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31st International Conference of the Red Cross Red Crescent
Geneva, 28 November–1 December – **For humanity**



31st International Conference of the Red Cross and Red Crescent

Geneva, Switzerland: 28 November – 1 December 2011

REPORT ON THE WORK OF COMMISSION E

(Tuesday 29 November: 1.30 p.m. to 4 p.m. and 4.30 p.m. to 7 p.m.)

HUMANITARIAN ACCESS/ASSISTANCE

Chair: Mr Juan Manuel Gomez Robledo, Deputy Minister for Foreign Affairs, Mexico

Secretary: Mr Thomas Graditzky, Legal Adviser, ICRC

Drafter of report: Ms Gloria Gaggioli, Legal Adviser, ICRC

EXECUTIVE SUMMARY

Obtaining access to people in need and providing them with assistance are among the most important issues of humanitarian concern in contemporary armed conflict. In such situations of violence, civilians are often deprived of the bare necessities of life – food, water, and shelter – and without access to health care and other basic services. Rapid access, and provision of assistance, to these people is a priority in armed conflicts, whether international or non-international. The barriers to getting access and providing assistance vary from one context to another. They include administrative obstacles, security problems, the existence of hostilities, and the presence of land mines and other unexploded remnants of war. Attacks on humanitarian workers, which are on the rise, and the proliferation of humanitarian actors add to these difficulties. Compliance with international humanitarian law (IHL) as well as acting in accordance with the Fundamental Principles of the International Red Cross and Red Crescent Movement (Movement) are extremely important for securing access to the people affected and for providing effective humanitarian relief. However, some provisions of IHL are not always sufficiently clear and might give rise to conflicting interpretations. Another problem is lack of knowledge of these provisions, among practitioners and belligerent parties. More needs to be done to disseminate the pertinent provisions of IHL and ensure their proper implementation at domestic level. Cooperation among States, the various components of the Movement and other humanitarian actors is also essential for providing effective humanitarian assistance for civilians in need.

Presentations by the panellists

The **Chairman, Mr Gomez Robledo**, introduced the subject to be discussed and the objectives of the workshop. He stressed the importance of having a frank discussion on the obstacles to securing access and providing humanitarian assistance. He invited participants to present their views on the three guiding questions proposed for discussion in the ‘concept note’ prepared for the workshop. He also reminded them that the topic under discussion had been examined at length in an ICRC report titled *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*. Before opening the floor, the Chairman invited three experts to present their views on the issue of access and the provision of assistance.

Mr Sylvain Vité, Legal Adviser, ICRC

Mr Vité provided an overview of the legal framework applicable to access and the provision of assistance. He reminded the participants that the primary responsibility for meeting the basic needs of the people lay with States, who exercise authority over them. When States are unable or unwilling to meet their

responsibilities in this regard, IHL requires that relief be provided. It specifies that such action must be humanitarian, impartial and conducted without any adverse distinction. It states that in international armed conflicts (other than occupation) and in non-international armed conflicts, the provision of relief is subject to the consent of the State on whose territory these humanitarian measures are to be carried out. Consent cannot be withheld arbitrarily. In situations of occupation, the provision of relief is not legally subject to the consent of the Occupying Power.

Mr Jorge Fernando Perdomo, Deputy-Minister for Justice, Colombia

Mr Perdomo presented some of the most important challenges to the securing of access and the provision of assistance during armed conflicts, describing them from the perspective of the State. He listed impediments such as the disruption or even the destruction of communication and transportation networks, a state of general insecurity, the existence of active hostilities or the presence of mines, booby-traps or unexploded remnants of war. Given the variety of challenges, he said, solutions might vary from one context to another. He acknowledged the relevance of IHL for ensuring access to civilians in need and pointed out some of the most important legislative and institutional developments in Colombia in this regard. Finally, Mr Perdomo stressed the importance of coordinating international assistance.

Dr Ahmed Hassan, President, Somali Red Crescent Society

Dr Hassan began his presentation with an overview of the challenges encountered by the Somali Red Crescent Society in connection with obtaining access and providing humanitarian assistance. The biggest challenge in Somalia, he said, was the prevailing lawlessness and state of insecurity. In spite of this, the Somali Red Crescent had maintained its operational capacity by upholding the Fundamental Principles, by ensuring its presence throughout the country and by assisting all the communities in the society. Dr Hassan stressed the importance of disseminating IHL and spreading knowledge of the Fundamental Principles, the values and the programmes of the Movement. He provided concrete examples and presented best practices in Somalia in this regard. He also drew attention to the intense and fruitful cooperation between the Somali Red Crescent, the ICRC and the International Federation of Red Cross and Red Crescent Societies.

Guiding Question 1 – Key Points

What are the main obstacles to gaining access to civilians in need? What are the main obstacles to the delivery of rapid and suitable humanitarian assistance to these people? What are the most effective means to overcome these obstacles?

- Participants listed obstacles of various kinds: administrative and bureaucratic barriers, security risks for humanitarian workers, the existence of hostilities, the presence of landmines, and the growing number of checkpoints.
- Many participants cited the proliferation of humanitarian organizations as a challenge that required improved coordination.
- The increasing involvement of armed forces in the delivery of humanitarian assistance – blurring the distinction between military and humanitarian operations – was another challenge. Participants stressed the need for the Movement to raise awareness of its Fundamental Principles unceasingly.
- Many participants voiced their concern about humanitarian workers being harassed, abducted or killed: this was an alarming development that was on the rise and could be countered only by increasing understanding and acceptance of humanitarian principles. There should be no impunity for those who target humanitarian workers.
- Some participants drew attention to the politicization of humanitarian action – for example, prohibiting the provision of humanitarian assistance in certain parts of a country affected by armed conflict – and said that it was counter-productive and must be avoided.
- One participant pointed out the link between the availability of arms and the lack of security, which was of direct consequence for humanitarian work. He called for a strong and comprehensive arms trade treaty. In this regard, it was pointed out that this was addressed by the four-year action plan for the implementation of IHL presented by the ICRC to the International Conference for adoption; the Plan was described as a valuable tool.

Guiding Question 2 – Key Points

Do you regard IHL as adequate for the task of ensuring access and the delivery of rapid and suitable humanitarian assistance? What measures would you propose to ensure greater knowledge and better understanding and use of the provisions of IHL governing access and humanitarian assistance?

- The participants agreed that IHL provided a comprehensive set of rules on access and humanitarian assistance. IHL contains essential principles that apply in all situations of armed conflicts, such as the principle according to which the wounded, the sick and the shipwrecked must be collected and cared for and the prohibition against using starvation of the civilian population as a method of warfare. These rules are customary and apply in international and non-international armed conflicts, which means that they must be respected by States and by non-State armed groups.
- Many participants pointed out that ignorance of and disregard for IHL make it more difficult to obtain access or deliver humanitarian assistance. For example, abuse or misuse of the red cross and red

crescent emblems can create distrust of the activities conducted by components of the Movement and have directly adverse consequences for the provision of humanitarian assistance. It was therefore essential to continuously and effectively disseminate the provisions of IHL, including those related to the emblem.

- Some participants saw a contradiction between the obligation to undertake action to provide relief when the civilian population does not have sufficient access to the means essential for its survival and the fact that the provision of humanitarian assistance was subject to the consent of the State concerned; they said that this should be clarified or resolved. In this regard, some participants were of the view that IHL should be clarified through soft law documents or the collection of best practices. One participant said that the rules regarding the conditions for delivering humanitarian assistance should also be clarified.
- Finally, most participants agreed that the most pressing problem was lack of compliance with the existing IHL rules regarding access and humanitarian assistance. In this respect, some participants stressed the importance of domestic prosecution for persons preventing the delivery of health-care and humanitarian assistance in violation of IHL. Others brought up the lack of mechanisms at the international level for ensuring compliance with IHL and the need to remedy this. Reference was made to the draft resolution on strengthening legal protection for victims of armed conflicts, which addresses the issue.

Guiding Question 3 – Key Points

How should States, components of the Movement and other actors concerned cooperate in this regard?

- Many participants stressed the importance of cooperation between the ICRC and National Societies; they said that it helped to ensure that IHL was disseminated properly and to raise awareness of the Movement's Fundamental Principles.
- Many participants also drew attention to the fact that, in some contexts, humanitarian assistance was provided by a number of different humanitarian actors. Coordination between these actors was essential in order to avoid, for example, work being duplicated and some goods and medicines being provided in excessive quantities while others equally needed were not provided at all. The provision of humanitarian assistance that was insufficiently adapted to local needs should also be avoided. Conducting accurate needs assessment in cooperation with the authorities and the local National Society was essential.
- One participant suggested that National Societies could provide advice and support to their States in coordinating humanitarian actors.

OTHER POINTS RAISED

One delegation made reference to the ICRC report entitled *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*. In so doing, it referred to the classification of non-international armed conflicts. Serious doubts were expressed regarding the interpretation made in the report that in many contexts organized crime or criminal groups fulfil the criteria of a non-international armed conflict. This delegation argued that this interpretation implies undue generalizations and is not based on legal arguments. It rejected the idea of automatic identification between these two concepts. Organized crime or criminal groups do not fall within the concept of non-international armed conflict.

CONCLUSIONS AND RECOMMENDATIONS

In conclusion, Commission E on IHL and Humanitarian Access and Assistance recommended that it is essential to:

- Work for a better understanding and dissemination of IHL rules and ensure better implementation and respect for these rules
- Raise awareness on the principles governing relief actions conducted by the components of the Movement of the International Red Cross and Red Crescent.
- Improve the coordination between the States, the different components of the Movement of the International Red Cross and Red Crescent and other humanitarian actors

One delegation submitted written comments to the ICRC report entitled *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts* and asked the Secretariat that they be reflected in the final report of the Conference.