

Sixteenth Commission

Humanitarian Assistance

Rapporteur: M. Budislav VUKAS

RESOLUTION

The Institute of International Law,

Recalling its Resolutions “*The Principle of Non-Intervention in Civil Wars*” (Wiesbaden Session, 1975) and “*The Protection of Human Rights and the Principle of Non-Intervention in Internal Affairs of States*” (Santiago de Compostela, 1989);

Considering that situations of urgency and disaster endangering fundamental human rights and the well-being of a large number of persons are increasingly brought about by natural or technological disasters, by international or internal armed conflicts, by internal disturbances or violence or by terrorist activities;

Noting that great disasters often affect not only individual States but also several States or entire regions, and are a matter of concern for the international community as a whole;

Emphasizing that States and competent international organizations should take measures to increase public awareness of the need to prevent natural and man-made disasters and to enhance community preparedness through education, training and other means;

Considering that it is imperative to render rapid and efficient assistance to victims in situations of disasters and that often humanitarian assistance is only the first necessary step to rehabilitation, recovery and long-term development;

Bearing in mind the essential role played by the United Nations, intergovernmental organizations, the International Committee of the Red Cross and non-governmental organizations in organizing, providing, and distributing humanitarian assistance;

Noting the Resolutions adopted by the United Nations General Assembly on “a new international humanitarian order”, and on “strengthening of the coordination of emergency humanitarian assistance of the United Nations”, and particularly Resolution 46/182 of 19 September 1991, as well as the various instruments adopted by other universal and regional intergovernmental organizations, by the Red Cross and Red Crescent Movement, and by other non-governmental organizations;

Noting the special rules of international humanitarian law applicable in armed conflict;

Considering that it is desirable that international human rights law and international humanitarian law be further developed, so as to prevent or mitigate human suffering caused by disasters in time of peace or war;

Adopts the following Resolution:

I. Definitions

For the purposes of this Resolution:

1. “Humanitarian assistance” means all acts, activities and the human and material resources for the provision of goods and services of an exclusively humanitarian character, indispensable for the survival and the fulfillment of the essential needs of the victims of disasters.

a) “Goods” includes foodstuffs, drinking water, medical supplies and equipment, means of shelter, clothing, bedding, vehicles, and all other goods indispensable for the survival and the fulfillment of the essential needs of the victims of disasters; this term never includes weapons, ammunition or any other military material.

b) “Services” means the means of transport, tracing services, medical services, religious, spiritual and psychological assistance, reconstruction, de-mining, decontamination, voluntary return of refugees and internally displaced persons, and all other services indispensable for the survival and the fulfilment of the essential needs of the victims of disasters.

2. “Disaster” means calamitous events which endanger life, health, physical integrity, or the right not to be subjected to cruel, inhuman or degrading treatment, or other fundamental human rights, or the essential needs of the population, whether

- of natural origin (such as earthquakes, volcanic eruptions, windstorms, torrential rains, floods, landslides, droughts, fires, famine, epidemics), or

- man-made disasters of technological origin (such as chemical disasters or nuclear explosions), or
- caused by armed conflicts or violence (such as international or internal armed conflicts, internal disturbances or violence, terrorist activities).

3. “Victims” means groups of human beings whose fundamental human rights or whose essential needs are endangered.

4. “Affected State” means the State or the territorial entity where humanitarian assistance is needed.

5. “Assisting State or organization” means the State or intergovernmental organization, or impartial international or national non-governmental organization which organizes, provides or distributes humanitarian assistance.

II. *Right to humanitarian assistance*

1. Leaving the victims of disaster without humanitarian assistance constitutes a threat to human life and an offence to human dignity and therefore a violation of fundamental human rights.

2. The victims of disaster are entitled to request and receive humanitarian assistance. Assistance may be sought on behalf of the victims, by the members of the group, by local and regional authorities, the government of the affected State, and national or international organizations.

3. Humanitarian assistance shall be offered and, if accepted, distributed without any discrimination on prohibited grounds, while taking into account the needs of the most vulnerable groups.

III. *Primary responsibility of the affected State*

1. The affected State has the duty to take care of the victims of disaster in its territory and has therefore the primary responsibility in the organization, provision and distribution of humanitarian assistance. As a result, it has the duty to take the necessary measures to prevent the misappropriation of humanitarian assistance and other abuses.

2. Any other authority exercising jurisdiction or *de facto* control over the victims of a disaster (for example in case of disintegration of the governmental authority) has the duty to provide them with the necessary humanitarian assistance, and also has all the other duties and rights of the affected State provided for in this Resolution.

3. Whenever the affected State is unable to provide sufficient humanitarian assistance to the victims placed under its jurisdiction or *de facto* control, it shall seek assistance from competent international organizations and/or from third States.

IV. *Right to offer and provide humanitarian assistance*

1. States and organizations have the right to offer humanitarian assistance to the affected State. Such an offer shall not be considered unlawful interference in the internal affairs of the affected State, to the extent that it has an exclusively humanitarian character.

2. States and organizations have the right to provide humanitarian assistance to victims in the affected States, subject to the consent of these States.

V. *Duties in respect of humanitarian assistance*

1 All States should to the maximum extent possible offer humanitarian assistance to the victims in States affected by disasters, except when such assistance would result in seriously jeopardizing their own economic, social or political conditions. Special attention should be paid to disasters affecting neighbouring States.

2 Intergovernmental organisations shall offer humanitarian assistance to the victims of disasters in accordance with their own mandates and statutory mandates.

3. The assisting State or organization may not interfere, in any manner whatsoever in the internal affairs of the affected State.

4. Assisting States and organizations, including non-governmental organizations, shall take the necessary steps in order to prevent misappropriation of stocks of goods and other grave abuses (such as illicit traffic of persons, arms, or prohibited drugs) by personnel under their responsibility.

VI. *Duty to cooperate*

1. In organizing, providing and distributing humanitarian assistance, the assisting States and organizations shall cooperate with the authorities of the affected State or States.

2. In the case of a disaster which endangers the territory and the population of more than one State, or which originates in one State and endangers the territory and the population of another State, the relevant States shall cooperate in mitigating the consequences.

VII. *Duty to facilitate humanitarian assistance*

1. States shall facilitate the organization, provision and distribution of humanitarian assistance rendered by other States and organizations. They shall accord them, among other things, overflight and landing rights, telecommunication facilities and necessary immunities. Humanitarian assistance missions shall be exempted from any requisition, import, export and transit restrictions and customs duties for relief goods and services. When visas or other authorizations are required they shall be promptly given free of charge.

2. States should adopt laws and regulations and conclude bilateral or multilateral treaties providing for the above-mentioned facilities relative to humanitarian assistance.

3. The affected States shall permit the humanitarian personnel full and free access to all the victims and ensure the freedom of movement and the protection of personnel, goods and services provided.

VIII. *Duty of affected States not arbitrarily to reject bona fide offer of humanitarian assistance*

1. Affected States are under the obligation not arbitrarily and unjustifiably to reject a *bona fide* offer exclusively intended to provide humanitarian assistance or to refuse access to the victims. In particular, they may not reject an offer nor refuse access if such refusal is likely to endanger the fundamental human rights of the victims or would amount to a violation of the ban on starvation of civilians as a method of warfare.

2. In the event of the refusal of an offer of humanitarian assistance or of access to the victims, the States or organizations offering assistance, if they consider that such refusal may lead to a graver humanitarian catastrophe, may call upon the United Nations bodies dealing with humanitarian issues and other competent universal or regional international organizations to consider taking appropriate measures in accordance with international law and their statutory rules, in order to induce the affected State to comply.

3. If a refusal to accept a *bona fide* offer of humanitarian assistance or to allow access to the victims, leads to a threat to international peace and security, the Security Council may take the necessary measures under Chapter VII of the Charter of the United Nations.

IX. *Protection of personnel and installations engaged in humanitarian assistance*

1. Intentionally directing attacks against personnel, installations, goods or vehicles involved in a humanitarian assistance action is serious breach of fundamental principles of international law.

2. If such serious breaches are committed, the accused persons shall be brought to trial before a competent domestic or international court or tribunal.

X. *Relationship with other rules of international law*

This Resolution is without prejudice to the:

- a) principles and rules of international humanitarian law applicable in armed conflict, in particular the 1949 Geneva Conventions for the Protection of War Victims and the 1977 Additional Protocols; and,
 - b) rules of international law regulating humanitarian assistance in specific situations.
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