Principles of humanitarian and medical aid

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Thank you and welcome.

I was asked to speak about principles of humanitarian and medical aid. Perhaps it will only be possible tomorrow to see why and how important those principles are even when discussing problems of co-operation between NGOs and the international ad hoc tribunals. International ad hoc Tribunals have an incredibly important task for the implementation of humanitarian law. Their task is not to provide aid but to punish those responsible and through that to prevent further crimes.

The Rwanda Tribunal has not yet been able to have an impact in the field. The Yugoslav Tribunal however has had an incredibly important impact on the whole issue of impunity, and therefore for enhancing respect for humanitarian law. Today not only in the former Yugoslavia but worldwide, those who want to commit serious violations of humanitarian law perhaps think twice. Up until now they hopefully have had information about humanitarian law and ethical reasons why certain things should not be done even in wartime. However, we know from the national level that unfortunately some people commit serious crimes, except if they fear being punished. Now people are starting to fear being punished for violations of humanitarian law.

Let us now speak about humanitarian medical aid. First, the general issue, humanitarian assistance. Here the first principle is that starvation of civilians is a prohibited method of warfare. It is clearly only starvation of civilians which is prohibited because international humanitarian law applies to armed conflict and unfortunately cannot stop armed conflicts.

1Record of oral introductory remarks made by Dr Marco Sassoli, Deputy Head of the Legal division of the International Committee of the Red Cross (ICRC). The views expressed are those of the author and not to be attributed to the ICRC.
The latter is the task of another branch of international law, mainly of the UN system, which is not always successful and therefore we need humanitarian law applicable to armed conflict. In armed conflict you cannot prohibit combatants to fight against combatants as long as the latter do not surrender. This fighting includes denying them food.

Civilian populations, however, are not involved in fighting the war, and therefore the civilian population has a right to be assisted. This is the second principle.

The third principle, which is particularly important, is that medical assistance may be of benefit to civilians or combatants. Here you do not have to check to whom it benefits because even fighting combatants have a right to medical assistance and medical aid. That is quite an old rule stemming back to the first Geneva Convention of 1864.

Practically, all this means that there is an obligation of parties to an armed conflict to agree to humanitarian assistance. This does not mean that NGOs may simply bring humanitarian assistance. They have to obtain an agreement. If you want to provide assistance you have therefore to speak with the parties to the conflict, although parties to conflicts are not always represented by very recommendable people.

Under the Geneva Conventions of 1949 and the Additional Protocols of 1977 you may argue that a party to a conflict has to agree to humanitarian assistance from the outside, under certain conditions: First there must be a necessity for the civilian population, a basic need, if there is no need, there is no right to assistance and there is no right for outside organizations to bring assistance. Second, the relief action must be humanitarian and impartial in character and conducted without any adverse distinction. There are certain humanitarian organizations having the very aim to help a particular population. Such NGOs may however be rejected by the adverse party. Next there is the right to search. The parties under an obligation to let humanitarian assistance through may check whether it really is humanitarian assistance for the civilian population. Finally, the parties have the right to have the distribution supervised. This does not mean that opponents may supervise distributions themselves but they may insist to have an organization like the
ICRC supervise them. States, however, are very keen on their sovereignty and therefore quite often they do not agree to an outside organization checking, while in humanitarian law their enemy can insist on such a checking.

Now allow me some remarks on the necessity to distinguish conflict resolution and humanitarian assistance. Conflict resolution, is directed at one side or at two sides but is not impartial. If there is an aggressor and the victim of aggression, conflict resolution must be directed at the aggressor. Humanitarian assistance however must benefit to all sides according to their needs. Humanitarian assistance may not be an alibi for political intervention. Conversely - and at least for the former Yugoslavia this was of a great actuality - humanitarian assistance may not be an alibi for not resolving the conflict.

We have to be conscious that if we do not distinguish conflict resolution and humanitarian assistance, then we do not only violate abstract principles but we increase the suffering of the victims. Those who represent the victims will have a certain interest that their suffering increases because if you get international attention only through suffering of the civilian population, in the end the government will increase the suffering of its own population to further its cause. The authorities in Sarajevo, e.g., did not always facilitate the work of humanitarian organizations simply because they had a certain interest that the television showed that Sarajevo was suffering. They felt that nobody would have helped them against what they felt as an aggression, except under the title of humanitarian assistance.

Now let us come more specifically to humanitarian law and medical aid. I am not an expert in medical ethics. Fortunately we do have some experts here with us. The idea of humanitarian law and medical aid has existed for thousands of years, but the codification in international treaties of some principles of medical aid in armed conflicts dates back to the last century and is connected with the idea which gave birth at the same time to the Red Cross and the Red Crescent. It is the idea of Henry Dunant, a Swiss businessman, who found himself by chance on the battlefield of Solferino in Northern Italy and noticed that the wounded and sick were not properly respected, collected and cared for. His idea how to improve this situation was to get people on the battlefield who would only collect,
assist and care for the wounded and sick. Those people should assist all the wounded and sick, to whatever nation they belonged to, and in order to make sure that those people were respected they would be recognizable by a specific emblem which at that time was the red cross. In the meantime the red crescent has been added. I think here we already have the basic rule: The obligation to respect, protect and care for the wounded, sick and shipwrecked without any adverse distinction. This obligation is something one has to remind of even very nice people such as blue helmets. They have an obligation if they are in a fighting situation not only to assist their own wounded and sick. They may not give priority to their own wounded and sick, but they also have to care for all other wounded and sick laying around, even if that is not always easy, from a purely logistical point of view, for them.

This respect, protection and care is only to be provided to the wounded and sick who refrain from any act of hostility. If you are wounded but continue to fight you are not protected.

Medical and religious personnel have to be respected on the battlefield and when falling into enemy hands, not so much because we want to protect medical and religious personnel, but because we need them to assist the wounded and sick. If the personnel is not protected and respected, then the wounded and sick will not be cared for.

Protection of medical personnel on the battlefield means that it may not be attacked, and it must be allowed to fulfil its medical duties in conformity with medical ethics. This does not only apply to medical personnel but to all inhabitants of the combat zone, who decide to collect and care for the wounded and sick. Medical personnel may also carry light weapons but only for self defence - and self defence is here used like the concept of self defence in national criminal law: it does not mean defence of the country or defence of positions or even defence of villages against enemy troops; it only permits defence against attacks on the medical personnel itself or on the wounded. To take over a hospital is not an attack under humanitarian law but a lawful act because humanitarian law assumes that the enemy will then respect the hospital and will let the work in the hospital continue. Therefore medical personnel may not defend a hospital against enemy take-over.
Once medical personnel falls into enemy hands - and it may not defend itself against falling into enemy hands, nor defend the wounded from falling into enemy hands - it has to be immediately repatriated or employed for caring for prisoners of war, the wounded and sick. Under the control of the enemy, if the enemy controls the territory where they work for instance, medical personnel has the right to perform its medical mission, the right not to perform medical acts contrary to medical ethics and finally the right to maintain medical secrets. On this last point, there is an exception for cases where information of a national authority is required by law. This means that if national law requires medical personnel to denounce everybody who has been treated with bullet wounds to the police, then even in armed conflict this obligation applies. This is very unfortunate and from the point of view of public health quite counterproductive, but even in the Additional Protocols this reservation is unfortunately made and I think it is important that medical personnel are conscious of that limitation.

Medical personnel has not only rights, but also duties: they have to respect medical ethics, to give care without discrimination and to respect the principle of neutrality. The latter is more than just to give care without discrimination. It means that medical personnel even if they give care without discrimination but is in addition involved, perhaps for very justified reasons, in propaganda activities for one side because it considers that side is victim of an aggression and needs public support, then medical personnel violates their duties.

Finally medical personnel has to identify itself as medical personnel. Furthermore there are provisions on the protection of medical material and objects including hospitals, ambulances, etc. If they are used in favour of the wounded and sick, they have to be respected and protected.

There is a possibility to constitute hospital, safety and neutralized zones under humanitarian law. We know the unfortunate stories about protected areas and so called safety zones in the former Yugoslavia. We should be conscious that under humanitarian law protected areas are something completely different than what was created in the former Yugoslavia. There were some real safety zones for the wounded and sick. The
hospital of Ossijek and the hospital of Dubrovnik were such areas. They were nevertheless attacked but at least there was an agreement not to do it and a supervising mechanism permitting interventions in case of attack. The "safe areas" constituted by the UN such as Srebrenica and Sarajevo were not protected zones under humanitarian law but what I would call protected zones under the UN charter in the sense that the Security Council decided that the Serbs may not go there and if they did, force would be used. Even if in the end the Security Council did not use force to defend those areas, this concept is something completely different from what is provided for by humanitarian law because protected zones under humanitarian law are based on the agreement of the parties, they are demilitarised - which means there could not have been any government soldiers in Sarajevo or Gorazde if those had been such protected zones. The idea of such a protected zone is mainly to protect civilians, hospitals and the wounded and sick against the effects of hostilities. Humanitarian law is based on the idea that the enemy attacks only military objectives. Therefore a hospital is in danger not because enemies want to kill the wounded but because enemies will make a mistake or because there may be military objectives just beside the hospital. In the former Yugoslavia there were specialists who had artillery positions just beside a hospital. Therefore the idea of protected areas in humanitarian law is to guarantee that there are no military objectives and no combatants in a certain area and therefore the enemy will have no interest in attacking that area. Obviously that does not work if the enemy just wants to kill civilians or attack wounded and sick. Finally, a protected zone may not hinder military operations, it is not a violation by the enemy if the latter takes over a protected zone. He may simply not attack a protected zone. The Security Council protected zones were something completely different and not very much more successful than the protected zones under humanitarian law.

Last - but not least - I should say some words on the emblem of the red cross and the red crescent. Those two distinctive signs both have the same meaning. There is a protective use and an indicative use. The latter consists of a use of the emblem in small dimensions to indicate that something or somebody belongs to a Red Cross or Red Crescent organization. The protective use is the one which is interesting for us in armed conflict. The emblems are used in great dimensions and their aim is to distinguish medical personnel and units and in addition ICRC and International Red Cross personnel. At this
point it is important to stress that not everybody who does a good job and who helps the victims of armed conflict has the right to use a red cross or a red crescent, but only medical personnel and units. An organization providing food to the civilian population does a very important job under humanitarian law, but may still not use the emblem of the red cross. Furthermore, the emblem may only be displayed with the permission and under the control of the competent authority.