

Commentary

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Human rights pertain to the man and citizen and fall within the framework of national constitutional laws and international law. The purpose of human rights is to defend and protect by institutionalized means the rights of human persons against the abuses of States and, at the same time, to promote the respect of human dignity and the establishment of human living conditions as well as the full development of the human personality.

The present human rights system codified by the Universal Declaration of Human Rights and by two International Covenants on Human Rights defines the duties of States to ensure and to implement on the national level the basic rights and freedoms to all peoples, irrespective of race, colour, language, religion or sex.

The principle of respect for human rights is one of the most important principles of modern international law. Its content is defined above all by the provisions of the UN Charter and by other international and regional instruments. This content is comprised essentially of the following: (i) all States have a duty to respect the fundamental rights and freedoms of all persons within their territories; (ii) States have a duty not to allow discrimination and distinction by reason of race, sex, language, religion, political or other opinion, national or social origin; (iii) States have a duty to promote universal respect for human rights and fundamental freedoms and to co-operate with one another in achieving this objective.

It is necessary to point out that contemporary international law proceeds from the proposition that a close link exists between a State's ensuring basic human rights and freedoms and the maintenance of international peace and security. This link is confirmed in many international conventions and in United Nations resolutions. International law intruded into a domain which was considered to relate exclusively to the domestic jurisdiction of States and in which specific features of the different social systems are manifested very prominently and strongly. This "intrusion" of the regulatory influence of international law into the domain of human rights should be interpreted in the sense that human rights are regulated by international law and that they have ceased to be the exclusive "domaine réservé" or domestic affair of a State.

The international humanitarian law, in the wide sense, is constituted by rules, whether written or customary or pragmatic, ensuring respect, assistance and protection of human beings in man-made and other disaster situations, in particular in armed conflict situations.

By "international humanitarian law applicable in armed conflicts", the ICRC means international rules, established by treaties or customs which are specifically intended to solve humanitarian problems directly arising from

international or non-international armed conflicts and which for humanitarian reasons, limit the right of parties to a conflict to use the methods and means of warfare of their choice or protect persons and property that are, or may be, affected by the conflict. The expression "international humanitarian law applicable in armed conflicts" is often abbreviated to "international humanitarian law" or "humanitarian law".¹

Apart from "conventional rules" laid down in the 1949 Geneva Conventions and 1977 Additional Protocols, there are also rules, which could be called "pragmatic rules", based on the Red Cross experience and practice. Some of them are formulated in various resolutions adopted by International Conferences of the Red Cross which are applicable not only in armed conflict situations but also in peace-time. These rules which already have a good experience in practice are applicable in so-called "non-conventional activities" of the International Committee of the Red Cross, in particular in peace-time.

The fundamental principles of the Red Cross, adopted by the International Conference of the Red Cross, should be considered as a part of the general principles of international humanitarian law. Principles such as humanity, impartiality, neutrality and universality, are fully applicable in all armed conflicts and other disaster situations.

A close connection undoubtedly exists between the international humanitarian law applicable in armed conflicts and human rights. The question of respect for human rights in armed conflicts has been widely discussed in international bodies including at the Diplomatic Conference on Humanitarian Law in Geneva. The relationship between these branches of law is demonstrated by certain provisions of the Additional Protocols. The Preamble of Protocol II additional to the Geneva Conventions and relating to the protection of victims of non-international armed conflicts recalls "that international instruments relating to human rights offer a basic protection to the human person." Article 2 of the Protocol I additional to the Geneva Conventions and relating to the protection of victims of international armed conflicts provides, *inter alia*, that provisions of the Protocol are additional to the rules concerning humanitarian protection of civilians in the power of a Party to the conflict contained in the Fourth Geneva Convention, as well as to the applicable rules of international law relating to the protection of fundamental human rights during international armed conflict. Human rights instruments contain various other provisions relating to concepts which also are expressed in humanitarian principles. The general principle of non-discrimination finds a prominent place in human rights instruments. The concept of proportionality is also recognized in human rights law. Other more general principles which should be mentioned and which are well established in human rights law relate to social and economic well-being and social security.

However, several authoritative commentators have emphasized that there are also some important differences between the two bodies of law.²

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1. Action by the International Committee of the Red Cross in the event of breaches of international humanitarian law" — *International Review of the Red Cross*, March-April 1981, p.76.
 2. See Proceedings of the International Conference on Humanitarian Law — Human Rights as the basis of International Humanitarian Law — International Institute of Humanitarian Law, San Remo, Italy, 24–27 September 1970, in particular reports by:
— Robertson, AH, "Human Rights as the Basis of International Humanitarian Law".

Traditional humanitarian law, although concerned with restrictions and prohibitions on States that are parties to conflicts, always expressed realistically the dual and complementary aspects of humanitarian protection and assistance. In fact the concept of protection has never been limited to the prohibition of bad treatment, but includes the right to appropriate material assistance. In reality measures of assistance are indeed essential for the tangible exercise of a range of basic human rights. This fact recognizes the examination of the legal foundations and framework of international humanitarian assistance activities in disaster situations beyond existing provisions within the regime of international protection.

However the principles of humanitarian assistance are themselves still not the subject of formal universal acceptance and recognition. It remains a condition *sine qua non* that State consent is necessary for the conduct of relief operations but respect for the principle of national sovereignty must be balanced by respect of the newly recognized general principles of international co-operation and solidarity. There is an encouraging development whereby the concept of an equilibrium, as a balance of forces, may become more or less stable. All regions are related materially by processes of action and reaction. The world as a community assumes that the parts are related politically, economically, culturally, sentimentally to one another and to the whole.

There is a kind of complementarity and interdependence between international humanitarian law and international human rights. Some basic humanitarian rules are applicable in human rights situations while some basic human rights are also applicable in armed conflict situations. There are also some common basic rules, such as on inviolability (right to the respect of life, integrity, both physical and moral, honour, etc.), on non-discrimination, on security. As mentioned above, the best example of this natural and logical “rapprochement” between human rights and humanitarian law is Additional Protocol II to the Geneva Conventions on the Protection of Victims of Non-International Armed Conflicts, whose preamble provides “that international instruments relating to human rights offer a basic protection to the human person.” Consequently, this basic protection should also be offered to the victims in other disaster situations.

Modern international law is now involved with a great number of international problems arising from the inter-related and inter-dependent interests of States and nations, including broad global problems of the environment, population resources and new forms of armed conflict situations. International law can intervene and act as a force for change based on co-operation in the face of world problems. If humanitarian law and human rights are to develop in response to the much wider range of situations of human distress which now face the community of nations their role must be in essence to promote international co-operation and solidarity. The development of humanitarian law based on international co-operation would therefore also make a contribution to the objectives of

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- McBride, S, “The Inter-Relationship between the Humanitarian Laws and the Law of Human Rights”.
 - Schwarzenberger, G, “Human Rights: A Programme for Inter-Disciplinary Studies”.
 - Draper, GIAD, “The Relationship between the Human Rights Regime and the Law of Armed Conflicts”.
 - Patnogie, J, “Les droits de l’homme et les conflits armés”.

general international law. Humanitarian law has always possessed a special universal unifying character transcending national boundaries, derived from the blend of realistic and idealistic factors which it contains. Full account should be taken of this feature in its further development and its very natural "rapprochement" to human rights.