Law Project

SPECIFIC BIBLIOGRAPHY

Suggested reading:

- BIERENS DE HAAN Barthold, *Humanitarian Action and Armed Conflict: Coping with Stress*, Geneva, ICRC, July 2001, 3rd ed., 28 pp.
- MACKINTOSH Kate, "Beyond the Red Cross: the Protection of Independent Humanitarian Organizations and their Staff in International Humanitarian Law", in *IRRC*, Vol. 89, No. 865, March 2007, pp. 113-130.
- RUFIN Jean-Christophe, "The Paradoxes of Armed Protection", in Médecins Sans Frontières (ed.), *Life, Death and Aid*, New York, Routledge, 1993, pp. 111-123

Further reading:

- SUY Erik, "La protection des volontaires humanitaires dans les conflits armés non-internationaux et dans les operations de secours en cas de catastrophes", in *Des Menschen Recht Zwischen Freiheit und Verantwortung: Festschrift für Karl Josef Partsch zum 75 Geburtstag*, Berlin, Duncker & Humblot, 1989, pp. 173-182.

5. The protection of water supplies and water engineers

CASES AND DOCUMENTS

- Water and Armed Conflicts

SPECIFIC BIBLIOGRAPHY

Suggested reading:

- *See supra*, Conduct of Hostilities, II. The protection of the civilian population against the effects of hostilities, 9. Protected objects, b) specially protected objects bb) objects indispensable to the survival of the civilian population – Water

Footnotes

- [1] See PI, Art. 54(1); CIHL, rule 53
- [2] See GC IV, Arts 55 and 56
- [3] See GC IV, Art. 59; P I, Art. 69
- [4] See CIHL, rule 55

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