

Humanitarian Assistance

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Helena TORROJA MATEU, *La asistencia humanitaria en la Organización de las Naciones Unidas: Fundamentos y perspectivas actuales*, Barcelona: Atelier, 2004, 382 pages.

Prof. Torroja Mateu is a young Spanish professor of international law.⁽²⁾ In spite of that, her book *La asistencia humanitaria en la Organización de las Naciones Unidas: Fundamentos y perspectivas actuales* (Humanitarian assistance and the United Nations Organization: Legal foundations and contemporary problems) is not her first contribution to the field of humanitarian legal studies. She has published several

short articles on humanitarian assistance in different Spanish journals on international law, international relations and UN activities. This book is a major effort in a research area she knows in depth. Prof. Torroja Mateu has written a detailed work on humanitarian assistance in the UN organization, which fills up a gap in the legal literature. She offers a comprehensive view on a topic, more often cited than

studied, a topic to be clearly distinguished from the one of humanitarian intervention.

As she points out briefly in the introduction of her book, humanitarian assistance is a traditional activity among those of the United Nations Organization, channelled through the General Assembly. The author stresses the importance of this function, given the present and growing impact of UN's Security Council actions in the humanitarian field. As an original General assembly competence, it is a legacy of the former humanitarian competences of the League of Nations or of the Red Cross founders.

This book tries to define humanitarian assistance as an operational and institutional activity of the Organization, based on consent, looking into its legal foundations so as to enhance the contemporary trends and problems to which humanitarian assistance is confronted to. This main purpose explains the structure of the book. The first part (pages 43-236) deals with the origins and evolution of activities of humanitarian assistance. The second part (pages 241-357) is concerned with the contemporary

problems related to humanitarian assistance. The book ends with a set of final considerations (page 359-367), which try to draw a line between humanitarian assistance and humanitarian intervention, taking into account the legal and political framework under examination.

The author combines the study of the legal framework (normative approach) and the institutional aspects (operational approach), methodology that it is used throughout the whole book. The scheme relies more on a historical perspective, than on a conceptual approach, at least in its long first part.

In the first part, the normative approach is developed on chapter second. She looks for an explanation of the term "co-operation on humanitarian problems" appeared in paragraph 3, of Article first of UN Charter as a purpose of the Organization. For this reason, she approaches the previous history of humanitarian co-operation, to which she devotes a short first chapter. This one highlights the two main fields where institutional humanitarian cooperation appeared historically to render effective assistance: in the context of armed conflicts –protection

to refugees, mainly- and in the context of natural disasters, with its origins both in private humanitarian actions –which she studies briefly- and in the League of Nations’ action in the field.

One of the most interesting points of this first part of the book is the conclusion that there is no strict definition of what the founders meant by “humanitarian problems.” The author of the book proposes for an open interpretation which highlights that this purpose is a human-centred approach to inter-governmental co-operation (pp. 110-118). In my opinion, this interpretation –even if it was not foreseen by the UN Charter drafters- also permits to encompass action with new theoretical approaches and new needs, as times goes by. At the same time, this historical approach allows the author to conclude that the newly born humanitarianism was deeply rooted into politics, and would grow –as a consequence- as a political tool for states. It is obviously (pp. 92-97), and it continues to be (pp. 337-359), a different product compared to non-governmental humanitarianism.

The operational approach is analyzed in chapters third and fourth,

following this pattern: analysis of organs charged with direct activities of United Nations, which are called by Prof. Torroja “co-operation” activities, and role and instances for the UN in the co-ordination of the relief efforts of a broad variety of actors. The periods in which this institutional study is divided by the author are extremely dependent on the formal changes that the UN structure encompassed, with few or no reference to the material consequences of these institutional changes on the humanitarian response to emergencies of those so-defined periods. In my opinion, this book is short of a reflection on the headquarters and regional office’s role for both the co-operation activities and the co-ordination efforts. This is a field of study, not covered in this work, for a moment – as it is today- when the UN effectiveness is being questioned.

At the end of chapter four, the author is back to the normative approach. She tries to introduce the reader to the second part of her book, with an analysis of the new philosophical approach to humanitarian action which, among other elements, would stress the

importance of coordination among the major actors of the assistance, both in- and outside the world organization. The New International Humanitarian Order (NIHO), never adopted as such by the General Assembly but in its agenda during more than two decades (p. 180), produced a set of resolutions, among them to be studied, as the author does, Resolution 43/131 and resolution 45/100 on “humanitarian assistance to victims of natural disasters and other emergency situations”. It is extremely interesting the balanced analysis of the author on the importance of these two resolutions (pp. 193-196), being a part of it the role played by the NGO’s –as the *French doctors* (so-called by the author)- in the new scenarios for the humanitarian assistance.

The author ends this normative approach to the contemporary problems of the humanitarian assistance with a critical consideration of the post-1990 treatment of the matter in the General Assembly ordinary sessions (pp. 196-200). It reveals a new phase in which specific interest in the subject appears diminished. Paradoxically it is during the 1990’s when the institutional

reforms on humanitarian assistance are taken to reality. The author explains at large these changes, with an adequate study of the creation, functions and principles of the new Department on Humanitarian Affairs (DHA), and of the Office for the Coordination of the Humanitarian Affairs (OCHA) (pp. 200-231). This study also highlights the growing importance of the Economic and Social Council. Prof. Torroja Mateu concludes this part of her work defining the problems focussing the reflection and the action –at the same time normative and institutional- of the UN organization today: the on-site security of the staff and actors in the field of humanitarian assistance; the nexus from assistance and relief to development (pp. 231-236).

The second -and shorter (about one hundred pages in two chapters)-part of the book is, with no doubt, the most interesting and creative. It is entitled “The humanitarian assistance within the frame of international co-operation: contemporary problems” (*La asistencia humanitaria en el marco de la cooperación internacional: planteamiento de problemas actuales*). At first consideration, the title does not show

the precise content of this second part. In fact, those “contemporary problems” have been exposed as final remarks both during the normative and institutional approach to the history of UN humanitarian assistance functions as developed in the first part.

Putting aside this nominative critique, it must be said that the author deploys an extraordinary effort to produce a theoretical construction on the material historically exposed in the previous part of her essay. Nevertheless, it is difficult to explain why this second part starts with a study of the concept of “humanitarian assistance” in relation to “humanitarian emergencies” (pp. 241-254), which would have been better placed in the first chapter of the book, as a basic approach to the topic.

These two final chapters deal with the key issue of the interaction between UN humanitarian cooperation in the field and UN humanitarian action throughout its contribution to the normative developments in two contexts: international law and international politics (specially pp. 290-304 in Chapter V and pp. 309-336 in Chapter VI). The relationship

between different normative sectors, like the international humanitarian law, the international refugee law and the international human rights law, brings the author to the question: is there a specific international humanitarian relief law? She tries and offers some considerations on the characters (characteristics OR nature) of such a special regime: the conventional character of the regulations, its fragmentation, non-uniformity, dispersion, and incompleteness (pp. 294-299).

Prof. Torroja, quite bravely, affirms the obligation for the UN to set up its machinery when an emergency situation appears: it is a duty upon the organization, which is limited by the legal rules, such as the consent of the territorial state, or the principles of neutrality, humanity, impartiality and independence. Some of these principles may collide with other UN functions. That is the case for the principle of neutrality and the duty of the organization to promote and preserve the respect of human rights. Prof. Torroja reflects on this issue, with a special reference to cases where the UN Security council is involved (pp. 321-330).

This idealistic approach to the international relief politics is also followed when she tries to define the rights and obligations of the sovereign states in case of emergency. In a realistic methodology of international relations, one would start by the study of the sovereignty. Prof. Torroja, on a functional approach to the theory of international organizations, states that the duty of the organization to cooperate in humanitarian relief (mentioned *supra*) is the legal base of those duties and rights of the States. These, as members of the world organization, must assure the effective achievement of the UN goals: obligation to co-operate with the organization, obligation to not arbitrarily reject the relief offered when the State itself cannot assist the population under its jurisdiction, etc. The author goes beyond this initial question and tries to define the legal framework for the humanitarian action of member states on the territory of a member state suffering from an emergency (pp. 332-337). The weakness of this approach –not relevant in this historical period of the life of the organization– is that it doesn't help to define the rights and

duties of hypothetical non-State parties.

The last considerations of the author are centred on the political analysis of the UN's humanitarian activities: it is perceived as a main function as it is showed by the inclusion of a specific goal in the Millennium Declaration; and it can deploy a central role as a clearing house. However it cannot become a substitute to long-term action, such as the co-operation for development, or the co-operation to promote and protect human rights.

One could regret the absence of a more empirical approach to the role played by UN action in different humanitarian emergencies throughout its history. Prof. Torroja chose not to follow this approach, which could have taken her too far. Her book is neither an encyclopedia on humanitarian assistance, neither a reference book for UN's activities in the field. Yet it is a valuable contribution to a more clear definition of UN humanitarian functions and values in the contemporary world.

Finally, it needs to be said that, although written in Spanish, this book offers a very useful bibliography and documentary annexes. The final

bibliography -which does not claim to be exhaustive- contains thirty eight per cent of references to English works, thirty six to French ones and just twenty four per cent to Spanish books and articles related to the subject matter. Among these latest – the Spanish books- it is to be stressed the number and quality of works by young scholars devoted in the last ten years to the problems of humanitarian assistance and/or humanitarian intervention. Nonetheless, of all these texts, I consider this one which has been a pleasure to comment on, as an outstanding text in its field.

NOTES:

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She still devotes some of her works to the topic of the book reviewed, as a major specialized sector for her research. Her recent analysis of the humanitarian aspects of the Secretary General Report of 21st march 2005 (A/59/2005), in “The humanitarian response system of the United Nations and the Report "In Larger Freedom: towards development, security and human rights for all"” can be seen in, <http://www.fride.org>.

