

Problems of the Requirement of Prior Approval for Humanitarian Relief Work in Armed Conflicts and Possible Legal Solutions Thereto

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Abstract: *The provisions of international humanitarian law require providers of humanitarian relief to obtain the prior approval of the country concerned to assist in its territory. One of the problematic issues, due to the ambiguity of the provisions of international humanitarian law, or at least its inability to keep pace with international developments, especially the increasing frequency of non-international armed conflicts. Accordingly, we present this study to clarify the problems of the requirement of prior approval for humanitarian relief work, and then try to search for possible legal solutions.*

Keywords: *Prior Approval - Humanitarian Relief - Armed Conflicts.*

I. INTRODUCTION

It is impermissible to interfere in affairs that are at the heart of the internal authority of a state [1]. States' observance of this obligation is a prerequisite for ensuring that nations live together in peace, because practicing any form of interference may lead to a threat to international peace and security [2]. This principle is a fundamental principle of international law [3]. It follows from the principle of non-interference - which is closely linked to the principle of sovereignty - that the state that has been afflicted by a disaster or that is a party to an armed conflict has the freedom to take any measures it deems appropriate to ensure the protection of the people within its territory and to provide them with humanitarian assistance. In principle, any party may intervene to provide humanitarian assistance in a country except after obtaining the approval of this country, which is translated by the provisions of international law in Article (9) of the First, Second, and Third Geneva Conventions of 1949, respectively [4], and Article (10) of the Fourth Geneva Convention of 1949 [5].

As a result, a country's acceptance of humanitarian help determines whether it is legal under international law. Forced acceptance of humanitarian aid or the passage of relief convoys across the afflicted country's territory to the territory of another nearby impacted country are both prohibited [6]. Humanitarian organizations cannot put their employees in danger without any assurances due to a lack of

respect for the will of the concerned state, despite the significance of the condition of the affected state's prior consent as one of the consequences of the principle of respecting the sovereignty of states and non-interference in internal affairs and one of the necessary prerequisites for the implementation of humanitarian action. The implementation of humanitarian action may be hampered by the numerous troubling considerations that this condition poses. It is crucial to learn about the "Problems of the Requirement of Prior Approval for Humanitarian Relief Work in Armed Conflicts and Possible Legal Solutions Thereto" issue. These issues mostly pertain to the issue of identifying the authority qualified to give prior authorization in non-international armed conflicts, particularly in regions under rebel control. The requirement of previous approval may also bring up the question of the conflict-affected nation's obstinacy and refusal to grant prior approval for relief efforts to be conducted on its soil without proper legal grounds. The right of armed conflict victims to receive humanitarian aid is lost due to the loss of the authority to grant consent in non-international armed conflicts and the state's unjustified refusal to grant this consent. As a result, it is necessary to look for legal solutions to resolve this impasse brought on by the ambiguity or contradiction of international law. For more clarification, we can emphasize the following: We will explore these issues in (the first topic), then attempt to determine ways to solve them in (the second topic), before wrapping up the research with a conclusion that includes a summary and suggestions for future research.

II. PROBLEMS OF THE PRE-APPROVAL REQUIREMENT

There are two significant issues with the pre-approval requirement. The first is concerned with identifying the competent authority to issue permission in non-international armed conflicts, while the second is concerned with the affected state's willful unwillingness to do so.

First: circumstances of non-international armed conflict, the issue of determining the appropriate authority to approve the provision of humanitarian assistance.

In the case of international armed conflicts, the requirement for prior authorization for the provision of humanitarian assistance does not present a problem because the provisions of international humanitarian law require prior authorization from a sovereign country before beginning humanitarian relief operations and free access to the victims. [7].

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The question of permission is likewise without dispute in the situation of the occupied territories [8], as the occupying power, not the legitimate authorities, is the authorized authority to grant approval based on the fact that it effectively controls the populace [9].

The second paragraph of Article 3 common to the four Geneva Conventions stipulates that: “An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the parties to the conflict. [10]” There are two possibilities for who has the authority to approval under this text, according to the party that controls the region, whether the central government or the rebels [11] and therefore this text allows humanitarian organizations to enter any territory without the approval of the central government, which is still recognized at the international level. A bigger issue results from countries arbitrarily rejecting humanitarian help, which can happen when they use this uncertainty to their advantage and refuse to allow it to enter areas that are under their control or that the rebels control.

III. THE PROBLEM OF ARBITRARY REFUSAL OF CONSENT

In addition to the legal difficulty already noted, nothing clearly stated in international law suggests that it is possible to provide humanitarian assistance without the agreement of the affected countries.

Except for this, it has been argued that the provisions of the four Geneva Conventions and the protocols attached to them that deal with humanitarian assistance in armed conflicts, as well as the resolutions of the United Nations General Assembly dealing with providing aid to victims of natural disasters and other emergencies, have “the vacillation and discrepancy in the provisions of international law, which would inevitably lead to the loss of the rights of victims [12]”.

States use this as an excuse to oppose the concept of humanitarian help, claiming that all forms of sovereignty, whether connected to the defense of human rights or in support of humanitarian goals, are prohibited [13]. The rules of international humanitarian law may have been broken here, especially the rule against using famine as a weapon of war [14]. The issue of arbitrary denial of humanitarian aid cannot be resolved by relying on the prior norms, which remain non-binding. It is no longer a matter of jurisdiction that inhibits states, especially when it comes to remedies for victims, notwithstanding the erosion in the concept of absolute sovereignty, particularly regarding human rights issues. According to some, the right of victims to obtain humanitarian aid would be compromised if the need not to arbitrarily withhold permission [15] were recognized by international law. Regarding this arbitrariness, some believe that the only method to carry out humanitarian action is by the use of armed force through the Security Council, provided the arbitrary denial is conditioned because it endangers global peace and security [16]. However, the researcher thinks that in most instances, its use was similarly ineffective.

IV. POSSIBLE SOLUTIONS TO THE PROBLEMS OF THE PRE-APPROVAL REQUIREMENT

First: removing the inconsistency between the common Article 3 text and the text of Article 18 of the Second Additional Protocol: about the party that must approve the areas that are under the rebels' control, by giving the common Article 3 text among the four Geneva Conventions priority and stipulating that: “An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the parties to the conflict.”

Legally, according to Maurice Turelli, “as long as the Protocol is additional, the provisions of the main treaty, that is, the four Geneva Conventions, continue to prevail following the Vienna Conventions of Treaty Law, given that the two Protocols were designed to improve the fate of the victims, and not the other way around. [17]”

This opinion is supported by realistic justifications based on actual control, giving the authority of approval to the rebels within the limits of their control, in addition to the fact that they are in control of the land, and the government has no authority on the ground, which misses the opportunity for the central government that will not grant its approval as a method of pressure on the rebels, Organizing aid, securing its arrival, and protecting the workers in charge of it - which is one of the most important challenges facing humanitarian organizations - cannot be done without the consent of the rebels. This is what Jean Nepicté acknowledges in this regard, “If the responsible authority over this group exercises effective sovereignty, then it is binding because it claims to represent the country or part of it (...) [18]”, and therefore this can be measured by granting the authority to approve humanitarian assistance in the case of occupation by the occupying power, not the legitimate authority, which was justified based on the actual control over the population [19].

Second: Inclusion of a binding legal provision imposing a general duty not to arbitrarily refuse humanitarian assistance:

Article 18 of the Second Additional Protocol states: “Relief of a purely humanitarian and impartial nature and not based on any unfair discrimination shall be carried out in favor of the civilian population with the consent of the High Contracting Party concerned, when the civilian population suffers from severe deprivation due to lack of essential supplies for their survival, such as food and medical supplies”.

There is a contradiction between the phrases “relief work shall be carried out” and “with the consent of the party”, which may give contradictory interpretations of the text regarding the need to obtain the consent of the State concerned to provide humanitarian assistance, even when the civilian population suffers from severe deprivation due to the lack of necessities for survival which may threaten their lives, but the prevailing interpretation remains what was presented by the International Law Commission during its comment on the two Additional Protocols,

“In fact, if consent is required, it does not mean that the decision is left to the free hand of the parties,” and “If the survival of the population is threatened, and a humanitarian organization meets The required conditions of impartiality and non-discrimination, and capable of remedying this situation, must carry out relief work. [20]”

Except for these situations, a careful reading of Article 18 does not imply that the state is required to accept or facilitate humanitarian relief [21], which leaves room for the discretion of states in approving humanitarian assistance, particularly in the case of non-international armed conflicts. When the Syrian regime refused to approve humanitarian assistance, it was a true example of this discretion. Therefore, a binding legal provision that includes the duty of the concerned state to accept humanitarian assistance if the conditions for its provision are met, whether the refusal threatens the survival of the population or not, must be included in international law to avoid such a tragic situation and to prevent making humanitarian assistance hostage to the state or hostage to the interests of the conflict in the Security Council. As the initial draft of the supplementary protocol, which was adopted in 1973, had previously approved the need to receive humanitarian assistance if it met the necessary circumstances, this proposal has what it does in customary international law. Despite opposition from some, the prior approval requirement was added at the diplomatic conference held in Geneva between 1974 and 1977. The representative of Switzerland present at the conference confirmed that he would have preferred to have the clause removed because he believes it violates the spirit of the Fourth Convention of the Geneva Conventions [22].

This is what was mentioned in a study of the International Committee of the Red Cross regarding the issue of approval of humanitarian assistance: *“It is not permissible to refuse approval for arbitrary reasons. The party is obliged to agree if it is established that a civilian population is threatened by hunger, and a humanitarian organization can remedy the situation by providing relief work on an impartial and non-discriminatory basis” [23].*

International Law Institute has also twice addressed the issue of consent in the context of humanitarian assistance. In its decision issued in 1989 entitled *“Protection of Human Rights and the Principle of Non-Interference in the Internal Affairs of States,”* it was stated in Paragraph (2) of Article (5) of the authoritative French text the following: *“Countries facing similar emergencies in their territory should populations who face serious risks to their lives or health, do not arbitrarily refuse offers of humanitarian assistance of this kind.” [24].*

In 2003, the Institute of International Law dealt with this issue again, and stipulated in its resolution related to humanitarian assistance, under the title *“The Duty of Affected States Not to Arbitrarily Decline a Good Faith Offer to Provide Humanitarian Assistance,”* as follows: *“Affected States are obligated not to reject arbitrarily or unjustifiably a bona fide offer aimed exclusively at providing humanitarian assistance, or refuse access to victims. In particular, it may not refuse an offer or refuse to grant access to victims if such refusal is likely to endanger the basic human rights of the victims or if it amounts to this refusal constitutes a violation of the prohibition against*

starving civilians as a method of war. [25]”

In the Guiding Principles on Internal Displacement [26], it follows: *“Proposals of humanitarian assistance shall not be arbitrarily withheld, especially if the authorities concerned are unable or unwilling to provide the requested humanitarian assistance. [27]”*

Some believe that: *“By agreeing to accede to and ratify the annexed conventions and protocols, states are at the same time expressing their acceptance of the right to humanitarian assistance. States that undertake to abide by the treaties are assumed to have accepted all the provisions contained therein, which is tantamount to an implicit license that allows humanitarian organizations to provide humanitarian assistance to the victims [28].* Based on the previous interpretation, some actors in humanitarian action tended to ignore the will of states, and Médecins Sans Frontières was a pioneer in this [29]. Therefore, the practice also began to support - in addition to previous jurisprudential studies - the claim that there is an obligation in customary international law that assistance must be agreed upon, and facilitate humanitarian action, in both international and non-international armed conflicts [30].

The proposal also has its backing in international human rights law, at least where arbitrary denial of humanitarian assistance would threaten the survival of the civilian population. The provisions of international human rights law, especially in the International Covenant on Civil and Political Rights, and the Covenant on Economic and Social Rights, provide special protection for the right to life and the rights associated with it, which constitute the essence of humanitarian assistance properly understood in a restrictive manner” and that protecting this right requires states to *“adopt positive measures” [31].* This proposal is supported by the practice of the Deloitte Council's decisions, particularly in the case of Syria, which has issued numerous resolutions requiring the delivery of humanitarian aid to Syrian territories without the need for the approval of the Syrian government. Among these resolutions is Resolution 2165 (2014) concerning the delivery of humanitarian aid in Syria, through four points, two of which are in Turkey (Bab al-Salam and Bab al-Hawa), one in Iraq (Al-Yarubiya), and one in Jordan (Ramtha). This is the first resolution that allows the entry of aid through crossings that are not under the authority of the Damascus government.

V. CONCLUSION AND RECOMMENDATIONS

In this paper, the researcher sought to analyze the problems raised by the condition of prior approval, and he concluded from this analysis that the condition of prior approval raises serious problems that impede the progress of humanitarian relief work. So Humanitarian organizations, as well as states, when necessary, must intervene in cases of urgent conditions to provide relief to the victims, even if this occurs contrary to the arbitrary will of the concerned state or the concerned party by refusing to grant assistance.



To achieve this, the researcher recommends the following proposals as legal solutions to these problems and puts them for debate among circles of international humanitarian law:

1. The addition of an explicit legal text that removes the contradiction between the text of Article 3 common to the four Geneva Conventions of 1949, and the text of Article 18 of the Second Additional Protocol of 1977, expressly granting the parties to the conflict the power to grant prior approval for humanitarian relief work in the territories they control.
2. Inclusion of a binding legal provision imposing a general duty on the parties to the conflict not to arbitrarily refuse humanitarian relief work.

Perhaps these proposals contribute to overcoming the problems of the pre-approval requirement for humanitarian relief work in armed conflicts, especially non-international ones, and thus contribute to ensuring that humanitarian aid reaches its beneficiaries in a timely and appropriate manner. In order to achieve these proposals, the researcher presents the following text formulation: "In order to do so, we propose the following text formulation: 'An impartial humanitarian body is permitted to offer its services to the parties of the conflict, and it is not permissible for these parties to arbitrarily reject this offer.'"

DECLARATION

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Authors Contributions	I am only the sole author of the article.

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4. Which states: "The provisions of this Convention shall not be an obstacle to the humanitarian activities that may be undertaken by the International Committee of the Red Cross or any other impartial humanitarian body to protect and relieve the wounded, sick and shipwrecked, medical personnel and religious personnel, subject to the consent of the parties to the conflict concerned."
5. Which states: "The provisions of this Convention shall not be an obstacle to the humanitarian activities that may be carried out by the

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