

International Humanitarian Assistance and International Law

Emilie E. Kuijt & Stefanie Jansen-Wilhelm

Organizers of the conference 'International Humanitarian Assistance &
International Law: A Legal Approach to Practical Problems'

a) Leiden University

e.e.kuijt@law.leidenuniv.nl

b) Tilburg University

s.jansen@tilburguniversity.nl)

International humanitarian assistance, which entails the provision of emergency aid to those in need, may take place in situations of crisis. Such situations include natural or manmade disasters, armed conflict or occupation. As a concept, international humanitarian assistance is currently receiving widespread attention from various international organizations, NGOs, and other actors involved in the practice of aid delivery, yet it deserves more attention from scholars of public international law. Such attention is warranted as many legal issues, ambiguities, and questions exist that arise time and again in situations where humanitarian assistance is needed, or when it is being delivered. These issues relate, *inter alia*, to the rights of the people in need of assistance; to the role of the affected states; to the specific circumstances in which humanitarian assistance is provided; to the rights and duties of entities providing assistance, as well as to the access of goods or relief personnel. Extensive research is still required to address these problems, in the hope of making the provision of humanitarian assistance more effective.

In order to address these issues and to place the field of international humanitarian assistance within the borders of public international law, a two-day conference was organized at the beginning of this year. As a joint effort between the University of Leiden and Tilburg University, the conference 'International Humanitarian Assistance & International Law: A Legal Approach to Practical Problems' was held in Leiden on 24 and 25 January 2013. Kindly and generously sponsored by the Meijers Institute of the

University of Leiden; the Leiden University Fund; Tilburg University's Centre for Transboundary Legal Development and the Dutch Ministry of Foreign Affairs, the conference succeeded in bringing together legal scholars, jurists, and other pioneers working on this topic, along with academics and practitioners that have only just begun taking an interest in the field.

The topic of international humanitarian assistance was addressed from four angles, each represented in a separate panel: (1) international humanitarian law, (2) the implementation of disaster response laws, (3) the work of the UN International Law Commission and (4) human rights and case law.

In the opening presentation, Professor Yoram Dinstein (Tel Aviv University) explained the legal basis of humanitarian assistance within the field of international humanitarian law. Dr. Heike Spieker (German Red Cross) subsequently discussed the operational framework with specific attention to the humanitarian principles. Emilie Kuijt (University of Leiden), Kubo Mačák (University of Oxford), Katharine Fortin (University of Utrecht), and Dr. Ebrahim Afsah (University of Copenhagen) addressed the developments taking place within the field. First, Emilie Kuijt discussed the potential emergence of a right to humanitarian assistance and its provision in times of a humanitarian crisis. Subsequently, more topical notions were addressed through a presentation on the use of humanitarian principles in the case of Libya by Kubo Mačák, while Katharine Fortin concentrated on the obligations of armed groups and Ebrahim Afsah considered the special context of counter-terrorism. As such, this panel reflected developments taking place within the context of international humanitarian law with regard to humanitarian assistance, from the more traditional understandings of humanitarian assistance within armed conflict-context, to new views and developments.

This focus on ongoing developments was continued in the second panel on International Disaster Response Laws by one of its developers, Professor Horst Fischer (University of Leiden), who focussed in particular on the EU-context, and by Professor Hans-Joachim Heintze (Ruhruniversität Bochum) who looked specifically at the interplay of various developments with regard to natural disasters. Sanne Boswijk (International Federation of the Red Cross in Africa) gave a practical view on the legal framework and developments which placed the conclusions of the first day in light of practical difficulties.

On the second day, further legal developments were discussed. This day was opened with a presentation by Dr. Eduardo Valencia Ospina, the United Nations International Law Commission's (ILC) Special Rapporteur on the 'Protection of Persons Against Disasters'. In this project, currently

fourteen draft articles have been adopted. Dr. Valencia Ospina addressed the ongoing work within the ILC, which was critically assessed by the other panellists; Dug Cubie (University College Cork), Livia Cosenza (University of Palermo) and Angelica Fanaki (Hellenic Red Cross). The fourth and final panel proceeded with a human rights and case-based perspective. Economic, social and cultural rights were covered by Stefanie Jansen-Wilhelm (Tilburg University) and Diana Philip (Strategic Foresight Group, India) who respectively discussed a possible duty to accept aid under the International Covenant on Economic, Social and Cultural Rights and the importance of the right to water in the delivery of humanitarian assistance. Marlies Hesselman (University of Groningen) looked at humanitarian assistance from a broader view by analyzing case law of human rights institutions on this topic and Rotem Giladi (Hebrew University) ended the session with a critical review on the mandate of the International Committee of the Red Cross, bringing the topic back to its earliest foundation.

The conference made it clear that international humanitarian assistance is a topic that relates to many fields of international law and is continuously developing. While these developments have been pointed out throughout the conference, there are also many issues and gaps that are in need of further research. The provision of international humanitarian assistance is highly important to those wishing to receive such assistance, as well as those working in the field, yet many barriers are of a legal nature and must therefore be overcome through legal research.

This perspective is reflected by the contributions prepared for the conference and further academic works inspired by the topic, including the proceeding articles in this issue of the *Tilburg Law Review*. However, despite the work already undertaken by human rights treaty bodies, it has become even more apparent that more research is still needed to clarify in detail the obligations of states with regard to humanitarian assistance.