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Application of the Principles of International Humanitarian Law, State of Law, State of Facts Red Cross and Red Crescent Movement

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Abstract: Internationally, the relations between nations are regulated by an international legal framework, almost unanimously recognized and which aims to regulate optimal cooperation. On a social level, the relations between the state and the citizen are also included in the national or, as the case may be, federal, community, etc. legislation. Both in one case and in the other, the types of established relationships lead to the democratization of the relationships between the parties, an absolutely indispensable standard in contemporary society. In the end, what interests the individual the most is the achievement of a standard of personal, general well-being, in the case of communities.

Keywords: non-governmental organizations; international humanitarian law; civilian refugees; prisoners of war; international conventions

Introduction

The first and second world wars produced suffering and destruction on a scale never seen before, the weapons and fighting tactics of the combatants, as well as the resources thrown into the fight being far superior to previous international armed conflicts. The risk that international humanitarian activities face is that of constituting a set of political tools and implicitly a way of exploiting certain interests, if not at least the appearance of confusion between the political and humanitarian domains. Obviously, there is still a need for regulations in the field, for the correct monitoring of the observance of conventions and treaties related to human rights, but the variability of interpretations of humanitarian principles by too many actors involved contributes to the dilution of the effectiveness of the activity of international non-governmental organizations involved in the humanitarian sector.

An argument of maximum interest, regarding the activity of non-governmental organizations, is their financing, all over the world. Although the revenues collected can be drawn from a variety of resources, they can be grouped, in general, into several categories, namely; financial sources from economic activities, individual member contributions, services or investments, financial sources from philanthropic activities such as donations from individuals and financial sources from government funds received through any public structure and institution. Depending on the financing margin they have, non-governmental organizations can have a larger or more limited scope of action due to the suspicion presented by financing from public funds and the involvement of government authorities in the organization's activity. Thus, the financial independence of NGOs, today, constitutes a sine qua non condition in achieving autonomy and their free expression possibilities in the public space.

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Content

Even before the end of the war and the organization of the Paris Peace Conference in 1946, the ICRC continued to advocate, alongside the governmental authorities from all over the world, for the manner in which the states of the world undertook to comply with the provisions of the Charter to be clearly regulated of the United Nations¹ of June 26, 1945 in San Francisco, adopted by 50 countries, from all over the globe and which obliges the signatory parties to respect the fundamental human rights (Poede, 2005, p. 132) in a well-defined manner. These would be difficult to fulfill both by the signatory states and by the organizations with a humanitarian purpose, without respecting some principles, provided in the charter, such as (Pâlșoiu, 2006, pp. 87-88):

- Maintaining international peace and security;
- The adoption of collective, effective measures in order to prevent and strengthen threats against peace and repress any acts of aggression or other violations of peace;
- The use of peaceful methods, in accordance with the principles of justice and international law;
- Flattening or resolving disputes that could lead to a breach of the peace;
- Development of friendly relations between national states;
- Development of relations based on respect for the principle of equal rights and self-determination of peoples;
- the adoption of measures aimed at consolidating peace in international relations;
- Realization of collaborations on an international scale, to solve international problems of an economic, social, cultural or humanitarian nature;
- Developing and encouraging respect for human rights and fundamental freedoms for all, regardless of race, sex, language or religion;
- Coordinating the actions of nations in achieving common goals.

Also, on this occasion, the major role that non-governmental organizations have in the dynamics of international relations was highlighted, they are considered, according to the text, to have “*consultative status*”, according to article 71 of the United Nations Charter. Considering the humanitarian consequences caused by the Second World War, the ICRC took the initiative to review the Geneva Convention all over the world, so that in 1949, against the background of the already existing conflicts, in the different parts of the world, the majority of the signatory national states decided the review. If until then the three previous conventions had in mind the protection of the wounded and the sick, on the battlefield, the support of the victims of the war fought on the seas and oceans, or the aid of the prisoners of war, now the fourth Convention from Geneva², which sought to assist and protect the civilian population under foreign occupation. Later, additional protocols were adopted, in 1977 and 2005, so that, in the case of international or civil conflicts, which will constitute the general international legal framework, of action, of all subjects of international law in the promotion, application and observance of rights individuals, anywhere on the globe³.

Both the conventions and the adjacent protocols seek to prevent and stop all forms of abuse or violation of the rights of those concerned, those responsible for such “*serious violations*” having to be brought to

¹ Carta Națiunilor Unite Art. 61.

² <https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions>, accessed on 30.03.2023, hours 17.30.

³ <https://www.icrc.org/en/document/history-icrc>, accessed on data de 30.03,2023, hours, 17.42.

justice, regardless of their nationality. By adopting strict measures and punishments, the aim is to protect all those who do not participate in the conflict, the wounded, the sick, the shipwrecked or the military personnel who are prisoners.

On the occasion of the signing of the Geneva Conventions of 1949, the texts of the previous conventions, adopted in 1864, 1906 and 1929, also adopted in Geneva and aimed at protecting wounded and sick military personnel during the war, were also updated. The last version, the fourth, through the 64 articles it contains, includes, in addition to the categories mentioned above, the medical and religious personnel, related to hospitals and ambulance services¹. Regarding the text of the second Geneva Convention, adopted in 1949 and which had in mind the situation of wounded, sick or shipwrecked soldiers on the seas and oceans during the conflict, this document had to replace the text of the Hague Convention in order to adopt to the principles of the Geneva Convention, regarding the conduct of maritime warfare. It is similar to the first Geneva convention of 1949, having 63 articles that apply to the particularity of war at sea. An important provision is to protect hospital ships. The third Geneva Convention has as its field of application the regulation of the status of prisoners of war, it was adopted to revise the text of the Prisoner of War Convention signed in 1929, now having 143 articles and 5 appendices, compared to only 97 in the previous convention. The document broadened the categories of people who can benefit from the status of prisoner of war, in accordance with the previous conventions.

An important aspect was the attention directed to the purpose of regulating the conditions of detention and work in captivity, the financial allowances or the support they have when legal actions are opened against them, considering their reduced possibilities to defend themselves and being vulnerable to the violation of personal or collective rights. As a basic principle, the release and immediate repatriation of prisoners of war after the end of the fighting is established.

The last and the fourth Convention, also signed in Geneva in 1949, brought up the issue of protecting civilian personnel in the territory occupied by the enemy, not addressed until then in the texts of the previous conventions, and is based on the sad experiences regarding the atrocities carried out in the of the second world war, directed against the civilian population by some combatant troops. The Convention sums up 159 articles and considers the protection of the population against some consequences of the war. The main objective was to protect the civilian population from certain inhuman treatments that could violate fundamental human rights. Strict provisions are made regarding the civilian population in the territory occupied by one of the belligerent parties and the practical ways of helping it and providing humanitarian support, following the specific regulation in the case of civilian internees, also containing a model of regulations regarding humanitarian assistance, areas of safety or agreements regarding the operation of hospitals.

The principles express beautiful, democratic goals, we would say, but they also have the obligation to be relevant from the perspective of their applicability in the field. Their main quality is that of being able to provide solid support in the adoption of delicate decisions in the field. Another pertinent observation is the fidelity to any form of humanitarian principles that is supported by the ability to understand the political context by the humanitarian personnel directly involved. During the Cold War, the International Red Cross Movement faced many times the situation of being engaged in conflicts where his main weapon was not only perceived neutrality or impartiality, on the contrary, more important were the ability to interpret events and understanding of the overall picture. The major role that the ICRC had in helping the victims of war was recognized in both world wars by awarding the

¹ <https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions>, accessed on 30.03.2023, at 18.09; To benefit from this protection, the personnel in question must wear the emblem and a certain model of identity card.

Nobel Peace Prize in both 1917 and 1944, thanks to the special efforts regarding the implementation of international humanitarian law. Also, in 1963, as a sign of appreciation, along with the centenary celebration, together with the League of Red Cross Societies, she was rewarded with a new Nobel Peace Prize, thus becoming the most vocal supporter of peacekeeping in the world¹.

The International Committee of the Red Cross, in its entire activity, from its foundation until now, has never abandoned the fundamental principles that govern the organization and that give it a status of neutrality and impartiality in conflicts. These principles are: humanity, impartiality, neutrality, independence, voluntary service, unity and universality. The first four² of these, considered universal vocation by the representatives of the Red Cross and Red Crescent Movement, were adopted at a global level starting with the 90s', being specified in the text of resolution no. 46/182 of the United Nations General Assembly in 1991³, along with the realization of the opening between the West and the former communist states on the road to democratization. They are considered today as “*humanitarian principles*”, despite all the interpretations and the different degree of commitment they assume, and constitute the foundation of international humanitarian law and; the actions that serve the application of this right in the world.

However, neutrality did not appear out of nowhere and is based on the ICRC's mutual interests and connections with those of a state, historically considered neutral, Switzerland. As a principle, neutrality could not be considered to represent a fixed concept, being appreciated differently, controversially applied even by the members of the Red Cross Movement, and its historical evolution proves that the principles are in a continuous transformation. The same can be said about the principle of independence, adopted by the Chinese Red Cross in a completely different context favored by a millennial tradition that qualifies the state as the sole responsible for providing social assistance. The example considers not only the demographic factor, present, which constitutes China, today, on the contrary, rather the emphasis can be placed on Chinese humanitarian values anchored in Buddhist religious beliefs, in Confucianism and the role and desire that China today manifests in to join the international community. The principles are therefore not only an expression of common universal standards, they can also represent a way to obtain recognition on the international stage, or they can constitute a deeply human position or disposition that can be considered both political and above all a personal virtue⁴.

Sometimes neutrality can be mistakenly understood as passivity. Frequent situations in which the actions of helping and supporting the population, of various international organizations, were made difficult or even prevented by some groups, civil or military, as was the case in Yemen, Somalia, Syria and Afghanistan due to different perceptions, the lack of trust in these actions⁵. If at the beginning the humanitarian principles constituted a simple agreement between the parties in conflict and the humanitarian organizations proved their impartiality, with the 21st century the complexity of the interventions in the areas affected by the conflict became evident, on the one hand by the increase in the number of international actors active in the sphere of humanitarian action, and on the other hand of the “reduction of the humanitarian space”, by the government authorities as happened in Kenya.

¹ <https://www.britannica.com/topic/International-Committee-of-the-Red-Cross>, accessed on date de 31.03.2023, hours 11.44.

² <https://www.icrc.org/en/fundamental-principles>, accessed on 31.03.2023, hours 15.05.

³ <https://undocs.org/A/RES/46/182>, accessed on 31.03.2023, hours 15.15.

⁴ <https://www.icrc.org/en/publication/0513-fundamental-principles-red-cross-and-red-crescent>, accessed on 31.03.2023, hours 15.50.

⁵ <https://www.icrc.org/en/publication/0513-fundamental-principles-red-cross-and-red-crescent>, accessed on 31.03.2023, hours 17.50.

Conclusions

There are opinions that question the exclusive right of humanitarian organizations to get involved in actions to support and support the population affected by the war. The organizations had to manage complicated situations in order not to be accused of being on the wrong side of history, on the side of terrorist groups. For the national actors involved, the situation is even more delicate, having to affirm their neutrality and independence in a much more complicated way. Some of the experts in matters of international organizations consider that, precisely for this reason, they have “*damaged their own cause*”, anyone can be a “*humanitarian actor*” at any given moment, even a military combatant. The history lesson warns us about the fact that the use of specific terms, such as humanity, can be perceived in different ways, humanity has always been a fact and a starting point on which there was a general consensus. Concerns in this direction have amplified, the ICRC has, today, diversified its activity from initial concerns about wounded soldiers to being interested today in the fate of civilians, prisoners of war, etc.

The discussion can be held in a broader sense, considering the entire community of non-governmental organizations and involves maintaining a balance between neutrality and the possibility of campaigning for a certain goal, exemplifying the abuses and violation of international treaties by the parties in conflict. The question is whether by denouncing these violations of international norms, the principles of impartiality, independence or neutrality, considered to be responsible, through their application, for building a better and safer world are affected.

General idea, today, is that the universal principles are not enough only if they are displayed by the various non-governmental organizations, they must also be respected and applied in the field by them. The confusion can also be due to the fact that many multinational companies have connections or are considered to be part of the sphere of organizations that undertake humanitarian actions. The perception of belligerents towards humanitarian organizations can be different from that of international public opinion due to numerous political, military or educational factors.

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