

International Humanitarian Assistance and the Impact of Sanctions on Humanitarian Assistance to Iran in the Recent Flash Flooding



By: Jabbar Aslani
University Lecturer Head of Rules and Principles of the Movement,
International Affairs and IHL Division, Iranian Red Crescent Society

The legal aspect of international humanitarian assistance and its surrounding questions and challenges, is not considered as a very new issue. Based on the United Nations resolution 43/131 (adopted on 1998), delivering and providing the international humanitarian assistance was dealt with three decades ago by now, which is currently taken into account as a controversial and somehow, problematic matter. Thus, in the survey, some different legal dimension of the issue such as: its legal basis and nature, the obligation of the international community and finally the situation of the affected country, namely Iran, which has been blocked due to unilateral or international sanctions, will be explored at both legal and practical level.

Introduction

During last two decades and due to serious climate change and consequently its negative impacts on different parts of the globe, unfortunately, several countries in the world have been confronted with devastating and harmful natural disasters: such as Nepal Earthquake, Pakistan Flood and recently Iran Flash Floods. In this field, the first and the last important point which is immediately raised among public, is to provide humanitarian assistance to affected people as soon as possible. Actually, providing and receiving such kind and in kind assistance to needy population requires a process which its full realization and accomplishment, relies on different and various factors. Despite of its clarity, the legal basis of the international humanitarian assistance is not as much as strong within international law rules and regulations, so that, there are only some limited legal documents which deal with this matter including the UN General Assembly Resolutions and the international Law Commission draft on the Protecting Persons in event of Disasters (2016). In this context, the main question is the obligation of the affected State in time of disaster to receive international humanitarian assistance and also the obligation and of the third States and as a whole, the obligation of the international community towards the affected State in order to facilitate and send humanitarian assistance to victims of natural disasters. Apparently, it

may seem that these are simple questions which have clear answers; but the issue is going to be more complicated when there is no consent (arbitrarily) to receive international assistance on the side of the affected State and also no serious will to send such aids on behalf of the third States or the international community and worse than all, when the affected State is faced with international sanctions which normally, is taken into account as a great obstacle towards receiving humanitarian assistance in a timely manner. Recent floods in Iran and the confrontation of the country with the heaviest sanctions from U.S.A would be a precise instance and case for this survey. Therefore, in

following parts, the survey aims to study and analysis the above mentioned questions and issues in detail.

The Legal Basis of Humanitarian Assistance

Considering the importance of the international humanitarian assistance and its peripheral aspects, the legal nature and the position of this issue among international law is considered as the rudimentary question. According to the legal background of the topic within the literature of the United Nations, it is worth noting that the General Assembly of the United Nations in its 75th plenary meeting on 8 December 1988 adopted resolution 43/131 about “Humanitarian assistance to victims of natural disasters and similar situations” and by adopting this document, it took its first step toward the legalization of this issue. At a glance, the resolution states some significant and considerable issues such as: abandonment of the victims of natural disasters without humanitarian assistance constitutes a threat to human life and an offence to human dignity, concentration and emphasis on the principles of humanity, neutrality and impartiality by all those involved in providing humanitarian assistance, reaffirming the sovereignty of the affected States and their primary role in the initiation, organization, coordination and implementation of humanitarian assistance within their respective territories and appealing to all states to give their support to the organization working to provide humanitarian assistance, where needed, to the victims of natural disasters. Besides above resolution, two years later, the second resolution (45/100) was adopted by General Assembly on 14 December 1990 in this regard. While reaffirming the previous resolution, the general assembly notifies new aspects of the issue and refers to some important technical points towards receiving humanitarian assistance in the event of natural disasters such as: responding speedily and effectively to the needs by the international community, concerning



Considering the importance of the international humanitarian assistance and its peripheral aspects, the legal nature and the position of this issue among international law is considered as the rudimentary question.

about the difficulties and obstacles that victims of natural disasters may encounter in receiving humanitarian assistance and inviting all States whose populations are in need of such assistance to facilitate the work of the humanitarian organizations in implementing humanitarian assistance. Inferring from the aforementioned resolutions, it seems that some legal challenges and gaps exist that must be taken into account at international era. The hard line of States, namely, their sovereignty, national security and their consent to receive international humanitarian assistance are considered as legal and practical obstacles towards this issue which must be discussed internationally; by now, there is no legal (binding) document and due to this, States do not have any legal commitment and obligation in this regard.; therefore, it is true if we claim that a legal lacuna exists in this field. Regardless of the UN outlines on the international humanitarian assistance, the draft articles on the protection of persons in the event of disasters adopted by the International Law Commission (ILC) at its sixty-eighth session in 2016, which submitted to the General Assembly as part of the commission's report covering the work of that session (A/71/10). It must be pointed out this draft articles are not legally binding, so it does not contain any obligation or commitment for States in their legal relations. Apart from its legal nature, the outstanding feature for this draft is its comprehensiveness and also its specialized literature; it is noteworthy that throughout its 18 articles, the draft truly has focused on the precise process which starts from describing the specialized notions of the issue in article 3 and in the following articles, enters into the practical aspects of the issue such as Duty to Cooperate (Art. 7), Forms of Cooperation in the Response to Disasters (Art.8), Role of Affected State (Art.10), Duty of the Affected State to seek External assistance (Art.11), Consent of Affected States to External assistance (Art.13) and Facilitation of External Assistance (Art. 15). Beyond the legal status of this draft, it must be noted that the content of this document is so important and considerable that no one can deny it; in other words, this draft has created a road map and also is considered as a pillar for any codification of the humanitarian assistance in the future.

To some extent, this draft is similar to the ILC's draft articles on responsibility of States for Internationally Wrongful acts, because both of them are not legally binding, but at the same time, their contents have been referred in different ways such as ICJ verdicts. Despite of the above mentioned statements, receiving humanitarian assistance for persons in the event of disasters, may be considered and discussed as a human right for affected persons. If so, the other side of the coin comes to scene: namely, the responsibility and legal commitment of affected State to protect the human rights of their aliens and realization and fulfillment of its obligations under the International Human Rights covenants and other related treaties. In this case, the affected State must take all appropriate and necessary measures to receive humanitarian items (including kind and in-kind). Arbitrary refusal to receive humanitarian assistance by the affected State, would led to its responsibility towards its own citizens and international community as a whole. In sum, it must be reminded that the current legal status of the humanitarian

assistance in international law is an unaccomplished process which has been appeared as soft law and more or less, governed by the practice of States as the main actors of the international community.

The obligation of the International community

Without any prorogation, international community, (by providing humanitarian assistance, based on humanity and philanthropy not on its legal commitment), always play its role and fulfill its ethical commitments during natural disasters throughout the world. According to the preamble the draft articles concerning the fundamental value of solidarity in international relations and the importance of strengthening international cooperation in respect of all phases of a disaster and by considering the article 7 of the mentioned draft regarding the duty of all states to cooperate among themselves and with other international entities and organizations, it would be clear that the legal base of this obligation has been truly predicted, but due to non-binding feature of the draft articles, we have to acknowledge that the international community has not been bound to enter into force of such obligation, therefore, the affected State, legally, would not be entitled to peruse its demands from the legal aspect. Regardless of this legal gaps and shortages, it must be bear in mind that based on the general rules and principles of international law, and particularly, according to the UN General assembly declaration of the 24 October 1970 regarding “Principles of international law concerning friendly relations and



Without any prorogation, international community, (by providing humanitarian assistance, based on humanity and philanthropy not on its legal commitment), always play its role and fulfill its ethical commitments during natural disasters throughout the world

cooperation among States in accordance with the Charter of the United Nations”, the international community, formerly, has committed itself toward its members; therefore, it could be claimed that this obligation, prima facie, has been created and developed amongst States as the main subjects of international law. However, the modality of realization and the practical fulfillment of this obligation in field of international humanitarian assistance to the affected state is the matter, because there is no precise and defined mechanism for the affected state to make its claim in order to interpolate the international community for accomplishing their obligation. In few words, this kind of obligation is considered as a potential not a de facto situation.

Iran flood and U.S imposed sanctions on Iran: A controversial case

During the abrupt rainfall in 23 provinces across Iran, unfortunately 5 provinces

including Golestan, Ilam, Khuzestan, sistan and Baluchestan and Lorestan severely damaged and most of their infrastructures fully destroyed and consequently, more than 12 million people throughout the country affected and in need of immediate assistance. According to the massive damages and destructions in different levels, on 8th April 2019, the Iranian Red Crescent Society (IRCS) with the coordination of the International Federation of Red Cross and Red Crescent Societies (IFRC) requested to launch an emergency appeal for the flood affected population. After launching the appeal by IFRC, the serious barrier of money transferring to IRCS emerged due to unilateral sanctions of the U.S against Iran. Actually, these sanctions directly have targeted the most vulnerable people affected by the current disaster in Iran and normally, make various and lots of impediments toward IRCS



It should be noted that the abundance and complexity of natural disasters is considered as a serious concern to international community, which must be more concentrated and emphasized legally within international law

and other internal humanitarian actors to provide assistance to the affected needy population. It is obvious that under the international law, humanitarian assistance is an exception to any unilateral or multilateral sanctions; therefore, this is an absolute rule in international law which must be protected all times and everywhere without any discrimination. In addition, the current ICJ provisional measures on Iran-U.S case, which has been issued on 3th October 2018, explicitly has excluded the medicine and medical equipment, agricultural commodities and other humanitarian items from the scope of the United States unilateral sanctions imposed to Iran. In this case ICJ precisely states that:

“ The United States of America in accordance with its obligations under the 1955 treaty of amity, Economic Relations and Consular Rights, shall remove, by means of its choosing, any impediment arising from the measures announced on May 2018 to the free exportation to the territory of the Islamic Republic of Iran: (i) Medicine and Medical Devices; (ii) Foodstuffs and agricultural commodities; and (iii) Spare parts, equipment and associated services (including warranty, maintenance, repair services and inspections) necessary for the safety of civil aviation”.

The wording of the provisional measure is so clear that there is no need for any comment or interpretation. Furthermore, ICJ in second paragraph of its provisional measure explicitly stipulates that:

“The United States of America shall ensure licenses and necessary authorizations are granted and that payments and other transfers of funds are not subject to any restriction in so far as they relate to the goods and services referred in point 1”

The above mentioned paragraph exactly refers to and directly relates to facilitating the money transferring to Iran for the purpose of providing humanitarian assistance for the flood affected people, which unfortunately, has not been done and realized yet, because the imposed sanctions of the U.S against Iran, blocked any financial transaction and transferring of funds to all Iranian organs and entities and addition to that, as a secondary impact of its unilateral sanctions, U.S not only does not allow other countries to have or make any financial or banking exchanges with Iran, but threatens them to impose heavy fines and penalties! Undoubtedly, it must be said such behavior within international relations and international law is an obvious, explicit and clear example of violation of rules and principles of international law, which preferably better to name it “the new threat against hope to the Rule of Law” in international law.

Conclusion and Final Analysis

It should be noted that the abundance and complexity of natural disasters is considered as a serious concern to international community, which must be more concentrated and emphasized legally within international law. If it is assumed that the right to receive international humanitarian assistance by individuals is recognized as a right, therefore, the affected State, at the first phase, and the international community, at the second phase, are respectively responsible towards the affected population for provide and ensure to provide humanitarian assistance to them. Regardless of recognizing this right as a human right, it seems that the obligation to provide international humanitarian assistance, ethically and philosophically, comes from the fundamental principle of Humanity as an umbrella to all humanitarian relations, so, putting any restrictions in the name of economic sanctions on States and excluding them from receiving humanitarian assistance through creation financial and banking obstacles, actually could be an obvious cruelty against humanity. It must be underlined that the continuance of such intemperate and illegal practices among States would be a serious warning for the future world order, to the extent that can lead to a great threat against the peace and security of all of us.

Resources:

UN Human Rights Council. Human Rights and unilateral coercive measures, New York: Un General Assembly, 2013.

UN International Law Commission, Draft Articles on the Protection of persons in the event of Disasters, available at: http://legal.un.org/ilc/summaries/6_3.html.201

Official website of the IRCS (Iranian Red Crescent Society), available at: www.rcs.ir

Official Website of the IFRC, www.ifrc.org

- UN General assembly declaration of the 24 October 1970 regarding “Principles of international law concerning friendly relations and cooperation among States, available:

<https://www.un.org/ruleoflaw/files/3dda1f104.pdf>