
**"The Increasing Relevance of International Humanitarian Law
in the Work of the United Nations"**

INTRODUCTORY SPEECH

by

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■ **INTRODUCTION**

“... [United Nations]-imposed cease-fires ... the ... presence of UN units in key locations, ... no-fly zones, weapons-exclusion zones, no-pass lines and “safe zones” ... do not stop or truly contain war, but merely prolong it, constantly adding to the sum total of killing, destruction and human suffering.” ... the UN must take responsibility for torturing those it professes to help “with useless therapies while denying them the decisive surgery of war.”

Edward N. Luttwak, IHT, 11 August 1995

The author of these words is a respected academic who contributed this comment to a major paper within the last month. The stridency of these words which I partly paraphrased (and which were much more inflammatory - the UN at one point is referred to as an “evil doctor”) can be in part explained by a desire to shock and to call attention to a grave situation. He has succeeded. His anger, however, is misplaced.

I call attention to this op-ed article because its author is not alone in challenging the positive role normally attributed to diplomatic initiatives and humanitarian intervention. Can it be that such efforts are counter-productive and should be terminated for the good of the patient? Or would such a course of inaction simply prove terminal?

Empirically, it can be shown that diplomatic efforts and humanitarian assistance in the former Yugoslavia as well as many other parts of the globe indeed have not always ended the shedding of innocent blood. However, what kind of peace would result from the absence or withdrawal of these efforts and provisions?

The answer to the above question is as complicated as it is simple: we must continue our diplomatic and humanitarian efforts. As human beings, we have a moral imperative to come to the aid of others less fortunate. As international civil servants, we have mandates we must implement.

Rather than heaping scorn on the United Nations, let us instead channel our energies in a constructive manner. This four-day international congress provides us with such an opportunity. ~~It is indeed an honour to address this distinguished assembly once again.~~ The theme you have selected this year, "United for the Respect of International Humanitarian Law", goes to the heart of what is a matter of fundamental importance in addressing the conflicts currently raging in many parts of the world and -- let us be realistic -- those that are simmering and, if left untended, will boil over. The promotion, development, and enforcement of international law -- and, in particular, international humanitarian law -- is of crucial importance if conflicts are to be contained, human rights respected, cultural heritage preserved, and above all, if the norms which regulate the conduct and relationships of nations are to remain in step with the evolving realities of our turbulent world.

As Secretary-General Boutros Boutros-Ghali pointed out just two weeks ago during his address before the Institute of International Law in Lisbon, it is:

"... essential today to instil into the unruly world in which we live new principles of international law to enable the conduct of States to be rationalized, controlled and regulated. It is at times when history is prey to troubles, and when States are beset by doubt that international law is called on to perform its true function: that of determining what is the norm, the norm in every sense of the term, which serves at one and the same time to spell out obligations and to judge behaviour."

Let us look at some fundamental changes and trends in international politics that could mean that the demand for humanitarian assistance will continue to grow in the coming years, and how the development and improved application of international humanitarian law may help retard this growth and facilitate the dispersal of aid.

THE INCREASING DEMAND FOR HUMANITARIAN ASSISTANCE AND UN ACTIVITIES

The rise of intra-State conflicts, the advent of "failed" States, an increase in xenophobia and isolationism, natural resource scarcity, the proliferation of small arms, and a world population that expands by some 100 million people a year—all indicate that the demand for humanitarian assistance will continue to grow. The United Nations and the international community are undertaking a myriad of short-term and long-term activities to address these needs and issues.

The growth of Intra-State Conflicts and UN Peace-Keeping Operations

the growing number of intra-State conflicts is directly attributable to the end of the cold war. They represent a new and major challenge to international peace and security. Rivalry between the two powers during the cold war sustained several "proxy wars". In many instances, this backing served to contain the level of conflict and stop it from spreading. Today, these powers' lack of interest or ability to exert influence has resulted in a power vacuum. The result is that tensions that had lain dormant during the cold war have come to life.

This trend is clearly discernable from the change and growth of United Nations peace-keeping operations. For the first 45 years of the Organization's history, from 1946 to 1990, 18 peace-keeping operations were undertaken. Of these, two-thirds resulted from **inter-State** conflicts. In the past five years, the United Nations Security Council has established 20 peace-keeping operations. Of these, the inverse is true: two-thirds have resulted from **intra-State** conflicts.

For the most part, the PKOs in the first 45 years provided important confidence- and security-building measures by separating warring factions, monitoring a particular area during tense periods, and reporting objectively on political and military developments. United Nations personnel were deployed with the consent of the parties concerned and

could be withdrawn at a protagonist's request.

Today's operations are considerably more complex and demanding. Some of the activities now undertaken include supervising democratic elections, monitoring human rights, overseeing the repatriation of refugees, disarming opposing factions, reconstructing war-damaged infrastructure, and providing humanitarian assistance.

Furthermore, whereas PKOs used to come about after protracted negotiations with recognized and legitimate actors, this is no longer always the case. Sometimes there are no easily-recognizable actors with whom to carry out talks. Of equal concern is that some recognized leaders are incapable of following through on their commitments. The deployment of peace-keeping troops and civilian personnel in a hostile environment at the displeasure and without the consultation of the "grateful" recipient's leaders is another recent development. At what stage does the protection of basic human rights override traditional concepts of State sovereignty and non-intervention? This question is very much at the core of ongoing norm-setting efforts.

In Somalia -- a country without a functioning central government -- the UN and the international community responded to the overwhelming and dire needs of the Somali people. But even ample financial resources and personnel could not alone guarantee the success of the peace-keeping operation. Despite the political will of UN Member States, we learned that without the political will of the combatants, the international community cannot force some small but influential groups of people to lay down their weapons and work towards creating the conditions for peace and stability. In evaluating the UNOSOM operation, let us remember that the famine would have claimed thousands of additional lives had not UN peace-keepers secured the delivery and distribution of humanitarian assistance. Now, farmers in some areas are producing surplus food stocks. In many parts of the country, local government institutions have been re-established and people have been able to resume the normal course of their lives. Education and health facilities have steadily improved.

The Primacy of Humanitarian Assistance and Fostering a Respect for Human Rights

Of course, the work of the United Nations is not limited to peace-keeping operations. As in the case of Somalia, the decision to withdraw its peace-keeping forces in no way means that the UN has abandoned the people. UN staff attached to several UN bodies, such as the United Nations Development Programme, the World Food Programme, and the United Nations Children's Fund, together with some 800 Somalis, continue to work in various regions throughout the country. The UN continues to monitor developments within Mogadishu closely and looks forward to the time when conditions will exist to permit the UN as a whole to return in greater numbers.

Indeed, peace-keeping operations constitutes only a small part -- perhaps 20 per cent -- of the Organization's undertakings. The majority of our work is devoted to humanitarian assistance and, in particular, fostering the respect for human rights. Towards these ends, the United Nations undertakes numerous and far-reaching programmes. For example, the ^{General Secretariat} Office of the High Commissioner for Refugees is today assisting more than 23 million people who have been forced to flee their countries due to persecution or other ^{man-made disasters} man-made disasters. The Department for Humanitarian Affairs ensures that the requisite planning, logistics, diplomacy and fund-raising are coordinated to respond effectively to major emergencies. Last year alone, DHA coordinated international responses to 75 natural disasters, issuing 214 emergency situation reports, organizing 33 relief shipments from its warehouse in Pisa, Italy, to 19 countries, and taking part in 14 disaster relief field missions. More than US\$ 2 billion in voluntary contributions was channelled towards these ends. The Office of the High Commissioner for Human Rights and the Centre for Human Rights provide numerous advisory services and technical assistance to national human rights programmes; coordinate human rights education and public information activities; contribute to the removal of obstacles to the enjoyment of human rights and to the prevention of human rights abuses; and promote the realization of the right to development. These are just a few examples of tangible ways in which the United Nations system is improving peoples' lives -- day in, day out, 365 days a year.

■ CRISIS DIPLOMACY AND THE NEED FOR INTERNATIONAL HUMANITARIAN LAW

Law provides norms by which to abide and to hold others accountable. The need for the enforcement of law increases as order decreases and the ability to address transgressions proves circumspect. During the cold war, a level of international stability was assured because two great powers adhered to the rules of a "game" that they both understood and appreciated. By way of analogy, one can think of this game as chess. The number of players are known, the number of moves ^{clear} finite, and the consequences largely known ahead of time. Today, however, the game being played is no longer chess, but rather billiards. There are no longer two players, and it is increasingly difficult to gauge the repercussions of certain shots. The confusion resulting from the "break" is not conducive to the maintenance of international peace and stability. That is the reason we need new methods and perhaps new concepts, including legal ones, if we are to be prepared to take appropriate actions.

■ Three Aspects of Crisis Diplomacy

To respond to the new realities and needs of the post-cold war world, the Secretary-General has issued three innovative reports: An Agenda for Peace, (together with its supplement), New Dimensions of Arms Regulations and Disarmament in the Post-Cold War Era, and An Agenda for Development. Taken together, these studies offer a sober analysis of the relative effectiveness and merits of crisis diplomacy and offers a clear and persuasive prescription for future action. If the lessons learned are applied, many conflicts can be prevented from breaking out and those peoples and countries working towards resolving conflicts can build the foundations for a lasting peace.

However, what about those conflicts that are not yet "ripe" for resolution? Perhaps after a period of romanticism we must realistically acknowledge the need to manage crises. Crisis management, while less attractive an option than crisis prevention or crisis resolution, is no less desirable when one considers the higher toll of death and destruction

that is likely to result from not intervening. Crisis management does not embrace the status quo. Rather, it seeks to pre-empt events that lead to the escalating spiral of bloodshed and recrimination. To achieve such an end requires that international humanitarian law is developed, and that the respect for and adherence to such law is promoted to a greater extent than is presently the case.

▪ **Adequacy of Existing Law**

As previously stated, today's conflicts are increasingly being fought within States and not between States. Front lines and battlefields used to be located "over there", to quote from a famous American war song. Today, however, it is common for combat to be waged house-to-house and along the main street. Battlefields are neighbourhoods and cities. All too often, the distinction between combatant and civilian is not being drawn. Whereas ^{in the past} civilian casualties were primarily the result of accidents and were exceptional in nature, today's combatants often target civilian populations purposefully. Given this new context, the critical question must be asked: Are existing laws still adequate?

International humanitarian law, comprised primarily of Hague and Geneva law^s that regulate the conduct of hostilities and seek to protect the victims of armed conflicts, is a body of law enjoying wide recognition. Not only are the Geneva Conventions the most widely ratified multilateral treaties, but also many of their provisions are considered today to be customary law, binding even on non-member States. Such is the case of Common Article 3 of the Geneva Conventions on non-international armed conflicts, as ruled by the International Court of Justice.

While Protocol II Additional to the Geneva Conventions and relating to the protection of victims of non-international armed conflicts includes detailed provisions that build on the principles enshrined in Common Article 3, ^{more} needs to be done ⁱⁿ this area.

For instance, we need to remind ourselves constantly that human rights norms apply in all situations, including conflict, in conformity with international law. According to the Charter of the United Nations, all member States are mandated to "promote ... universal respect for, and observance of, human rights and fundamental freedoms for all...". Today we are experiencing a gradual convergence of these two regimes of Humanitarian and Human Rights law, which after all aim at protecting similar values and ideals. The Sub-Commission on the Elimination of Discrimination and Protection of Minorities, for instance, has^{mi} elaborated a Declaration on Minimum Humanitarian Standards, currently being reviewed by member States. It is perhaps timely to consider whether norms cannot be developed that will protect individual human beings more comprehensively during internal strife.

Many laws that prohibit or restrict behaviour in armed conflict can be strengthened. For example, wording contained in Protocol II of the so-called Inhumane Weapons Convention, which obliges parties "in so far as possible" to record the location of minefields, mines and booby-traps, leaves something to be desired. Nevertheless, despite the less-than-optimum wording in some places and the lack of enforcement and verification mechanisms, the Convention, which places constraints upon certain conventional weapons deemed to be excessively injurious or to have indiscriminate effects provides an important foundation from which to build. The upcoming Review Conference to be held in Vienna later this month will provide the parties with an important opportunity to strengthen the treaty.

The international community has proven its will and ability to fortify legal foundations and make them more structurally sound. For example, the Geneva Protocols outlawed the use of chemical and biological weapons but did not prohibit their development, production, or stockpiling. The Chemical Weapons Convention and the Biological Weapons Convention have closed these potentially destabilizing loopholes.

Still, more can be done. As the Secretary-General recently stated:

"After each great historical upheaval, whether the Napoleonic wars, the First or the Second World War, States -- in Vienna, Versailles or San Francisco -- have laid the juridical foundations of the new order within which they proposed to act. However, the end of the cold war has not given rise to any major international conference to lay the foundations of the future order. The international legal order seems to be late in arriving for its appointment with historical destiny."

■ A PLAN OF ACTION

What are we to do then when no government exists to implement such laws, as in the case of failed States, or when a government disregards such laws? Broadly speaking, the United Nations and the international community can address these situations in four ways: through education, persuasion, providing its good offices, and enforcement.

■ Education

To those of us who grapple with these issues on a daily basis, it is strange to think that there are some who are simply unaware of the existence of such laws. This should not be so surprising. Whereas there were 160 Member States in 1990, today there are 185. Many of these States are quite new to the international arena and are just learning about international law and norms of behaviour. Furthermore, during this period many established States have concluded or are now in the process of concluding lengthy civil wars. For these countries, many of those knowledgeable of such matters have been forced to flee their homeland or have been killed. In such instances it is necessary to provide these countries with the knowledge that they lack and which they seek.

Of course, education must not be limited to those in government. The growing network of organizations and institutions that comprise civil society have an influential role to play in ensuring that international humanitarian law is respected. Thus, it is important to educate parliamentarians, members of the media, academia, and concerned

non-governmental organizations (NGOs). International humanitarian law and national laws supporting its precepts should be contained in every country's military manuals. Armed forces (and, when it is appropriate, the police) should receive adequate instruction and officers must be held accountable for the actions of the troops under their command.

And of course, we must educate our children -- tomorrow's leaders.

■ **Persuasion**

Persuasion represents a second important tool that the international community can utilize. With the continuing rapid development of information technology, one should not underestimate the effect public opinion can have on redressing errant policy when it is effectively mobilized. This is another reason why educating NGOs and the media is so important. Similarly, the threat of economic sanctions can also be used to persuade a government to uphold international humanitarian law. The decision to enforce sanctions provides a potential "carrot" if the threat of the "stick" has failed to achieve the desired objective and the sanctions subsequently are enforced. At such a juncture, the prospect of lifting the sanctions becomes a potential carrot by which to influence a country's leaders. The temporary and conditional lifting of sanctions has been used effectively to persuade governments to change their policies to conform to international expectations.

■ **Good Offices**

A third means of promoting such laws is through the United Nations employing its good offices and expertise, which comprises making available analyses, recommendations, and technical assistance. Under Chapter VI of the United Nations Charter peace-keeping operations such as the United Nations Transitional Authority in Cambodia (UNTAC), the UN has provided training to, and overseen the activities of, the media, human rights groups, and the judiciary. In the Baltic States, the United Nations Development Programme and the Centre for Human Rights have combined forces to establish a viable

human rights legal regime, oversight mechanism and training activities. In Guatemala, a sizeable UN mission presently is monitoring training and helping to strengthen the local human rights machinery.

■ **Enforcement**

Perhaps the question to be asked is not whether existing laws are applicable or adequate, but rather if the problem is with the circumspect manner in which the international community administers them?

Thus, a fourth means is through enforcement. Enforcement should be employed only as a last resort. Historically, the types of enforcement most frequently used have included the levying of economic sanctions and the deployment of peace-keeping operations under Chapter VII of the Charter. Concerning the former, sanctions have proven to be effective tools, but they often require a ^{certain} lengthy period of time to succeed and the most socially and economically vulnerable groups within the population always bear the heaviest share of the burden. Perhaps it is time to consider the concept of "humanitarian thresholds" when designing and implementing economic sanctions.

The Security Council's recent decisions to establish tribunals for the former Yugoslavia and Rwanda indicate another important and potentially effective tool. The establishment of an International Criminal Court is now receiving serious consideration.

■ **CONCLUSION:**

As a result of United Nations' and the international community's diplomatic and humanitarian intervention hundreds of millions of people are better off and have a brighter future. Today there is hope when once there was despair.

Peace-keeping is not a panacea. Development and humanitarian assistance does

not make the symptoms disappear overnight. There are a lot of patients who are not well. If left unchecked, some infections could spread. Not all prescriptions are capable of being filled and not everyone who receives the medicine takes it. Sometimes the dose administered is not strong enough. But in no case can one see the United Nations as an "evil doctor" who is working against the best interests of the patient. A united respect for international humanitarian law will make "house calls" less frequent and less costly.

In less than four years, when the United Nations Decade of International Law draws to a close in 1999, we shall also be ^{commemorate} celebrating the centenary of the first Hague Peace Convention -- the Convention for the Pacific Settlement of International Disputes. The Secretary-General supports the call already made by some Member States to convene a major world conference to ⁱⁿ ~~celebrate~~ ^{commemorate} this anniversary and to re-examine all the legal mechanisms for the peaceful settlement of disputes between States. International law must draw conclusions from the new disorder in the world and the rule of law must invent new procedures so that it can better serve peace and international security.

We are in the process of deepening and solidifying the institutional foundations of international justice. You, the practitioners and promoters of international humanitarian law, must build on the legacy of existing law to strengthen the protection of human rights, especially during extreme situations of conflict.

