

N.B. As per the disclaimer ^[1], neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: *IRRC*, No. 323, 1998, pp. 366-394; available at <http://www.icrc.org> ^[2]]

First Periodical Meeting on International Humanitarian Law Geneva, 19-23 January 1998 Chairman's Report

I. Factual Elements

The 26th International Conference of the Red Cross and Red Crescent (1995) requested the Swiss Government, as the depositary of the Geneva Conventions, to hold periodical

meetings of the States Parties to those Conventions in order to examine general problems relating to the application of international humanitarian law.

Acting under that mandate, and after consulting the States Parties, Switzerland convened the First Periodical Meeting, which took place in Geneva from 19 to 23 January 1998. It proposed that the experts consider two topics: respect for and security of the personnel of humanitarian organizations, and armed conflicts linked to the disintegration of State structures.

At a preparatory meeting in Geneva on 13 January 1998, it was agreed that the First Periodical Meeting would be held on an informal level. This approach was endorsed by the Meeting, which was attended by the representatives of 129 States and 36 observer delegations. [...]

The debates were based on two preparatory documents drafted by the International Committee of the Red Cross and two working papers submitted by the Swiss authorities.

At the close of the Meeting, the Chairman drew up and presented the conclusions detailed below. These conclusions identify the problems encountered in implementing humanitarian law in respect of the topics discussed and list possible remedies. They reflect the Chairman's personal view and are in no way binding on the delegations which participated in the First Periodical Meeting. [...]

II. Chairman's Conclusions

1. Respect for and Security of the Personnel of Humanitarian Organizations

Identification of Problems

Where civilian populations are specifically targeted by acts of violence, humanitarian

assistance may be perceived as an obstacle to the very purpose of those acts;

Because they are not familiar with the concept of international humanitarian law, the persons directly participating in an armed conflict often regard humanitarian workers as friends of their enemies;

Where structures have disintegrated, there is no clear distinction between persons directly engaged in an armed conflict and civilians and no chain of command; and there is confusion about the international humanitarian law applicable among the parties to the conflict;

There is insufficient coordination between measures to restore peace and security, and measures to provide humanitarian assistance;

Humanitarian organizations do not always sufficiently coordinate their activities; they do not always observe their status of neutrality or respect local customs; and their motivation may not always be purely humanitarian;

Through lack of diligent selection, humanitarian actions are sometimes delegated to organizations that are not capable of performing them adequately;

There is insufficient observance of the duty to prosecute or extradite those who have committed acts of violence against humanitarian workers, resulting in insufficient deterrence from and prevention of such acts;

Links between political and humanitarian actions may make humanitarian workers more likely targets of attacks.

Possible Remedies

Establishment of mechanisms to prevent acts of violence against humanitarian workers, such as early warning systems for the exchange of information on situations that may lead to such acts;

Recognition that the commission of acts of violence against humanitarian workers as well as the order to commit such acts are crimes under both international and national law for which the perpetrators bear individual responsibility;

Relentless prosecution of those committing acts of violence against humanitarian workers; or extradition to another State; or, where appropriate, transfer to an independent international criminal court;

Support for and cooperation with international efforts to clear anti-personnel mines threatening the safety of humanitarian workers;

Strengthening of and increased cooperation with local providers of humanitarian assistance, in particular the National Red Cross and Red Crescent Societies;

Ratification of conventions on international humanitarian law, including conventions on anti-personnel mines, and improved implementation through national legislation;

Ratification of the United Nations Convention on the Safety of United Nations and Associated Personnel;

Fulfillment of the obligation to translate the Geneva Conventions into local languages, where necessary with the cooperation of the ICRC's advisory services;

Increased recognition of the competence of the International Humanitarian Fact-Finding Commission and, where appropriate, resort to ad hoc commissions;

Full compliance by humanitarian organizations with the principles of impartiality, of neutrality and of independence, which are the foundations of humanitarian ethics;

Adherence of all humanitarian organizations to the Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief, and respect by these organizations for the principles of international humanitarian law;

Acceptance of the Code of Conduct by humanitarian organizations, and coordination of their activities with those of other organizations, as a prerequisite for receiving public funds;

Establishment of a system of accreditation for humanitarian organizations;

Intensification of the ICRC's advisory services as well as of the efforts of other institutions, including those of a religious character, to disseminate international humanitarian law among armed forces and civilian populations, with special emphasis on the protection of humanitarian workers and the red cross and red crescent emblems;

Improvement of the recruitment, education and training of humanitarian personnel;

Effort by humanitarian organizations to cooperate, from the outset of their operations, with the authorities controlling the territory concerned;

Improved cooperation of humanitarian organizations in international efforts to maintain peace and security, where such cooperation does not jeopardize the effectiveness of the

humanitarian assistance or the safety of its providers.

2. Armed Conflicts Linked to the Disintegration of State Structures

Identification of Problems

Situations where State structures have disintegrated in the course of an armed conflict are usually characterized by a lack of effective leadership capable of ensuring respect for international humanitarian law or of protecting the safety of humanitarian workers;

Where civilian populations are specifically targeted by acts of violence, the disintegration of State structures and of the common values of a society can have particularly serious consequences;

The distinction between persons directly participating in an armed conflict and civilians tends to blur, as members of local militias rarely wear distinctive signs and mingle with civilians.

Possible Remedies

International support for measures designed to prevent the disintegration of State structures;

Establishment of early warning mechanisms to detect signs of a State being in the process of disintegration;

Recognition that the basic humanitarian rules in common Article 3 of the Geneva Conventions are applicable in armed conflicts where State structures have disintegrated;

Establishment, among the main actors in an area of armed conflict, of a code of conduct

taking into account local ethics and customs in addition to principles of international humanitarian law;

Support for measures aimed at building a lasting peace after a conflict has ended, such as disarmament, resettlement and economic development;

Reduction by States of the influx of weapons into areas of conflict and establishment of a code of ethics on the export of arms;

Integration of conflict prevention into development aid programmes;

Recognition of the necessity to strengthen the capacity of National Red Cross and Red Crescent Societies to enable them to continue to provide humanitarian assistance despite the disintegration of State structures;

Fulfillment of the obligation not to recruit children into armed forces or groups;

Promotion of the endeavour to define minimum humanitarian standards applicable in all circumstances;

Establishment of an independent international criminal court with jurisdiction over acts of violence committed by persons engaged in a conflict where State structures have disintegrated and prosecution by national authorities is no longer feasible;

Support for efforts of the United Nations and regional organizations at managing armed conflicts of an anarchic nature, including those made by the Security Council to restore conditions conducive to provision of humanitarian assistance;

Increased dissemination of humanitarian principles by the ICRC and other institutions, including National Red Cross and Red Crescent Societies and those of a religious character, with emphasis on the education of the young civilian population;

Identification of partners, within structures that may not yet have completely disintegrated or are re-emerging, in order to create the conditions rendering humanitarian assistance possible;

Cooperation and dialogue with local providers of humanitarian assistance who are familiar with local customs and conditions.

3. Follow-up

Periodical meetings, convened by the depositary of the Geneva Conventions and the Additional Protocols, pursuant to Resolution 1, paragraph 7, of the 26th International Conference of the Red Cross and Red Crescent, which shall, as part of a continuing process, examine general problems relating to the application of international humanitarian law, in conformity with common Article 1 of the Geneva Conventions;

Regular meetings of experts on questions of dissemination of international humanitarian law, organized specifically in regions of conflict;

Communication by the Chairman of his Report on the present Meeting to all the States Parties to the Geneva Conventions, to all the participants in the Meeting, to the 27th International Conference of the Red Cross and Red Crescent, and to the Standing Commission of the Red Cross and Red Crescent;

Communication by the Chairman of his Report on the present Meeting to the Secretary-General of the United Nations to assist him in his task to report to the 53rd Session of the

General Assembly on the security of United Nations personnel pursuant to United Nations Resolution 52/167 of 16 December 1997.

Lucius Caflisch

Chairman

First Periodical Meeting

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