

Chapter 12

Safety and Protection of Humanitarian Workers

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12.1 Introduction

Systematically, the numbers of incidents involving humanitarian workers as victims grow larger. In the past, such attacks tended to be quite random in nature, but with time they have become more organized and more purposeful. Humanitarian workers fall victim to bombings, direct attacks, kidnapping, thefts, as well as collateral damage security incidents. Such workers have always been vulnerable, considering that they operate in a dangerous environment. The conditions are most precarious during international and internal armed conflicts, yet violence also erupts during humanitarian activity in response to natural disasters.

The international community was horrified when six workers of the International Red Cross were killed in their sleep in Chechnya on 17 December 1996 (BBC, 17 December 1996). On 19 August 2003 in Iraq, 24 workers, including UN Special Representative Sergio Vieira de Mello (BBC, 19 August 2003), were killed in a bomb attack. On 7 August 2010 the Taliban in Afghanistan admitted to having killed ten aid workers on charges of espionage (The Associated Press, 7 August 2010). The list of the killed and wounded goes on and on (Aid Worker Security Report 2011, p. 2).¹ The most dangerous states are Afghanistan, Syria, Sudan (Darfur), Somalia, and Pakistan. In several cases, the untenable security situation forced aid institutions to reduce or withdraw the aid they offer, e.g. in Chechnya, Iraq, and Afghanistan (Aid Workers Security Reports).

The increase in attacks against humanitarian workers in recent years raises once again the question concerning the scope of their protection, as well as ways to

¹ Victims of attacks against humanitarian personnel: in 2005—173, in 2006—240, in 2007—220, in 2008—278, in 2009—295, in 2010—245, in 2011—308, and in 2012—274.

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improve it. A significant part of international law, in particular international humanitarian law and human rights law, has as its objective the protection of potential victims of armed conflicts and of human rights violations, especially civilians. The issue is also widely discussed in the academic literature on the subject (Humanitarian Debate, *International Review of the Red Cross* 2013; Primoratz 2007, 2012; Ramcharan 2006; Carpenter 2006; Siobhan 2009). What is missing, however, is systematic research into the scope of protection of humanitarian workers, and a debate as to what further measures should be adopted in order to limit the attacks against those who bring humanitarian aid, and to ensure their safety. A response to the following question is necessary: how do we achieve the right balance between the needs of victims of humanitarian crises and ensuring safety to humanitarian workers?

The objective of this paper is to analyse the factors that have a negative impact on the humanitarian space, i.e. the space where humanitarian workers are able to carry out their work effectively, and to consider the limitations resulting from international law and its implementation. The paper also proposes an assessment of the response measures that are undertaken to improve the security conditions of humanitarian workers.

The paper focuses on the safety of humanitarian workers in terms of protecting their life and health. As far as the definition of a humanitarian worker is concerned, the authors assume the term to denote workers, both international (i.e. persons who are not citizens of the state where the humanitarian assistance is provided) and national (citizens of the state in which the assistance is provided), who are involved in humanitarian assistance. Humanitarian assistance is understood as short-term emergency assistance under conditions of humanitarian crisis, consisting of actions aimed at ensuring that the basic needs of the affected population are being met.

12.2 Factors Impacting on the Safety of Humanitarian Personnel

The factors that impact negatively on the safety conditions of humanitarian workers may be divided into two groups. The first group includes the adverse effects of what occurs externally, beyond the control of the humanitarian workers themselves. The second group pertains to a shift in the concept and practice of humanitarian aid, and may therefore be modified by those involved in humanitarian assistance.

A useful notion in an analysis of the external factors that contribute to security incidents involving humanitarian personnel is that of humanitarian space, often defined as a 'conducive humanitarian operating environment' (UN Office for the Coordination of Humanitarian Affairs 2003) or 'scope for neutral and impartial humanitarian action in the midst of conflict' (Studer 2001, pp. 367–391). It is crucial for effective activity of the International Committee of the Red Cross, other humanitarian organizations, as well as for inter-governmental organizations like

UNICEF or the Office of the United Nations High Commissioner for Refugees (UNHCR). In recent years, increasingly worse security conditions have been noted, spurring reports on the shrinking of humanitarian space, reduction of humanitarian space, or erosion of humanitarian space (Beauchamp 2008; Abild 2009; Inter-Agency Standing Committee 2008; Khambatta 2009; Wagner 2005), in particular with reference to the areas with active military conflicts.

A principal reason behind the negative trends in security conditions with regard to humanitarian workers has been the shift in the nature of conflicts (Strachan and Scheipers 2011). For a number of years, internal conflicts have been prevalent. Such conflicts often play out against a background of weak state structures, with their resultant absence of territorial control hindering the operations of humanitarian organizations. The level of trust among the organizations providing aid and the state tends to be very low under such conditions.

Non-state participants of armed conflicts often refuse to perceive themselves as parties to the instruments of international law. They believe to be involved in an unequal fight, and thus to be forced to make use of illegal measures in order to achieve their goals. They can be rather cunning, and for many of them war is a way of life, and also a money-making endeavour. Criminal groups often have a vested interest in maintaining a certain level of violence, and humanitarian personnel in many instances provide the most easily available target. Moreover, disintegration of chains of command is typical of such groups, making it more difficult to establish contact and offer information on the plans regarding the supply of humanitarian aid (First Periodical Meeting on International Humanitarian Law, International Review of the Red Cross 1998, pp. 366–394; Ewumbue-Monroe 2006, pp. 905–924).²

Where the nature of the conflicts is ethnic, and the target is a civilian group, the presence of humanitarian personnel is hardly desirable to the assailants. In fact, it makes operations difficult and becomes an obstacle in attaining their objectives, besides often bearing witness to the crimes and thus becoming an enemy. The cultural aspect has also been pointed out: with regard to the recent conflicts in Afghanistan, Iraq, and Sudan, the ICRC former president Jakob Kellenberger has noted the trend towards “polarization” and “radicalization”, which he found to be among the results of the ‘war on terrorism’ (ICRC Annual Report 2004, p. 4; Hazan and Berger 2004). Humanitarian workers have often been perceived as representatives of a foreign Western world, and treated with suspicion, as if they had an agenda that included implementing foreign or hostile values besides doing their ostensible work. Humanitarian personnel who are involved in the promotion of human rights and thus who criticize either the authorities or the living conditions of the local communities are particularly vulnerable to attacks. In Iraq for example the Western aid organizations were perceived as an outpost of the international occupant forces (Carle and Chkam 2006, p. 9).

² Report dated 19 January 1998: *Respect for and Protection of the Personnel of Humanitarian Organizations*, Preparatory document drafted by the International Committee of the Red Cross for the first periodical meeting on international humanitarian law Geneva, 19–23 January 1998.

Also important is the unique nature of the problem of disrespect for international humanitarian law and human rights law. No other area of international public law is subject to violations on such a massive scale. The rights of individuals and the respect thereof tend to suffer due to the enormous power disproportion between the individual and the state and other actors in wars who have the responsibility for observing the law. The situation is exacerbated by the fact that the sanctions for violations of this type are often rather ineffective.

In this respect, the authority of international law has been undermined when the United States, along with its allies in the ‘war on terror’, essentially took a stance against its fundamental standards. The return of the debate on torture, holding individuals suspected of connections with terrorism, and difficulties in cooperation between the representatives of the International Red Cross and the leaders of the superpower might be interpreted as justifying disrespect of international law (Samuel and White 2012; Gaston 2012).

Principal factors aggravating the poor safety conditions of humanitarian workers that rest on the part of the humanitarian aid organizations include the lack of transparency and the increasing politicization of humanitarian action. Clearly, humanitarian actors vary widely (Beigbeder 1991). Aid is offered by United Nations institutions, Red Cross and Red Crescent institutions, local and international NGOs, private institutions, and states. For many of them, humanitarian aid is only one aspect of their involvement. Parties to the conflicts in general, and local communities in particular, often find it difficult to distinguish those who bring aid from those who are in pursuit of political, ideological, or other objectives (Carle and Chkam 2006, pp. 2–5). More and more often, states provide humanitarian aid while working to satisfy their own political or security-related interests. The aid is directed to countries with which the aid-providing states have historical, political, or cultural ties, which gives rise to questions regarding the impartiality of the decisions on its allocation. Furthermore, armed forces are with increasing frequency required to carry out humanitarian work. United Nations institutions rely on the support of international armed forces with presence in the region of conflict (Bessler and Karouko 2006, pp. 4–10; Studer 2001, pp. 374–377). Providing safe operating conditions to humanitarian workers is also within the remit of EU-mandated troops.³ Civil-military cooperation certainly improves the potential for reaching those in need of aid, and in a short-term perspective may boost the safety of both humanitarian workers and the civilian population to whom the aid is directed. Yet the same model of cooperation leads to the disintegration of the civilian nature of humanitarian work (Pommier 2011, pp. 24–25). The International Committee of the Red Cross has pointed out that it leads to erosion of the separation between humanitarian and military spaces, and consequently to the disruption of perceptions of the status and role of humanitarian personnel (Mc Hugh and Bessler 2006, p. 7).

³ Inter alia: European Union Force Chad/CAR, European Union Force–Libya.

Furthermore, as noted for example by the former ICRC President Cornelio Sommaruga, the term “humanitarian” is used indiscriminately; a large part of the overall international response to a conflict is labelled “humanitarian”. This broad application of the term distorts the perception of the unique nature of actual humanitarian work, which requires the observance of the fundamental principles of humanity, impartiality, neutrality, and independence (Sommaruga 1997).

Statistically, members of NGOs fall victim to attacks most frequently. They often operate in difficult security conditions, without adequate background research and without proper preparation. Many NGOs cannot afford to hire highly qualified personnel (Stoddard and Harmer 2010, p. 8). Often, they rely on volunteers, and these volunteers receive no basic training either with regard to safety or to methods of communication with the local population (Aid Workers Security Report 2011, p. 1). The abundance of NGOs hinders organized cooperation in terms of exchanging crucial safety-related information: instead of cooperating, NGOs very often compete with one another and thus become more vulnerable to manipulation by local decision-makers.

12.3 Legal Protection of Humanitarian Workers

A comprehensive assessment of the situation of humanitarian workers requires an analysis of their legal protection. In situations outside of armed conflict, the scope of that protection is determined by human rights law, as well as specific regimes such as international disaster response law and the Convention on the Safety of United Nations and Associated Personnel (CSUNAP) of 1996 and its Optional Protocol of 2005. In situations of armed conflict, further protection is provided by international humanitarian law and the provisions of international criminal law on war crimes. In each case, full assessment of the scope of legal protection requires a review of national laws.

12.3.1 *Outside of Times of Armed Conflict*

Situations which do not qualify as armed conflict but that necessitate humanitarian aid range from natural disasters, through unilateral violence against civilians and unrest that has not yet reached the stage of armed conflict, to post-conflict situations where sporadic acts of violence continue to occur. Across this variety of scenarios, in terms of protection of humanitarian workers, only one fundamental legal regime applies, i.e. human rights law.

Human rights protect the life and safety of every human being, which naturally pertains also to humanitarian workers, whether or not they are members of armed forces. Even under conditions of a “public emergency which threatens the life of nation”, when states are allowed to limit certain human rights, there nonetheless

remain rights and liberties, such as the right to life, the ban on torture and slavery, or the ban on punishing for an act or omission which were not criminal offence at the time they occurred, from which no derogation can be made.⁴ These regulations are crucial in the context of humanitarian aid because they guarantee the protection of life and health of humanitarian workers and ensure their authorisation to offer humanitarian aid and not be subject to abuse for that reason. Operations of humanitarian workers may have, and often do have, immense impact on the preservation of life and safety of those in need of humanitarian aid. Not only are the states obliged to respect human rights (which in essence is a ban on state authorities infringing these rights), but they also have the positive obligation to ensure that human rights are observed, which requires actual action on their behalf. In the case of alien humanitarian workers, the protection arising out of (universal) human rights are augmented by the right to diplomatic care vested in their state of citizenship (Sandurski 2000, p. 13). This right means that the state of citizenship is authorized to represent its citizens against the host state if the host state violates their rights or fails to prevent and punish violations directed at them.⁵

The responsibility of the state to ensure the safety of humanitarian workers is also the focus of the *Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance* (IDRL Guidelines) which were unanimously adopted on 30 November 2007 by the state parties to the Geneva Conventions and the International Red Cross Red and Crescent Movement at the 30th International Conference of the Movement.⁶ The IDRL Guidelines are not binding, yet they are invaluable in effecting a shift in national laws pertaining to disaster response and facilitation of disaster relief.⁷

Point 22 of the IDRL Guidelines, entitled Security, reads as follows:

Affected States should take appropriate measures to address the safety and security of disaster relief and initial recovery personnel of assisting States and eligible assisting humanitarian organizations and of the premises, facilities, means of transport, equipment and goods used in connection with their disaster relief or initial recovery assistance.

⁴ See Article 4 International Covenant on Civil and Political Rights of 16 Dec. 1966, UNTS vol. 999, p. 171. Compare with Convention for the Protection of Human Rights and Fundamental Freedoms of 4 Nov. 1950, UNTS vol. 213, p. 221.

⁵ See Draft Articles on Diplomatic Protection of 2006 (A/61/10). It is interesting to remember in this context that in the initial stages of work of the International Law Commission on the issues of state responsibility, the special rapporteur F.V. Garcia Amador in his reports focused specifically on the question of the responsibility of the State for injuries caused in its territory to the person or property of aliens. See e.g. UN Doc. A/CN.4/96, A/CN.4/106, A/CN.4/111.

⁶ The text of IDRL Guidelines is available on <http://www.ifrc.org/en/what-we-do/idrl/idrl-guide-lines/> (31.05.2013). According to definitions included in the IDRL Guidelines, “disaster” means “a serious disruption of the functioning of society, which poses a significant, widespread threat to human life, health, property or the environment, whether arising from accident, nature or human activity, whether developing suddenly or as the result of long-term processes, but excluding armed conflict.”

⁷ See also A/RES/63/139, A/RES/63/141, A/RES/63/137 (2008) in which UN General Assembly encouraged states to make use of IDRL Guidelines.

Assisting States and assisting humanitarian organizations should also take appropriate steps in their own planning and operations to mitigate security risks.

The above essentially re-states the general duty of states to ensure the security of those under their jurisdiction. Yet in contrast to documents focusing on overall human rights protection, the IDRL Guidelines distinguish a separate class of “disaster relief and initial recovery personnel” that is at risk of attacks, and to whose protection the state should therefore pay particular attention.⁸ Importantly, the IDRL Guidelines emphasize the duty of the helpers to take measures to mitigate risks to their safety. The fact of providing humanitarian aid gives nobody the right to recklessly risk their life at the expense of the host state.

A particular regime of protection applies to humanitarian workers providing aid within the framework of United Nations operations. Protection of personnel serving on peacekeeping missions as well as other UN-mandated missions has been a concern of the Secretary-General,⁹ the General Assembly,¹⁰ and the Security Council¹¹ since the 1990s. In 1994, the General Assembly adopted the Convention on the Safety of United Nations and Associated Personnel that has, as of 13 January 2015, gathered 92 signatories (Christianebo Urloyannis-Vrailas 2005, pp. 561 ff.; Bouvier 1995, pp. 638 ff.; Bloom 1995, pp. 621 ff.; Engdahl 2002, pp. 205 ff.).¹² The purpose behind the Convention is to enhance the protection of UN and associated personnel who, as noted in the preamble to the Convention, make an important contribution in respect of United Nations efforts in the field of humanitarian operations.

The Convention prohibits attacks on UN and associated personnel and any actions that prevent them from discharging their mandate, and imposes on the states the duty to take all appropriate measures to ensure the safety and security of United Nations and associated personnel.¹³ It provides that in principle, if UN or

⁸ According to definitions included in the IDRL Guidelines, “Disaster relief” means goods and services provided to meet the immediate needs of disaster-affected communities; “Initial recovery assistance” means goods and services intended to restore or improve the pre-disaster living conditions of disaster-affected communities, including initiatives to increase resilience and reduce risk, provided for an initial period of time, as determined by the affected State, after the immediate needs of disaster-affected communities have been met. IDRL Guidelines uses terms like “humanitarian relief”, “humanitarian organization” but they do not provide definitions of these notions.

⁹ See e.g. Boutros Boutros-Ghali, *An Agenda for Peace* (A/47/277—S/24111) of 17 June 1992. See also S/1999/957 of 8 Sept. 1998, pp. 21–22.

¹⁰ See e.g. GA resolutions A/RES/52/167 (1997), A/RES/53/87 (1998), A/RES/54/192 (1999), A/RES/55/175 (2000), A/RES/56/89 (2001), A/RES/56/217 (2001), A/RES/57/28 (2002), A/RES/57/155 (2002), A/RES/58/122 (2003), A/RES/59/211 (2004), A/RES/60/123 (2005), A/RES/61/133 (2006), A/RES/62/95 (2007), A/RES/63/138 (2008), A/RES/64/77 (2009), A/RES/65/132 (2010), A/RES/66/117 (2011), A/RES/67/85 (2012).

¹¹ See e.g. S/RES/1296 (2000), S/RES/1265 (1999), S/RES/1502 (2003); S/RES/1674 (2006), S/RES/1894 (2009).

¹² A/RES/49/59, 9 Dec. 1994. Convention entered into force on 15 Jan. 1999. As to the circumstances surrounding the work towards the Convention.

¹³ Article 7.

associated personnel are captured or detained in the course of the performance of their duties and their identification has been established, they may not be subjected to interrogation and they are to be promptly released and returned to United Nations or other appropriate authorities, and until the time of their release, are to be treated in accordance with universally recognized standards of human rights and the principles and spirit of the Geneva Conventions of 1949.¹⁴ However, the core regulations of the Convention serve to criminalize certain offences targeted at the personnel protected under the Convention¹⁵ and to determine how the perpetrators of such offences are to be handled, including international cooperation in bringing them to justice.¹⁶

From the moment of commencement of negotiations of the Convention, the most problematic issue was the scope of the application of the Convention. The determination of that scope in turn required agreement as to, firstly, the definition of protected personnel, and secondly, of the type of operations to which the Convention was to apply. The only classes of persons protected under the Convention are “United Nations personnel” and “Associated Personnel.”¹⁷ Under the definition adopted in the Convention, UN personnel means:

- (i) Persons engaged or deployed by the Secretary-General of the United Nations as members of the military, police or civilian components of a United Nations operation;
- (ii) Other officials and experts on mission of the United Nations or its specialized agencies or the International Atomic Energy Agency who are present in an official capacity in the area where a United Nations operation is being conducted.

For example, representatives of UNOCHA or UNHCR, if they are present in an official capacity in the area where a United Nations operation is being conducted, fall into the category of UN personnel. The need to extend to UN employees the same protection that is granted to peacekeepers was quite clear. Employees of various UN agencies are involved in peacebuilding operations as well as humanitarian assistance within peace missions, and when they work in the area where the operation is conducted, they face the same risks as the blue helmets.

Controversies arose however with regard to the category of “Associated Personnel”. Certain states were unwilling to define the category in broad terms, mainly due to their distrust of NGOs and their unwillingness to bear the responsibility for ensuring their protection. Ultimately the definition reads as follows:

- (i) Persons assigned by a Government or an intergovernmental organization with the agreement of the competent organ of the United Nations;

¹⁴ Article 8.

¹⁵ Article 9.

¹⁶ Articles 10–18.

¹⁷ Article 1.

- (ii) Persons engaged by the Secretary-General of the United Nations or by a specialized agency or by the International Atomic Energy Agency;
- (iii) Persons deployed by a humanitarian non-governmental organization or agency under an agreement with the Secretary-General of the United Nations or with a specialized agency or with the International Atomic Energy Agency to carry out activities in support of the fulfilment of the mandate of a United Nations operation.

For the purposes of this paper, the third sub-category above is of particular interest. Protection under the Convention does not apply to all humanitarian workers; it only applies to those who work for organizations who have an agreement with the Secretary-General of the United Nations, a specialized agency, or the IAEA. Moreover, these workers are only protected when they carry out activities in support of the fulfilment of the mandate of a UN operation.

It is rather difficult to determine whether there is a formal connection between the United Nations and a given organization. The Convention does not require the United Nations to control the organization (different opinion: Bloom 1995, p. 624). In order for the Convention to apply, it is sufficient to demonstrate (as emphasized by the Secretary-General) “any contractual link or a treaty arrangement institutionalizing the cooperation between the United Nations and a non-governmental organization in support of a United Nations operation or in the implementation of its mandate.”¹⁸ The practice of the United Nations so far indicates that two types of agreements have been prevalent: “partnership agreements” between UNHCR, UNDP, UNICEF, WFP or other UN bodies executing humanitarian programmes and non-governmental organizations whose role consists in the implementation of specific projects, and “security agreements” between the Office of the United Nations Security Coordinator and non-governmental organizations participating in the implementation of assistance activities of the UN (Engdahl 2002, pp. 223–224).¹⁹ However, it is the position of the sub-contractors of the organizations that have formal ties to the UN that makes the solution problematic. Local workers of local NGOs that may lack a formal agreement with the UN are more vulnerable to attacks, yet beyond the scope of protection offered by the Convention. It is hardly an acceptable situation (Ecroth 2010, p. 19).

Further limitations of the applicability of the Convention are connected to the types of operations listed by the Convention. An operation must meet three requirements conjunctively. Firstly, it must be established by the competent organ of the United Nations in accordance with the Charter of the United Nations. Secondly, it must be conducted under United Nations authority and control. There is no stipulation as to the degree of UN control required, i.e. whether the duty to report on the proceedings is sufficient, or whether the UN must have full control of the operation (not only overall political control but also command in the field). The issue is

¹⁸ A/55/637 (2002), para. 15.

¹⁹ *Ibidem*.

crucial in that experts disagree whether, in the light of these questions, operations authorized by the Security Council but conducted by a given state or a coalition of states fall under the Convention's definition (Cf. Christianebo Urloyannis-Vrailas 2005, pp. 566–567 with Commentary of Mahnoush Aransjani, available on <http://untreaty.un.org/cod/avl/ha/csunap/csunap.html>). It must be noted that the Security Council increasingly often encourages regional organizations to conduct specific operations when it finds itself unable to muster sufficient resources on tight deadlines. This efficiency issue on the part of the Security Council should not deprive the forces that are acting on the Security Council's recommendation of the protection under the special regime, be it as UN personnel or as associated personnel.

Thirdly, the operation must be either established for the purpose of maintaining or restoring international peace and security, or it should be declared by the Security Council or the General Assembly for the purposes of the Convention that there exists an exceptional risk to the safety of the personnel participating in the operation. Application of the Convention has been excluded with regard to operations "authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies." This is a very strict limitation. It is understandable why members of UN enforcement missions engaged in combat actions may not be granted immunity against attacks from the opponent (Bouvier 1995; Engdahl 2002, p. 233).²⁰ Yet it is hard to grasp why civilian workers offering humanitarian aid should lose protection just because one component of the mission involves participation in hostilities (cf. Christianebo Urloyannis-Vrailas 2005, p. 568). Furthermore, it is extremely difficult to determine whether an operation has an exclusively peacekeeping character, whether its character is exclusively peace-enforcement, or whether it is mixed. These terms lack definitions, and the Security Council rarely offers this type of information about the missions it authorizes (Bloom 1995, p. 625). It appears therefore that in the absence of a formal determination of a given operation by the Security Council as falling into the category of enforcement, the operation is within the scope of application of the Convention. Regrettably, the states have decided not to extend the protection under the Convention to humanitarian operations (not to be mistaken with humanitarian interventions), despite proposals to this effect.

The Convention applies automatically only with regard to operations authorized by the Security Council (which by definition is responsible for the maintenance of peace and security, and thus there is little need to rely on the legal basis of the resolution in Chapter VII or VI of the UN Charter) or by the General Assembly acting pursuant to the resolution *Uniting for Peace*.²¹ In any other case, a declaration regarding an exceptional risk (a triggering declaration) is required (Llewellyn

²⁰ Experts point out that the purpose of this reservation was to preclude the application of the Convention in situations in which international humanitarian law applies.

²¹ A/RES/377 (V) (1950).

2006, p. 719), which has proved to be most challenging. Firstly, there are no clear criteria for assessing that risk. Furthermore, declarations of this nature are considered political, and thus there is reluctance amongst the members of the United Nations to issue them. This continues to mean that members of a whole range of United Nations operations remain beyond the protection of the Convention. The Secretary-General argued that it was necessary to adopt a protocol to the Convention, and by means of that protocol to extend protection to all humanitarian organizations, regardless of their affiliation with the UN, and to all UN operations, regardless of whether the declaration on exceptional risk with regard to their personnel has been passed.²² His appeal was effective. On 8 December 2005, the General Assembly adopted an optional protocol, which—regrettably, only to a limited degree—extends the scope of protection under the Convention.²³ The application of the Convention under the protocol is only extended to UN operations established for the purposes of:

- (a) Delivering humanitarian, political or development assistance in peacebuilding, or
- (b) Delivering emergency humanitarian assistance.

However, a restriction stipulates that the provisions of the protocol do not allow the application of the Convention to any permanent United Nations office, established under an agreement with the United Nations. Not all humanitarian workers are under the protection either, because the requirement of formal connection between the organization and the UN is still in force. Further doubts may arise out of the wording “emergency humanitarian assistance”: all humanitarian assistance is of an emergency nature as it is one of the criteria that distinguish it from development assistance. Another controversial point is that the protocol allows a host state to make a declaration to the Secretary-General of the United Nations that it is not going to apply the provisions of the protocol with respect to an operation whose purpose is delivering emergency humanitarian assistance and which is conducted for the sole purpose of responding to a natural disaster. Such a declaration must be made prior to the deployment of the operation. This opt-out clause was implemented at the request of China and other developing countries, because they argued that in a situation of a natural disaster there is no risk to the life of helpers, as opposed to a peacebuilding operation. The option of making such a declaration is somewhat surprising. The role of it is either to reinforce the obvious principle of no responsibility of a state in the case of *force majeure*, if due diligence was observed (which would make it superfluous, but that is frequent in international law), or to offer the state full freedom with regard to the safety of humanitarian workers, which would constitute a complete departure from the general principles of human rights

²² See A/55/637, S/1999/957 (1999), A/54/619, S/1999/957 (1999). See also World Summit Outcome 2005, A/RES/60/1, para. 167.

²³ Protocol (A/RES/60/42, 2005) entered into force on 19 Aug. 2010. There are 28 states parties to the Protocol (as of 31 May 2013).

protection. Nonetheless, the wording “for the sole purpose” may support the argumentation that in the cases where both humanitarian and development aid is offered (and it is very difficult to draw a sharp line between the two), the state may not opt out of the applying the Convention.

12.3.2 In Times of Armed Conflict

In times of armed conflict, humanitarian workers continue to be protected by the above-mentioned human rights documents and the special regime of the CSUNAP.²⁴ However, further protection under provisions of international humanitarian law (IHL) also comes into play. These provisions differentiate between international and non-international conflicts, and between various categories of persons offering aid.

In situations of international conflicts, apart from customary law (Henckaerts and Doswald-Beck 2005, pp. 3 ff.),²⁵ the following regulations apply: the four Geneva Conventions of 1949 for the protection of war victims (GC)²⁶ and the first Additional Protocol of 1977 (AP I).²⁷ These legal acts define the category of relief (humanitarian) action, understood as providing food and medical supplies, clothing, bedding, means of shelter or other supplies essential to the survival of the civilian population of a territory under the control of a party to a conflict and objects necessary for religious worship.²⁸ Relief action may be targeted only at protected persons (civilians, but also the sick and wounded, the shipwrecked, prisoners of war) (Stoffels 2004, p. 516)²⁹ and must be conducted in accordance with the following principles. Firstly, it must be humanitarian, i.e. aimed at bringing relief to victims (Pillod et al. 1987, p. 817). There is no differentiation between humanitarian assistance and development assistance in IHL but specific provisions clearly specify that the aid in question must be of a short-term nature and intended to provide emergency relief (Mikos-Skuza 2013, pp. 235 ff.). Thus an organization that implements developmental programmes, e.g. road or school construction, may not obtain consent to operate in the state where aid is being provided, its workers will not be treated as relief staff, and protection awarded to relief personnel will not be extended to them.

²⁴ However, the IDRL Guidelines will not apply: the option of their applicability in situations of armed conflict has been barred in advance. See note 7.

²⁵ See List of Customary Rules of International Humanitarian Law based on the International Committee of the Red Cross study on customary international humanitarian law (CIHL).

²⁶ UNTS, vol. 1975, pp. 31 ff.

²⁷ UNTS, vol. 1125, pp. 3 ff.

²⁸ Article 69, para. 1 and Article 70, para. 1 AP I.

²⁹ See e.g. Article 9 of the GC I, GC II, GC III, Article 10 GC IV.

Secondly, relief action must be impartial in character and conducted without any adverse distinction. As noted in the ICRC Commentary of 1987, “[t]he ‘impartial’ character of the action may be assumed on the basis of fulfilling the obligation (. . .) to conduct the action ‘without any adverse distinction’” (Pillod et al. 1987, p. 818). Aid must be provided to the persons who are suffering, and the decision concerning whom to serve first should be based on purely objective criteria, expressed in terms of the needs of the intended recipients of the aid. As the ICRC Commentary points out, “the principle of non-discrimination removes objective distinctions between individuals, while impartiality removes the subjective distinctions.”³⁰

Thirdly, relief actions must be undertaken subject to the agreement of the parties concerned in such relief actions. While the state is essentially obliged to allow relief aid if it is unable to satisfy the basic needs of its population, the aid organizations must nonetheless obtain permission to conduct operations. It is not a requirement under IHL that the entities conducting relief operations must be independent or neutral (Durham and Wynn-Pope 2011, pp. 330–331). Naturally, maintaining an independent or neutral position facilitates access to the victims, but it is a prerequisite neither of the ability to offer and conduct relief action, nor of protection granted to relief personnel. What is more, even if the principles of humanitarianism, impartiality and consent of parties, clearly specified in IHL, are not observed, the persons engaged in relief action do not forfeit the general protection granted to them as civilians, as long as they do not take part in hostilities (Cottier 1999, p. 333).

Relief action typically also involves health care and religious assistance, but IHL treats this type of aid as a separate category, and consequently, more specific provisions (discussed in more detail below) apply to medical and religious personnel than to relief staff.

Health care must be provided without discrimination or adverse distinction.³¹ Offering medical aid (in line with regulations on relief aid) is not to be considered as interference in the conflict,³² and thus clearly cannot be perceived as taking part in hostilities. Importantly, the fact that personnel of the medical unit can be equipped with light individual weapons for their own defence, or for that of the wounded and sick in their charge, may not be considered harmful to an enemy state.³³ Given the above, it must be concluded—in light of the fact that personnel of the medical units may carry light weapons—that they may also definitely use means of protection such as bullet-proof vests or armoured vehicles (ICRC 1998). The first Additional Protocol of 1977 notes that a unit can be guarded by a picket or by sentries or by an escort, and the fact that small arms and ammunition taken from the wounded and sick and not yet handed to the proper service are found in the units, cannot be considered as an act harmful to the enemy.³⁴ A unit may not be deprived

³⁰ Ibidem.

³¹ See e.g. Article 12 GC I.

³² Article 27 GC I.

³³ Article 13 AP I.

³⁴ Article 13, para. 2 AP I.

of protection solely due to the fact that members of the armed forces or other combatants are in the unit for medical reasons. Even if the personnel engage in actions beyond their humanitarian function which are in fact harmful to the enemy, protection may cease only after a warning has been given, setting (when appropriate) a reasonable time-limit, and after such warning has remained unheeded.³⁵ Under no circumstances may a person carrying out medical activities compatible with medical ethics be punished for such activities, even if those who benefited from those actions were on the adverse side.³⁶

IHL contains no explicit principles that should be observed in offering religious and spiritual assistance (and it is actually difficult even to apply to such assistance the same terminology as to other types of aid). What are the methods of effective verification of whether religious personnel offers assistance without any adverse distinction and impartially, solely for the purpose of providing relief to the victims and being guided only by their needs, without investigating the principles of a specific religion? However, the provisions that require religious personnel to be assigned to either armed forces, medical units, or civil defence organizations indirectly points to the conclusion that also in the case of religious assistance it is necessary to obtain prior permission of the state in whose territory the aid is to be provided.

Under IHL, the following categories can be distinguished among those offering humanitarian assistance (i.e. among the personnel offering health care and spiritual aid, as well as the more broadly understood relief aid):

- medical personnel (proper medical personnel and administrative personnel);
- auxiliary personnel;
- hospital ship personnel;
- medical aircraft crew (and crews of other medical transport);
- religious personnel;
- other relief personnel (including of the International Committee of the Red Cross, national Red Cross societies and other humanitarian or voluntary aid organizations).

The category of medical personnel includes primarily the so-called proper medical personnel exclusively engaged, either on a permanent or a temporary basis, in search for, the collection, transport, or treatment of the wounded and sick, including first-aid treatment, or in the prevention of disease (e.g. doctors, surgeons, dentists, chemists, orderlies, nurses, stretcher-bearers, etc., who give direct care to the wounded and sick).³⁷ The category of medical personnel also includes staff exclusively engaged in the administration of medical units and establishments, i.e. the so-called administrative staff (e.g. office staff, ambulance drivers, cooks, cleaners).³⁸ The status of medical personnel, and thus the protection

³⁵ Article 13, para. 1 AP I.

³⁶ Article 16 and 17 AP I. See also Rule 26 CIHL.

³⁷ Article 24 GC I and Article 8 (c) AP I.

³⁸ *Ibidem*.

granted thereto, may also apply to the staff of national Red Cross societies and that of any other voluntary aid societies, provided that they are duly recognized and authorized by their governments, and their staff are subject to military laws and regulations.³⁹ Similarly, the status may be granted to medical personnel made available to a party to the conflict for humanitarian purposes by any other state which is not a party to the conflict, as well as a recognized society of neutral or any other country which is not a party to the conflict (on the condition that it obtains the consent of its own government and the authorisation of the party to the conflict concerned) and permanent medical personnel of an impartial humanitarian organization.⁴⁰ The adversary state is to be notified about this consent by neutral government and the adverse party before making any use of this medical staff. The medical staff are to be “respected and protected in all circumstances.”⁴¹ This means firstly, that they should be spared and not attacked, so attempts upon their lives, or violence to their persons, are strictly prohibited, and secondly, that the parties should take all feasible measures in order to ensure their protection, e.g. by means of properly training their armed forces and not conducting armed operations in the immediate vicinity of protected personnel.

Within the group of personnel providing health care, IHL recognizes a separate category of auxiliary personnel, i.e. members of the armed forces specially trained for employment as hospital orderlies, nurses or auxiliary stretcher-bearers in the search for or the collection, transport or treatment of the wounded and sick.⁴² There is however a significant difference in the scope of protection granted to medical and auxiliary personnel. While medical personnel are to be respected and protected always and everywhere, auxiliary personnel are only protected if they are carrying out medical duties at the time when they come into contact with the enemy or fall into their hands. Moreover, if medical personnel fall into the hands of an adverse party, they “shall be retained only in so far as the state of health and the number of prisoners of war require.”⁴³ If there is no such need, they should be released immediately. Medical personnel of neutral governments (and of other states not party to the conflict, or of aid society of such states, or of humanitarian organizations) may not be detained.⁴⁴ Medical personnel are not to be deemed prisoners of war but are granted the entirety of rights vested in prisoners of war, and—importantly—do not have to perform any work outside their medical duties. On the other hand, when auxiliary personnel fall into the hands of the enemy, they obtain the status of prisoners of war but should be employed in their medical duties in so far as the need arises.⁴⁵

³⁹ Article 26 GC I.

⁴⁰ Article 27 GC I and Article 9, para. 2 AP I.

⁴¹ Article 24 GC I. See also Rule 25 CIHL.

⁴² Article 25 GC I.

⁴³ Article 28 GC I.

⁴⁴ Article 32 GC I.

⁴⁵ Article 29 GC I.

With regard to medical and hospital personnel of hospital ships and their crews,⁴⁶ IHL stipulates that they should be respected and protected, and that they may not be captured during the time they are in the service of the hospital ship.⁴⁷ The stipulation pertains also to the period when the ship has not yet accepted the wounded aboard, as well as the period when they leave the ship to go onshore, albeit only temporarily (Pictet 1960, p. 204). With regard to medical personnel serving not on a hospital ship, but on a navy or merchant vessel, if such personnel fall into the hands of enemy, they do not obtain the status of prisoners of war, but are to be respected and protected. They may continue to carry out their duties as long as this is necessary for the care of wounded and sick, but as soon as the need dissipates, they should be released. This principle only applies to medical and hospital personnel assigned to the medical care of the wounded, sick and shipwrecked, and not to the entire crew of the ship, as is the case with hospital ships.

Additional Protocol I of 1977 expanded the protection to cover also civilian medical personnel.⁴⁸ Previously, the Fourth Geneva Convention of 1949 ensured respect and protection for hospital staff (meaning persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases).⁴⁹ Interestingly, civilian population which is entitled on their own initiative to collect and care for the wounded, sick and shipwrecked⁵⁰ cannot be considered civilian medical personnel (Kleffner 2008, p. 345), and IHL only guarantees them protection if the parties to the conflict appealed to the civilian population to collect and care for the wounded. Thus for example the parties to a conflict should protect the civilian medical personnel from the armed operations, e.g. refrain from conducting such operations nearby, yet such a restriction is not necessary with regard to the civilian population who “only” collect and care for the wounded.

Another separate category is that of medical aircraft, which is defined as “aircraft exclusively employed for the removal of wounded, sick and shipwrecked and for the transport of medical personnel and equipment.”⁵¹ This category of personnel too should be respected, which means that they cannot be the object of attack while flying at heights, at times and on routes specifically agreed upon between the parties to the conflict, and they must be clearly marked. Importantly, it is stipulated that they are to be respected, but not protected; it was decided that for

⁴⁶ It is immaterial whether the ships are military hospital ships, National Red Cross hospital ships, or ships of recognized relief societies or private persons of neutral countries, on condition that they have placed themselves under the control of one of the parties to the conflict, with previous consent of their own governments and with authorization of the party to the conflict concerned, Article 22–25 GC II.

⁴⁷ Article 36 GC II.

⁴⁸ Article 15 AP I.

⁴⁹ Article 20 GC IV.

⁵⁰ Article 17 AP I.

⁵¹ Article 39 GC II.

military reasons it is impracticable to accord protection to that group of personnel. In the case of involuntarily landing, the crew of the aircraft become prisoners of war. The status of the personnel of medical aircraft is therefore not similar to that of personnel of hospital ships. Rather, they are treated in a manner similar to medical transport personnel (as is the case with land medical mobile units). Such differentiation in treatment is difficult to understand. Naturally, there is the argument of military security and the risk that the crew of the aircraft might be engaged in espionage. However, should that prove to be the case, their actions would go far beyond medical duties, and would thus result in a loss of protection. The less benign treatment, in comparison to crews of hospital ships, may also be the result of the assumption that there are no typical medical aircraft. The assumption is incorrect, considering for example rescue helicopters and other similar units. If a hospital ship crew may not be detained while serving on a hospital ship, similar principles should apply to a typical, purpose-specific medical aircraft—yet presently that is not the case.

As far as religious personnel are concerned, this category includes military or civilian persons who are exclusively (!) engaged in the work of their ministry and are attached (temporarily or permanently) to the armed forces of a party to the conflict, or to medical units or medical transports or to civil defence organizations of a party to the conflict.⁵² They are to be respected and protected; with regard to chaplains attached to the armed forces it is further stressed that they should be protected in all circumstances.⁵³ When religious personnel fall in enemy hands, the applicable principles are the same as with regard to medical personnel. They are not to be deemed prisoners of war, and should be retained only in so far as the spiritual needs and the number of prisoners of war require.⁵⁴

All the above-discussed categories of personnel must be identifiable.⁵⁵ In this context, it is noteworthy that the option of medical and religious personnel using the distinctive emblem of the Red Cross or Red Crescent (and also Red Crystal) and the protection it grants is available to workers of the ICRC or national Red Cross societies and the medical service of armed forces. Other medical and religious personnel may use it only with the consent of military authorities.⁵⁶ Considering that members of NGOs who are not covered by the protection of the emblem of the Red Cross, Red Crescent or Red Crystal fall victim to attacks most frequently, it appears advisable to encourage the above-mentioned authorities to approve to as great an extent as possible the requests to use the emblem by a variety of organizations who provide professional health care.

The Geneva Conventions make a reference to relief action, but in terms of personnel of relief/humanitarian societies they only go so far as to guarantee that

⁵² Article 8 (d) AP I.

⁵³ Article 24 GC I. See also Rule 27 CIHL.

⁵⁴ Article 28 GC I.

⁵⁵ Article 17, para. 2 AP I.

⁵⁶ See e.g. Articles 38–44 GC I.

the occupying power may not make any changes in the personnel or structure of these societies that would affect their humanitarian activities, provided there is no need for the occupying powers to implement temporary and exceptional measures imposed for urgent reasons of security.⁵⁷ Additional Protocol I provides a clear definition of relief personnel and granted special protection thereto. Under the Protocol's definition, relief personnel consist of persons engaged in assistance provided in relief action, in particular for the transportation and distribution of relief consignments.⁵⁸ Importantly, Additional Protocol I makes no distinction between international and national workers. It does however read: "the participation of such personnel shall be subject to the approval of the Party in whose territory they will carry out their duties."⁵⁹ Such personnel are to be respected and protected,⁶⁰ meaning not only that they are to be "spared, not attacked" (respect), but also that others should "come to their defence, lend help and support" (Pillod et al. 1987, p. 834). Under Additional Protocol I, relief personnel "shall not exceed the terms of their mission" and "shall take account of the security requirements of the Party in whose territory they are carrying out their duties." Violating these provisions does not automatically deprive the relief personnel of their protection, but the mission of any of the personnel who do not respect them may be terminated.⁶¹ Naturally, civilians (including those who are involved in relief action) are protected as such from the consequences of the war, and may not be attacked, as long as they do not take part in hostilities.⁶²

In conflicts of a non-international nature, Article 3 that is included in all Geneva Conventions of 1949, as well as Additional Protocol II of 1977 are applied. Under these regulations, also in the cases of non-international armed conflict medical and religious personnel are to be respected and protected.⁶³ The definition of such personnel does not substantially differ from that adopted with reference to international conflicts. It is clearly stipulated that the personnel may not be punished for carrying out their duties and may only lose their protection in their capacity of medical or religious personnel if they act beyond their humanitarian duties, and in their capacity of civilians solely when they take directly part in hostilities (and solely for the duration of doing so). In the context of non-international conflicts, IHL makes no use of the terms 'relief personnel' or 'humanitarian personnel', although it does use the notion of relief action. Characteristically, both the provisions of common Article 3 and the provisions of Additional Protocol II are

⁵⁷ Article 63 GC IV.

⁵⁸ Article 71, para. 1 AP I.

⁵⁹ Article 71, para. 1 AP I. Compare also with Article 142 GC IV (duly accredited agents).

⁶⁰ Article 71, para. 2 AP I. See also Rule 31 CIHL.

⁶¹ Article 71, para. 4 AP I.

⁶² However, it is important to note that protection under GC IV is not granted to every civilian, but only to those caught up in occupied territory or those who found themselves in the territory of the enemy. Geneva Conventions therefore give no protection to local (national) humanitarian workers.

⁶³ Article 9 AP II.

worded so as to only include the option of offering assistance by impartial humanitarian body and relief societies, but not to include a reference to the need to provide protection to relief personnel. The duty of protection nonetheless arises out of the provisions allowing relief aid to be provided as well as from customary law.⁶⁴ Last but not least, relief personnel typically remain under protection simply as civilians.

Protection of humanitarian workers during an armed conflict is also reinforced by the provisions of international criminal law. Beginning with the first attempts to catalogue war crimes and the principles of responsibility for them, attacks against humanitarian workers have been penalized: the category of war crimes has been conceived as including attacks against protected persons, including civilians, and destruction of relief ships, deliberate bombardment of hospitals, attack on and destruction of hospital ships, and breach of other rules relating to the Red Cross—all of these encompassing situations where typically humanitarian and medical personnel would be present (Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties 1919, pp. 114–115).⁶⁵ In the Rome Statute of the International Criminal Court, acts against persons protected under the provisions of the relevant Geneva Convention (i.e. also civilians and medical personnel) are treated as war crimes,⁶⁶ and so is intentionally directing attacks against personnel using the distinctive emblems of the Geneva Conventions⁶⁷ and, in the case of an armed conflict not of an international character, acts committed against persons taking no active part in the hostilities.⁶⁸ Furthermore, it must be stressed that the Rome Statute is the first document of this nature that establishes a separate category of war crimes directed at workers engaged in humanitarian assistance. Article 8(2)(b) and (e)(iii) defines it in the following manner:

Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a *humanitarian assistance* or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict.⁶⁹

The wording was implemented under the influence of the Draft Code of Crimes against Peace and Security of Mankind of 1996 (Article 19) and the United Nations Convention on the Safety of United Nations and Associated Personnel of 1994 (Article 9) (Venturini 2001, p. 100 compare with Frank 2001, p. 145). However, the

⁶⁴ Rule 31 CIHL which states: “Humanitarian relief personnel must be respected and protected [IAC/NIAC]”.

⁶⁵ Compare Article 6 International Military Tribunal Charter and articles 50/51/130/147 GC and Article 85 AP I, and Rule 30 CIHL.

⁶⁶ Article 8 (a) (i–iii) and (v–viii), Article 8 (b) (i) (iv) of the Rome Statute of the International Criminal Court of 17 July 1998, UNTS, vol. 2187, pp. 3 ff.

⁶⁷ Article 8 (b) (xxiv), *ibidem*.

⁶⁸ Article 8 (c) (e).

⁶⁹ See also S/Res/1502 (2003) in which SC reaffirmed that killing humanitarian aid workers is a war crime.

UN Convention contains significant restrictions with regard to the scope of protection, and these restrictions were to a large degree left out of the wording of the Rome Statute. Protection is extended, apart from peacekeeping mission personnel, to personnel involved in humanitarian assistance, regardless of whether the organization responsible for conducting the mission has a formal connection to the United Nations. Interestingly, there have been suggestions to the effect that the parallel character of the Rome Statute provisions with regard to the UN Convention means that the restrictions of the UN Convention apply to this provision too (Bothe 2002, p. 411). This seems to be rather incorrect, given that the Statute neither makes a reference to the Convention nor literally copies its wording.

The only restriction placed by the Rome Statute on the protection of humanitarian workers is the stipulation that it applies to those who are protected as civilians. The definition of war crimes thus excludes attacks against members of the armed forces who are supplying or protecting the supply of humanitarian aid unless they are a part of a peace mission (and therefore not participants of armed operations).

Under the above-discussed provisions of the Rome Statute, it is a war crime to attack a humanitarian worker (although this term itself is not used in the Statute) if that worker is actually engaged in offering humanitarian assistance, the conduct took place in the context of and was associated with an armed conflict, and the perpetrator was aware of factual circumstances that established the existence of an armed conflict (Frank 2001).

Stating explicitly that attacks against persons providing humanitarian assistance constitute war crimes may theoretically contribute to the prevention of such attacks, and to have an educational effect, by means of signalling clearly that humanitarian workers are protected, and may not be attacked. Furthermore, the introduction of this provision will likely inspire states to expand national legislation to include similar regulations (Burundi's Law on Genocide, Crimes against Humanity and War Crimes 2003). Yet the provision is essentially superfluous. Possibly a clear indication that participants of peace operations, who are often members of armed forces, may not be attacked, and attacks against them are considered war crimes, may have been necessary due to doubts as to their status. However, civilian humanitarian workers are undoubtedly protected as civilians, which qualifies any attacks against them as war crimes. Michael Cottier goes so far as to point to the risk inherent in specifying such crimes, namely that it may detract attention from the general protection of civilians (Cottier 1999, p. 411).

Establishing a separate category of war crimes against humanitarian workers would only be reasonable if such crimes were punishable more severely than crimes against "regular" civilians. *Ratio legis* of such a solution would consist in that killing a humanitarian worker, especially one that offers medical assistance, has greater secondary effects in terms of general population safety (Durham and Wynn-pope 2011, p. 328). However, no stipulation to this effect is included in the legislation, the above considerations should be treated as a suggestion *de lege ferenda*, or a proposal with regard to sentencing. As of 13 January 2015, there are no rulings of the International Criminal Court with regard to crimes against humanitarian workers. A judgment in a relevant case could have enormous

significance, if only by improving the precision of the definition of humanitarian assistance. It must be noted here that provisions on war crimes in the form of attacks against humanitarian workers pertain solely to situations occurring during an armed conflict and in association with it. In the absence of armed conflict, crimes against humanitarian workers are only subject to the Court's jurisdiction if they qualify as genocide (e.g. if humanitarian workers are killed for the purpose of deliberately inflicting on a group conditions of life calculated to bring about its physical destruction in whole or in part) or as a crime against humanity (which requires demonstrating that the attacks were directed against civilian humanitarian workers as a part of a widespread or systematic attack).

It is noteworthy in this context that at the 31st International Conference of the Red Cross and Red Crescent, the Resolution 2: '4-Year Action Plan for the Implementation of International Humanitarian Law was adopted, imposing on the states the responsibility to

ensure that perpetrators of attacks against humanitarian personnel, including personnel using the distinctive emblems in accordance with the Geneva Conventions and their Additional Protocols, are held accountable, by encouraging disciplinary measures and criminal prosecutions (ICRC 2011).

12.4 Response to Security Challenges

If the provisions of international law were observed, humanitarian institutions would not need to invest their resources in ensuring the safety of their personnel. It is for that reason that all efforts, both on a national and on an international scale, geared towards improving the observance of the law, are an important contribution to a better humanitarian space.

Nonetheless, risk remains inherent in offering humanitarian aid, which is why humanitarian actors should always (and in particular in situations of armed conflict or destabilization) evaluate that risk, and make a conscious decision as to whether the results of the action they are planning are worth that level of risk. Risk awareness, developed mainly through regular training, is of key importance for all actions aimed at increasing the safety of providing humanitarian assistance.

In recent years, attempts have been made to propose rules and procedures that lower the risk to an acceptable level, and to design the best possible response to threats.

12.4.1 ICRC

The response of the International Committee of the Red Cross consist of four elements: defining risk; prevention; reducing the risk; limiting the consequences (Krähenbühl 2004a). In each specific case, the ICRC recommendation is to determine

what kind of risk can be expected. Does it pertain to the personnel or to the goods provided? What is the likelihood of it materializing? As prevention, humanitarian personnel should make relevant key decisions, such as which transport route or time of delivery to choose. Reducing risk is crucial. It is achieved mainly by means of access to shelters, using security services, as well as observing ICRC's principles (pillars) of security policy for field operations. The personnel should always be ready to limit the consequences of security incidents by having evacuation routes at the ready, having options for communication open, having insurance, etc.

ICRC Director of Operations Pierre Krähenbühl has noted on numerous occasions that for ICRC 'security—long before it becomes an issue of technical or physical protection—is a matter of acceptance, perception of the organization, individual behaviour of delegates, the ability to listen and to communicate and project a consistent and coherent image of the organization to all parties involved in a conflict situation' (Krähenbühl 2004b). This quote makes a reference to all seven pillars of security policy: acceptance—ICRC's mission in the field should be accepted by the parties to the conflict, including non-state groups, as neutral, impartial and independent, operating under the International Humanitarian Law of Armed Conflicts; identification—the Red Cross emblem should be applied correctly; information—field staff are responsible for regularly collecting information on security conditions, sharing such information, and cooperating in that respect with other organizations active in the area; security regulations drawn up by individual delegations—each delegation is responsible for designing and observing procedures that fit with the local safety situation, and update them regularly (and the head of the delegation is responsible for organizing briefings on the subject, and ensuring that all personnel observe the procedures); personality—individual qualifications and predispositions of the personnel members to work under difficult conditions, a sense of responsibility and solidarity towards the other team members impact the safety of ICRC's delegations; telecommunications—ensure efficient communication of incidents or degenerating security situation, and allows for faster help; protective measures—many humanitarian workers die as a result of bombings or fire exchange between parties to the conflict, which makes protective measures such as shelters, security services and alarming systems so important (Roberts 2006; Dind 1998; Grombach-Wagner 2007; Bruger 2009; Hazan and Berger 2004).

12.4.2 UN

In response to the changing security conditions, and specifically in the aftermath of the shocking attack against the UN headquarters in Baghdad in 2003, the UN introduced a new global security policy (Bruderlein and Gassmann 2006). On 1 January 2005, the United Nations Department of Safety and Security (UNDSS) was established for the purpose of engaging in broad-scale action to promote the safety and security of the UN and its staff worldwide, including humanitarian workers. In January 2006, the United Nations Field Security Handbook was

adopted. It outlines system-wide arrangements for the protection of United Nations personnel and property in the field (United Nations Field Security Handbook 2006); its emphasis is on the primary responsibility of the host government for ensuring the safety of the personnel employed by the UN, by the organizations of the United Nations System, and by staff members.

The following persons are in charge of planning and implementing a safety and security policy: the UN Under-Secretary General for Safety and Security, Executive Heads of Organisations, Headquarters of United Nations Agencies, Programs and Funds, the Designated Officials in the field, the Chief Security Advisors (security professionals), Area Security Coordinators, Wardens and Representatives of Organizations. Security Management Teams are made up of a Designated Official, the head of each agency present at the duty station, and the Chief Security Advisor.

The UN distinguish between five phases of security: Precautionary—in the first phase, the staff are warned of the impending danger and advised to remain cautious; Restricted Movement—in the second phase, limited movement in the territory of the host state is recommended; Relocation and Emergency Operations—the third and fourth phase apply if the situation is significantly degenerating, and leads to partial relocation of staff into a different region of the host state, or outside that state (the first to be moved are the internationally-recruited staff members and/or their spouses and eligible dependants); Emergency Operations—in the fifth and last phase, all personnel are evacuated.

The next dimension of the UN security management system is the Minimum Operating Security Standards (MOSS),⁷⁰ a set of recommendations and instructions aimed at lowering the risk for the UN personnel, and for the property and assets of the organizations. The Standards refer e.g. to the equipment of staff, vehicles, and UN offices. For instance, in the first phase, all international staff and the most important national staff must be equipped with handheld radios; in the second phase, all vehicles must be equipped with VHS radio, and in situations of increased risk (phases 3–5), all vehicles should carry body armour. Each specific mission is responsible for designing its own standards on the basis of the Minimum Operating Security Standards, depending on the mission-specific conditions. Designing the standards should be preceded by a Security Risk Assessment.

Personal responsibility and accountability are also assumed. Each worker is expected to be familiar with the UN security management system, to observe safety procedures e.g. while travelling, to take part in briefings on security-related issues, to be properly equipped, and to not contribute to the risk with their own conduct. Training in this respect is mandatory. The policy of the UN also provides for entitlements and benefits in the case of death, injury, theft of property, evacuation, post-traumatic stress disorder, etc.

The UN Office for the Coordination of Humanitarian Affairs (OCHA) is also behind the creation of a number of manuals on the topic. *To Stay and Deliver: Good*

⁷⁰ United Nations Security Coordinator (UNSECOORD), *Minimum Operating Security Standards (MOSS)*, Policy Document, 1 July 2004.

Practice for Humanitarians in Complex Security Environments is a collection of rules and good practice models of humanitarian organizations that have been successful in providing humanitarian assistance despite high security risks (OCHA 2011).⁷¹ The rationale behind the publication was to offer practical solutions with regard to safe access to those in need of humanitarian assistance.

In line with the ICRC approach, acceptance is considered a priority. Humanitarian organizations should make all conceivable efforts, and engage in dialogue, in order to be recognizable to, and accepted by, the local population and the parties to the conflict. It is recommended that dialogue be fostered with ‘everyone with a gun’, in particular representatives of the government, local authorities, and the police, who all are able to have a positive impact on the security conditions. One of the methods of ensuring acceptance among the local population is to employ local workers, in agreement with the local communities.⁷² Equipment with laptop computers and communication devices is also considered crucial as it makes it possible to implement a remote management system.

However, a satisfactory level of acceptance is not always achievable, and therefore protective measures and deterrent measures are also recommended. In particular, development of ‘smart’ measures is advisable; such measures increase the safety of personnel without placing unnecessary barriers between the personnel and the local populations. It is important to avoid ‘bunkerisation’ as it has a negative impact on mission image. In extreme situations, military protection is an option: when the level of threat to life is very high and violence occurs not due to political reasons but because of banditism, such a provider of protection is acceptable and likely effective as a deterrent.

The manual was followed by another publication, *Safety and security for national humanitarian workers* (Annex 1 to OCHA 2011).⁷³ Despite the advances in security risk management, it appeared that national workers receive less support in terms of safety compared to international staff. Yet statistically, national workers not only are the majority of the victims, but are also a strong majority of all workers, and often work almost literally in the line of fire.⁷⁴ More attacks *per capita* are however directed against international workers, who make up over 10 % of all aid workers.⁷⁵

⁷¹ In 2010 an independent research team, led by Jan Egeland, conducted interviews with 255 humanitarian practitioners and policymakers, surveyed over 1,100 national staff members, and carried out a desk-based review of organizational literature and case-based evidence.

⁷² *Ibidem*, p. 2.

⁷³ The publication was based on anonymous surveys of national aid workers.

⁷⁴ According to ICRC’s data concerning health-care workers, more than 80 % of the 900 or so security incidents recorded in 22 countries affected local health-care professionals, ICRC, Violent Incidents Affecting Health Care—January to December 2012, 15 May 2013, www.icrc.org/eng/resources/documents/report/2013-05-15-health-care-in-danger-incident-report.htm, accessed 1 September 2014.

⁷⁵ *Ibidem*, p. 3; see also: *Cote d’Ivoire: Local UN Staff Easy Targets in the Crisis.* IRIN, UNOCHA, 24 January 2011.

National workers should not be left alone; the organization that employs them is responsible to offer them support with regard to security (Clause 2010; Finucane 2011). However, the report noted differences in the approach to staff safety e.g. in terms of equipment and access to security trainings (Stoddard et al. 2006, p. 32).

The report recommends regular audits to eliminate the inequalities in treatment of national staff with regard to training, equipment, insurance, and medical and psychological care. It also proposes that national workers should be included to a much greater extent in security risk management and security coordination, exchange of information and analyses, and maintaining an open dialogue on the risks and on the rules and procedures of offering humanitarian assistance. They also should receive greater financial support (Fawcett and Tanner 2001).

12.4.3 EU: ECHO

The Humanitarian Aid Department of the European Commission (ECHO) provides humanitarian assistance in cooperation with NGOs, UN agencies, international organizations, ICRC, and IFRC. In the European Consensus on Humanitarian Aid,⁷⁶ adopted by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission noted the negative impact of disrespect of international law on the humanitarian space. Safety and security of humanitarian workers were deemed ‘essential preconditions’ for offering humanitarian aid.

The following values were listed as the foundation of offering humanitarian assistance: neutrality, impartiality, humanity, and independence.⁷⁷ According to the Consensus, “neutrality means that humanitarian aid must not favour any side in an armed conflict or other dispute”, “impartiality denotes that humanitarian aid must be provided solely on the basis of need, without discrimination”, and independence is “the autonomy of humanitarian objectives from political, economic, military or other objectives”.

The ECHO Generic Security Guide was published in 2004. It is a comprehensive security manual for humanitarian organizations.⁷⁸ Its self-professed purpose is to offer humanitarian organizations assistance in security management. The Guide is a collection of recommendations that may be valuable in drafting detailed context-specific safety and security procedures. It was created in cooperation with a number of humanitarian organizations and is therefore based on experiences in the field, presented in a competent and detail-rich manner.

The ECHO Generic Security Guide is composed of 12 parts, with attachments and checklists. It contains recommendations on how to prepare for field work in

⁷⁶ In: The European Consensus on Humanitarian Aid - The humanitarian challenge, 2004.

⁷⁷ Ibidem, p. 24.

⁷⁸ ECHO Generic Security Guide for Humanitarian Organization, 2004.

terms of security, as well as on security management in the field, prevention of and reaction to security incidents, and on deciding on suspension, evacuation and closing the programme. The Guide reflects a “technical approach to security.” It is a source of information for teams on humanitarian missions, with advice on how to behave under specific circumstances: how to organize a convoy, how to behave at a checkpoint, how to avoid and prevent bribery and corruption, etc. It is also a review of specific threats, such as land mines, bombs, terrorist attacks, chemical, biological, and radiological attacks, kidnappings, earthquakes, etc. For each scenario, there is a basic instruction on the steps to be taken.

The Guide too stresses the paramount importance of rigorous selection of highly qualified staff members, as well as training, in terms of ensuring safe working conditions.

12.4.4 NGOs: Towards Cooperation

NGOs tend to be aware of the risk in the field, and are often affected by security incidents. Large and credible NGOs have in recent years developed their own rules and procedures that adequately reflect the changes in the humanitarian space. Smaller organizations, however, often have neither a sufficient awareness of the risks nor the funds to invest in the safety and security of their humanitarian workers.

There have been initiatives aimed at improving cooperation among NGOs, with the overall objective of more efficient supply of aid to those in need. InterAction, a USA-based coalition of humanitarian organizations, has established a Security Unit tasked with assisting organizations in preparing for work under difficult security conditions. InterAction has developed its own Minimum Operating Security Standards and Security Standards for National Staff. It has a strong focus on training with regard to security issues. In 1991, it also established the Security Advisory Group (SAG) that has created guidelines on security risk assessment and security risk management.⁷⁹

The European Interagency Security Forum (EISF) was established in 2006. It is a network of Security Focal Points that represents European NGOs with international reach. The objective of EISF is to support NGOs in their risk management and security management efforts, by means of providing information, facilitation of dialogue, pursuing research, and organizing workshops.

Another example of cooperative work is the International NGO Safety and Security Association (INSSA). The membership of INSSA includes security professionals and not NGOs. The Association was established in 2010 on the initiative

⁷⁹ A special risk assessment model was developed, based on comparing the likelihood of a security incident and the heaviness of its impact. The model helps identify the acceptable level of risk. Security Risk Management, NGO Approach, InterAction Security Unit, <http://www.eisf.eu/resources/library/SRM.pdf>, (4 June 2013).

of the USAID's Office of Foreign Disaster Assistance, with the objective of creating a support platform for humanitarian workers with regard to safety and security.

Safety and security of humanitarian workers is also at the heart of the cooperation within the Inter-Agency Standing Committee (IASC), which was created as a follow-up to the United Nations General Assembly Resolution 46/182 in 1992. The IASC is made up of the organizations and agencies of the United Nations. Standing invitations were granted also to the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies, the International Organization for Migration, and NGOs of particular significance.

In 2004 the IASC established the Task Force on Collaborative Approaches to Security under the auspices of which in 2006 *Saving Lives Together - A Framework for Improving Security Arrangements among IGOs, NGOs and UN in the Field* was adopted (ICRC and IFRC decided not to take part in the initiative) (Paludan 2002). The report was an updated and revised version of the *Menu of Options for UN/NGO/IGO Security Collaboration (MoO)* adopted by the IASC in 2001. The rationale behind *Saving Lives Together (SLT)* was to solidify the rules and procedures of cooperation between the UN and NGOs in order to improve staff safety and security in the field. One of the dimensions of the arrangements was to ensure cooperation in the area of collection, analysis, and dissemination of information.

Several attempts to evaluate the assumptions of SLT followed.⁸⁰ Interesting observations were contained in a report of the NGO Christian Aid, published in 2010. The purpose of the report was to check the real level of implementation of the solutions proposed under SLT. The report demonstrated that only 30 % of the respondents (NGOs workers⁸¹ in the field) were actually familiar with SLT. The need to raise awareness of the cooperation framework, and to make cooperation close, was observed primarily with regard to smaller, national organizations.

The report identified the following factors with a negative impact: limited human and financial resources, deficient professionalism, poor information flow (one-sided, from the UN to NGOs), and insufficient engagement of the UN in consultations with NGOs. The report also noted that under conditions that are not extremely difficult, NGOs are reluctant to share information in the belief that it might have a negative impact on their image as independent and neutral organizations and consequently translate into difficulties in their access to populations. The greater the security risks the better the cooperation between the UN and NGOs.

In recent years, reviews of the implementation of the SLT have been conducted by means of research and debates. The most recent updated framework of collaboration was adopted in 2011. It outlines the following areas of cooperation:

⁸⁰ *SLT Survey Report*, June 2009.

⁸¹ In the study underlying the report, 205 aid workers completed anonymous questionnaire surveys in the period 1 July—31 August 2009. Out of the total number of questionnaires, 149 were filled in by field-based staff. See: *Saving Lives Together. A Review of Security Collaboration Between the United Nations and Humanitarian Actors on the Ground*, Christian Aid 2010.

convening broad-based forums for field security collaboration and information sharing; meeting common security-related needs and sharing resources, facilitating inter-agency emergency telecommunications; collaborating and consulting on the development and delivery of contextually based security training; identifying minimum security standards and seeking adherence to Common Humanitarian Ground Rules (CHGR).⁸²

Inter-agency cooperation within the SLT framework was attempted in Afghanistan, Ethiopia, Darfur, Kenya/Somalia and Pakistan, but its scopes continues to be limited.

In 2011, an NGO under the name of International NGO Safety Organisation (INSO) was established. Its objective is to deliver safety and security services to NGOs working in the field (International NGO Safety Organisation 2011).⁸³ Upon invitation, the organization appoints NGO Safety Offices (NSO) in high-risk states, serving as cooperation hotspots for NGOs offering humanitarian assistance. The task of the NSOs is to collect and distribute to NGOs information on security situations, training, security meetings, civil/military cooperation and NGO-UN liaison. INSO outposts operate in countries including Afghanistan, Kenya, Mali, the DRC, and in Turkey (to support humanitarian organizations in Syria).

12.5 Concluding Remarks

The complex issues of safety and security of humanitarian aid workers far exceed the modest concept of this paper and certainly requires further research and study.

Humanitarian space is crucial for effective delivery of humanitarian aid. International law guarantees protection to persons engaged in humanitarian action. If the provisions of international law were observed, the problem of shrinking humanitarian space would be non-existent. However, what requires further reflection is the less advantageous legal status and actual situation of national workers, to whom rights e.g. under CSUNAP do not apply on the same terms as they apply to international workers. Most national workers also have no access to security trainings and to equipment comparable to that of international staff. This issue requires attention particularly in light of the tendency towards remote management, i.e. management of the delivery of humanitarian aid from remote locations, with minimal engagement of international workers.

⁸² CHGR seek to ensure that humanitarian assistance should not be instrumentalized by political or military agendas. For further information, see: *Saving Lives Together. A Framework for Improving Security Arrangements among IGOs, NGOs and the UN in the Field*, endorsed by the Inter-Agency Security Committee in August 2011.

⁸³ INSO was created by the staff of the Afghanistan NGO Safety Office with the support from Welthungerhilfe, ECHO, Swiss Development Cooperation, the Norwegian Ministry of Foreign Affairs, and the Norwegian Refugee Council.

The recent years have seen an increase in risk awareness and in the engagement of aid-providing institutions in ensuring safety and security of humanitarian workers, with a characteristic boom in guidelines and security handbooks. Organizations intensified their efforts towards improving personnel safety. The quality and effectiveness of their attempts often were directly correlated with the funding available for that purpose. The NGOs that are small and local tended to have the most limited options in this regard.

Some differences have come to light in the approaches to protective measures and deterrent measures, e.g. in terms of using security services or using weapons for self-defence. Yet overall, the attempts of cooperation between humanitarian institutions by establishing coalitions and networks, by developing common standards, and by making efforts to specialize in the safety and security of humanitarian workers (e.g. the relatively new initiative of the International NGO Safety Organization), while not fully satisfactory, deserve a positive assessment.

The safety and security of humanitarian staff improve with every effort to disseminate information on the idea as well as the rules and procedures of humanitarian aid, the human rights in which the delivery of aid is rooted (rights-based approach), international humanitarian law, and other standards discussed above. These efforts should however be accompanied by a practice of bringing to criminal justice the perpetrators of the crimes of which humanitarian aid workers are victims. Positive changes could also result from specific condemnation of each security incident intentionally directed against those who offer humanitarian aid, on the part of local media, pundits, authorities, or religious leaders. It is necessary to build the image of humanitarian assistance as universal, guided by the principles of humanity, neutrality, independence, and impartiality. Contributing to this image is a task for humanitarian organizations, states, the media, and also individuals, as they all are able to influence the quality and the perception of humanitarian aid.

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