



**JUSTICE AND RECONCILIATION:
AN INTEGRATED APPROACH**

edited by

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with the collaboration of

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CURRENT PROBLEMS OF INTERNATIONAL HUMANITARIAN LAW

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- PROCEEDINGS -

This year's publication of the proceedings of 2006 Round Table on Current Problems of International Humanitarian Law is an important contribution to "*HUMANMED - International Diploma on International Humanitarian Law*", a training project financed by the EU through a specific programme, INTERREG III A ALCOTRA, which provides financial support for institutions, associations and local authorities, with the aim of encouraging a wide range of initiatives and projects in the cross-border area between Italy and France.

The idea of "*HUMANMED*", is to gather together the experiences of the International Institute of Humanitarian Law (IIHL) and the Institute of Peace and Development of the University of Nice Sophia-Antipolis (*Institut de Droit de la Paix et du Développement - IDPD*) in International Humanitarian Law (IHL) training, teaching, promotion and dissemination. The aim of the programme is to provide a brand new, very specific and relevant post-graduate course on International Humanitarian Law, and other related issues, in a cross-border area where no such teaching programme exists. The Diploma covers the general, specific, theoretical, and practical aspects of International Humanitarian Law (IHL) and is awarded by the University of Nice-Sophia Antipolis.

HUMANMED represents the first project of its kind in which the Institute has been involved opening its activities to a different target of participants such as post-graduate students, and developing a new type of activity in collaboration with new partners such as Universities.

The Diploma is organized in 4 modules and students must follow two modules at each Institute and a course from each module. Every course is held in different periods of the year and students are able to choose when to attend.

A theoretical module on the Law of Armed Conflict (LOAC), where the students are expected to learn basic principles of International Humanitarian Law, is composed of several IIHL's Basic Courses on the Law of Armed Conflict in Sanremo and different classes held at the *Institut de Droit de la Paix et du Développement* of Nice Sophia-Antipolis University.

A practical module is composed of two different seminars: "International Humanitarian Law and Peacekeeping Operations" and "International Humanitarian Law and Civil-Military Action", and a seminar on the "Implementation of IHL" held at the IIHL in Sanremo.

A specific module on "Refugee Law" in Sanremo and a module on "Law of Disarmament" at the University of Nice, have also been included.

The first Academic year of the International Diploma in International Humanitarian Law "HUMANMED" ended in September 2006, culminating in the Round Table. This collection of contributions represents an important part of the training programme in terms of teaching, dissemination and promotion of International Humanitarian Law.

Gian Luca Beruto

Assistant

to the IIHL Secretary-General

The 29th Round Table on Current Problems of International Humanitarian Law discussed the theme of "**JUSTICE AND RECONCILIATION: AN INTEGRATED APPROACH**" with the participation of legal experts and representatives of organizations active in the fields of justice and reconciliation.

The balance between justice and reconciliation must always be looked for in every specific situation by local actors with the international community giving a helping hand, both on the regional and international level.

Once more the Institute provided an important platform for humanitarian dialogue. I would like to express my gratitude to all speakers and participants for their valuable contribution.

This year's meeting was of particular importance as it was part of the Diploma course that has been included in the training programme in International Humanitarian Law, jointly organized and supported by the International Institute of Humanitarian Law and the *Institut de Droit de la Paix et du Développement* of the University of Nice Sophia-Antipolis. The programme is sponsored by the European Union.

Special thanks go to our friends from the ICRC, in particular, to Dr. Anne-Marie La Rosa and to Professor Yoram Dinstein, who, with his usual wit and vigor, summarized the rich discussions at the final session of this Round Table.

May I also express my gratitude to all the Institutions (see the list in the following page) which funded this important event and contributed to its realization.

Moreover, I would like to thank Dr. Gian Luca Beruto, who, with the help of Mrs. Shirley Morren, prepared this publication.

It's sad to think that this collection of contributions is the last one to be compiled during the presidency of Prof. Jovan Patrnogic who regrettably passed away on 6 May 2007 before it was published. We will sorely miss this great man who, as co-founder of the Institute, had a determining role in forging it into the prestigious organization it has become. The Professor dedicated his life to the humanitarian cause and his inspiring legacy will always serve as an example to us all and ensure the continuity of the good work of the Institute.

Sanremo, May 2007

Michel Veuthey
IIHL Acting President

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GIUSTIZIA E RICONCILIAZIONE: CONDIZIONE DI UNA PACE DURATURA

Cornelio SOMMARUGA

Presidente dell'Associazione Internazionale Iniziative e Cambiamento, Caux (Svizzera)

Grüß Gott! Ma com'è possibile - direte - che questo cittadino della Svizzera italiana ci saluti con un'espressione del Nord delle Alpi? Né Austriaco, né Bavarese e nemmeno Svizzero tedesco sono, ma questa espressione di saluto colà usata è la più bella di quelle che conosco, nelle quattro lingue che parlo. *Grüß Gott*, porta a chiamare l'Altissimo a testimoniao e magari anche ad ispiratore del dialogo che si inizia. Ecco perché dico a voi tutti: autorità, insigni amici diplomatici, giudici, cattedratici, giuristi, cari amici di Croce Rossa e di Mezzaluna Rossa, Signore e Signori, un poderoso *Grüß Gott!*

Pur essendo conosciuto come un amico, critico, di questo Istituto, sono lieto di essere di ritorno a San Remo per una Tavola Rotonda dedicata ad un tema di così grande attualità: GIUSTIZIA E RICONCILIAZIONE.

Davanti a tanti grandi rappresentanti della scienza giuridica e distinti membri di istituzioni giudiziarie, non abborderò il tema sotto l'angolo giuridico, ciò che sarà fatto nei tre giorni della Tavola Rotonda, ma piuttosto parlerò come diplomatico umanitario, preoccupato da sempre di difendere la dignità umana, a servire la prevenzione dei conflitti ed a lavorare per la riconciliazione personale quale premessa ad una dinamica di pace.

Osservando la storia del XX Secolo ed i primi anni di questo XXI Secolo, fatta dai disastri delle due Guerre mondiali, delle guerre della decolonizzazione, di numerose guerre regionali, dei conflitti interni in tutti i continenti, dalla guerra fredda ed dai tanti atti di violenza terroristica, malgrado i numerosi Patti, Accordi, Statuti di Organizzazioni internazionali, la storia recente dimostra che la firma di solenni documenti non bastano a garantire la pace. Bisogna che la vera pace entri nei cuori e nello spirito. La regola d'oro, presente in tutte le dottrine religiose, "tutto quanto volete che gli uomini facciano a voi, anche voi fatelo a loro" è generalmente dimenticata o banalizzata.

Al Convegno interreligioso di Assisi, dove ero negli ultimi giorni con la Comunità di Sant'Egidio, abbiamo proclamato nel nostro appello finale di Pace, firmato anche dal Presidente della Repubblica Italiana: "[...] la nostra speranza è quella di un mondo di pace. Niente è perduto con il dialogo, tutto è possibile con la pace. Mai più allora la guerra [...]"

Comme vous le savez, j'ai eu la tâche – délicate, mais combien stimulante – de présider pendant presque 13 ans le CICR, ce qui m'a permis de me rendre dans les situations de guerre. Je m'y suis entretenu avec les délégués, mais j'ai surtout vu les victimes, côtoyé la souffrance humaine due à des conflits en cours ou à la violence du passé, observé les désastres causés par les armes transférées à tort et

à travers, généralement armes légères et mines terrestres, ce qui m'a donné l'occasion de réfléchir aux conséquences graves de toute forme d'épuration ethnique et de constater l'oppression exercée sur des adversaires politiques.

C'est dans ce contexte international, auquel il faut ajouter la misère, la faim, la soif et les pandémies infectieuses, que j'ai eu l'occasion de réfléchir aux conséquences de la vertigineuse mondialisation en cours, avec des aspects positifs, mais sans doute aussi avec les dangers qu'elle implique, notamment si on laisse libre cours au fondamentalisme du marché. C'est pour cela que je n'ai cessé d'appeler à la mondialisation des responsabilités.

La mondialisation des responsabilités comporte – selon moi - la recherche constante des moyens de renforcer la sécurité humaine. Je pense à la sécurité des hommes, femmes et enfants – leur sécurité physique, leur condition économique et sociale, le respect de leur dignité et valeurs comme êtres humains et la protection de leurs droits humains et des libertés fondamentales, en particulier leurs choix religieux et spirituels.

Regardant la scène mondiale d'aujourd'hui avec une recrudescence des actes de terrorisme, laissez-moi vous dire que la réaction doit en premier lieu être axée sur la prévention et la justice et non pas sur la vengeance. C'est la réponse civilisée du droit qui doit s'imposer, avec un raisonnement serein et intelligent sur la manière de mieux combattre le terrorisme. Pourquoi « guerre » contre le terrorisme avec des moyens militaires de grande envergure ? J'ai du reste les plus grands doutes que la « guerre contre le terrorisme » puisse être justifiée d'un point de vue de la légalité internationale. Et nous savons que le droit à la légitime défense de l'art. 51 de la Charte de l'ONU, n'est ni inconditionnel, ni illimité.

Le combat devrait être celui de toute l'humanité, car le terrorisme ne me paraît pas être une idéologie ou une culture, mais plutôt une méthode de combat politique, inhumaine certes, lâche et injuste. C'est pourquoi il faut répondre avec les armes du droit – sans banaliser le droit international humanitaire : primauté du judiciaire pour poursuivre en justice les coupables d'actes de terrorisme et leurs complices directs, en prévenant ainsi de nouveaux actes terroristes. Le pire châtimement pour un vrai terroriste doit être - je pense - de l'asseoir devant le juge. Mais n'oublions pas dans ce contexte l'importance du pardon, ce qui ne signifie pas l'oubli ! Il n'y a pas de paix sans justice, il n'y a pas de paix sans pardon et il ne peut y avoir de pardon avec des réserves mentales ! Je vous dis cela avec conviction, malgré la stupeur, la compassion et la rage initiale que des événements comme ceux du 11 septembre il y a juste 5 ans aux USA et tous ceux très graves qui ont suivi en tant de régions du monde, encore tout récemment, ont suscité en moi. Oui, pardon, ce qui ne signifie pas oublier !

Et puis il faut se demander quelles doivent être les priorités pour la communauté internationale au début de ce XXI siècle, qui – je ne suis certes pas le seul à le prétendre – a fort mal commencé. La réponse je la trouve dans le remarquable discours de Kofi Annan à Oslo en 2001 lors de la remise à lui-même et à l'Organisation des Nations Unies du Prix Nobel pour la Paix du Centenaire. Il y dit

textuellement : « éliminer la pauvreté, prévenir les conflits et promouvoir la démocratie. – et il poursuit – Il faut un monde débarrassé de la pauvreté pour que tous les hommes et toutes les femmes puissent exploiter leur potentiel. Il faut que les droits de l’homme soient respectés pour que les différends puissent être réglés dans l’arène politique, par des moyens pacifiques. Il faut un environnement démocratique, fondé sur le respect de la diversité et la concertation, pour que les individus puissent s’exprimer librement, choisir le gouvernement qui leur convient et jouir de la liberté d’association.» N’est ce pas un appel pour travailler pour la sécurité humaine et la réconciliation, qui est pour moi la *conditio sine qua non* pour une paix durable ?

The 1933 Peace Nobel Prize winner Norman Angell of the United Kingdom did say in Oslo at the award ceremony: "The obstacles to peace are not obstacles in matter, in inanimate nature, in the mountains which we pierce, in the seas across which we fly. The obstacles to peace are in the minds and hearts of men. [...] Only by intellectual rectitude and in that field shall we be saved. There is no refuge but in truth, in human intelligence, in the unconquerable mind of man."

As I had occasion to say, peace has a price. It is not just the absence of violence; it is the active creation of trust. I believe that the many conflicts and horrors that I have witnessed in 13 years with ICRC, and since I left it, and particularly the very recent war in the Middle East in which innocent civilians were once again the first casualties, are not inevitable. As the cause lies with earth’s inhabitants, the remedies must be found among the same people; it will be difficult but not impossible.

Let us recall the concept of security, which I already touched. Security today cannot just involve military containment. It has to concentrate on positive action to win hearts and minds. Its most effective form is a preventive one, that tackles also root causes. This is why I strongly believe that there is an urgent need to globalize responsibilities. It implies mainly the responsibility to protect and the accompanying responsibility to prevent and to rebuild. In its Report (2001) called "The Responsibility to Protect", the International Commission on Intervention and State Sovereignty – of which I was a member - firmly stated that it is more than high time for the international community to be doing more to close the gap between rhetorical support for prevention and tangible commitment for reconstruction. And here reconciliation plays a fundamental role.

The most successful reconciliation process does not necessarily occur at high level political dialogue tables or in judicial-style processes. Let me, however, recognize in this context the largely positive role that truth and reconciliation commissions can play and have played in specific post-conflict environments. True reconciliation is best generated by a sustained dialogue among former enemies and by ground level reconstruction efforts. This is the case when former armed adversaries join hands in rebuilding their community or creating reasonable living and job conditions at new settlements. True and lasting reconciliation occurs with sustained daily efforts in cooperating in productive activities. External support for

reconciliation efforts must be conscious of the need to encourage this cooperation, and dynamically linked to joint development efforts between former adversaries. Of importance is also the education to respecting human rights, fostering political inclusiveness and promoting national unity, ensuring the smooth repatriation of refugees and displaced persons, reintegrating ex-combatants into productive society, and more.

A Tutsi Rwandan lady, who had lost her own father in the genocide, said the other day in Caux "I believe that when the victim is ready to take the first step, reconciliation becomes possible!"

Such a dynamic must be accompanied by an effort of forgiveness and let me at this juncture, interject that spiritual and human values have in this process not always been given even consideration. Human values should be maintained in the centre of preoccupations recalling that politics also implies ethics. Political systems give moral instructions indirectly through legislation and via administrative directives. A nation's law reflects its underlying moral norms; a nation's civics reflects its constitutional mores. It is, therefore, fundamental to recall the essential role of education that should insist on the individual responsibility and on the constant need to scrutinize the credibility of the mass of information.

Expressing my profound respect and admiration for the direct and indirect contribution – also as deterrent – to the prevention of conflicts and to peace by the international criminal justice, I wish particularly to underline the role of the International Criminal Court, this new indispensable instrument of the international community.

Why indispensable? Simply because impunity, for war criminals, can not be tolerated any longer. In my ICRC years, where the work for the faithful application of International Humanitarian Law was one of my priorities, I was never tired to affirm that while implementation of the law requires preventive action, education and training, measures of repression are needed as well. A law that is not backed up by sanctions rapidly loses its credibility. This is why, in many yearly contacts with the International Law Commission and later in the many negotiations in New York and elsewhere up to the conclusion of the Rome Statutes, the ICRC always underlined the shortcomings of the international system. Despite the legal obligation for States parties to the Geneva Conventions, that is all nations of the world, to institute national legal proceedings to bring suspected war criminals in front of their own courts, very little had been done in this respect. It is very regrettable indeed that the fact finding commission created by Additional Protocol I, has not received the due attention by States, parties or not to the Protocol. The setting of the International Criminal Court wanted to make certain that suspected war criminals would be in any case prosecuted; Let me here also insist on the importance that the international community should continue to endow the Court with the full powers it needs, to discharge its heavy responsibilities.

The Court now exists. In order to send a clear message to the perpetrators of war crimes and to honour the expectations of potential war victims, the Court



must, however, have universal jurisdiction, with universality in its membership. This is sadly not the case. Here is the weakness of the ICC that could otherwise have all its efficiency and effectiveness. But let us not be discouraged: the Rome signature on 17th July 1998 was a historic event indeed. This Round Table can contribute to its better knowledge by civil society, and possibly also by government officials. Hopefully, one more step for universality and full effectiveness of the International Criminal Court.

In concluding let me, with anon, appeal that we avoid the six deadly sins of the XXth Century:

- politics without principles,
- wealth without work,
- pleasure without conscience,
- knowledge without character,
- science without humanity ,
- commerce without morality .

And a last word: if we want to work for peace, justice is indispensable. But I believe that forgiveness is the best tool for reconciliation. I should say, it is the most effective form of revenge. There is no contradiction between justice, a public state or interstate responsibility, and forgiveness, a personal and discrete act that has to be given without mental reservations. I, therefore, proclaim: no peace without justice, no peace without forgiveness!