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REQUEST FOR THE INCLUSION OF AN ADDITIONAL ITEM IN THE AGENDA
OF THE THIRTY-SIXTH SESSION

NEW INTERNATIONAL HUMANITARIAN ORDER

Letter dated 28 October 1981 from the Permanent Representative of
Jordan to the United Nations addressed to the Secretary-General

Upon instructions from my Government, I have the honour to bring to Your Excellency's attention the proposal presented by His Royal Highness Crown Prince Hassan of Jordan in his address before the thirty-sixth session of the General Assembly on 28 September 1981 concerning the promotion of a new international humanitarian order (A/36/PV.15, p. 57).

International humanitarian law and practice suffer from serious gaps, both in terms of content and variegated corresponding institutional arrangements. In recent years the world community has had to face major natural and man-made disasters in virtually all parts of the world. The response to these challenges has been generous but has remained essentially ad hoc and fragmentary in nature. The evolution of responsible international agencies has not kept pace with the evolution of the world situation.

The proposal to promote a new international humanitarian order, though still in its incipient stage, is based on the urgently felt need for an integrated approach, as well as to fill the gaps both in terms of basic principles and mechanisms for remedial action.

I have the honour to enclose herewith an explanatory memorandum containing background notes on the proposed new international humanitarian order which explain the basic essence of this new proposal. It is needless to state that the background notes do not in themselves constitute all the necessary elements of the proposed new international humanitarian order. They only provide general ideas which led to the proposal and which will need to be further elaborated and refined. This could be achieved through ad hoc working groups of leading personalities in the humanitarian field of experts on international humanitarian law.

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Such being the case, and fully recognizing that the formulation of the proposed new international humanitarian order requires arduous and intensive work and preparation by Member States, the Government of Jordan has the honour to request Your Excellency to regard this letter and its enclosure as a request for the inclusion of an additional item entitled "New international humanitarian order" in the agenda of the thirty-sixth session of the General Assembly, in accordance with rule 15 of the rules of procedure of the Assembly.

(Signed) Hazem NUSEIBEH
Ambassador
Permanent Representative

ANNEX

Explanatory memorandum

"Working at the edge of the development of human society is to work at the brink of the unknown. Much of what is done will one day prove to have been of little avail. That is no excuse for the failure to act in accordance with our best understanding, in recognition of its limits but with faith in the ultimate result of the creative evolution in which it is our privilege to co-operate."

Hammarskjöld: "Markings"

1. In contemporary history, the efforts of nations, individually and collectively, have been devoted essentially to technological advancement in the North; problems of economic development in the South; cobwebs of ideological confrontations and realpolitik. Side-effects of this excessive preoccupation with material aspects of human life are now becoming dangerously evident in the humanitarian field which has remained relatively neglected. The "quality of life" has steadily degenerated over the past decades. Human rights have, by and large, remained a peripheral issue. Problems of poverty, hunger, illiteracy, uprootedness have not received as much attention as they deserve. The individual human being, the ultimate recipient of all progress, has seen very little come his way in most parts of the world. Whether one looks at the globe in the East-West context or the North-South context, the over-all picture remains grim: we are not adequately prepared for the next century or even the next decade.

2. In recent years, efforts have been made in the framework of the United Nations system to promote a new international economic order. Similar endeavours have been undertaken in the field of information. Parallel to these efforts, it is proposed, as an essential complementary task, to promote a "new international humanitarian order". The task may begin with increasing international awareness, through initiatives of individuals and Governments, of the urgent need for such an order. It may finally involve legal and institutional remodelling as well as elaboration of conceptual frameworks intended to strengthen international response to man-made and natural disasters, which are becoming a common and familiar feature of our times.

3. Ironically, serious efforts have been made to develop and codify international humanitarian law in the context of armed conflicts a/ but not yet in the context of peace. The former is the result of sustained international endeavour since the battle of Solferino; the latter amounts to fragmentary efforts, mainly after the Second World War, lacking a comprehensive approach. This is symptomatic of the unhealthy attitude of the community of nations which suffers, inter alia, from a deep conflict between the prerogatives of the State and the rights of the individual.

a/ See appendix for background material.

4. There is a common assent that the reduction of human suffering is worthy of support by all, for all can suffer. War is a man-made disaster. Man-made suffering also occurs outside warfare, caused by human cruelty and exploitation at the instance and ordering of States. There is also extensive human suffering caused by neglect on the part of prosperous States of impoverished and under-developed States. Over and above this man-made suffering, there is the loss and suffering occasioned by natural disasters. In the main, the response to the latter is a phenomenon of our age whether carried out by Governments or non-governmental relief organizations. In the case of man-made disasters, the sovereignty of States has tended to inhibit one State interfering in the domestic affairs of another. The international régime of human rights is too fragile to achieve much by way of humanitarian intervention, unless the conduct complained of amounts to a threat to the peace and security of the international community. There are many areas of human and governmental action outside warfare in which the humanitarian ideal is not conspicuous and where compassion demands that it be displayed if civilization is to be worthy of its name.

5. The reality and validity of a new international humanitarian order entail that the humanitarian ideal informs and exercises a certain control over the international and internal conduct of States. This means that such an order must be expressed in a code of conduct and in the practice of international institutions duly mandated to monitor the code. The Charter of the United Nations made certain steps in that direction, for example, in relation to the attempt to curtail resort to war, the establishment of respect for human rights, and in the broad purpose recited in the preamble to the Charter.

6. Law is a social modality, whether it be municipal or international, that is, a means for promoting and establishing the common good of mankind. In that sense the humanitarian purpose is central to the moral and juridical nature of all law. The new order might be launched, in the first place, by the framing of a universal declaration formulating certain fundamental humanitarian principles and inviting the assent of the international community of States to it. As the Universal Declaration of Human Rights of 1948 became the inspirer and matrix of legal régimes of human rights, both international and regional, so might such a universal declaration of humanitarian principles become the foundation of further systems of humanitarian law over and beyond the law of armed conflicts, international and internal, as now found in the Geneva Conventions of 1949, b/ the two additional Protocols of 1977 c/ and the Geneva Convention of 1980 on weapons. d/ Such further régimes might extend to the law governing refugees and displaced persons and relief to victims of natural disasters and of oppression.

b/ United Nations, Treaty Series, vol. 75, Nos. 970-973.

c/ A/32/144, annexes I-II.

d/ Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (see A/CONF.95/15 and Corr.2).

7. Such a declaration might be initiated through and debated in appropriate United Nations organs and committees. It would be designed primarily as a moral standard and guide to compassionate action in the face of human suffering. However, this in itself would not suffice. Elaboration of moral principles must lead to the establishment of a code of conduct which benefits from law and morality but does not make them interdependent. This should be so because, if law is assimilated to morality, then that which is lawful tends to be considered as moral. This works to the detriment of morality. If morality be assimilated with law, then what is immoral is not considered to be law.
8. If nothing else, universally adopted declarations and similar documents contribute significantly towards increasing awareness on the part of Governments and the public in general. This awareness, which helps inhibit action that is internationally considered wrong, is in itself a step forward in the right direction. However, it is hoped that the proposed new international humanitarian order will go beyond this general objective. In addition to appropriate monitoring mechanisms that might be devised, necessary changes and improvements in the existing institutional arrangements would also need to be made. The work on the order, both by Governments and private humanitarian institutions, will hopefully stimulate the process of streamlining, updating and improving or expanding institutional mechanisms.
9. It is clear that in today's interdependent world the move towards a new international humanitarian order can produce a positive chain reaction leading to a healthier social and political environment. Similarly, welfare of human beings as well as social, economic and political actions are interlinked. Today, at national and international levels, economics conditions politics as much as politics conditions economics. Thus the proposed order can have a direct impact on the North-South dialogue as much as it can affect the East-West relations.
10. In terms of the necessary endeavour to translate the concept into reality, it is realistic to think that, once the idea is launched in its raw form at the international level, it will be picked up, in the first place, at the national level, in the private sector. A group of leading personalities in the humanitarian field or having wide experience of government or world affairs, or experts in international humanitarian law, could form an international commission. Eventually, this could lead to work at the regional level in the context of regional organizations. Together these actions may be expected to yield the essential components of the proposed order as well as a viable plan of action at the international level, possibly in the United Nations context or an international conference called for the specific purpose at an appropriate time.

APPENDIX

Humanitarian law: a historical background

1. The words "humanitarianism" and "humanitarian" have now passed into the language of jurists, although not without strong reservations on the part of certain of them. The expression "international humanitarian law" was adopted by the International Committee of the Red Cross in 1965 in resolutions adopted at the XXth International Red Cross Conference held in Vienna, although reference to "humanitarian principles" can already be found in resolutions adopted at the XVIIth Conference held at Stockholm in 1948. These humanitarian principles were embodied mainly in the Geneva Conventions for the protection of the sick and wounded and prisoners of war, 1886 to 1929, and subsequently, in the four Geneva Conventions. a/

2. In 1965, and thereafter at succeeding International Red Cross Conferences, seven fundamental principles on which all Red Cross action is based were solemnly proclaimed. These principles are: (i) Humanity; (ii) Impartiality; (iii) Neutrality; (iv) Independence; (v) Voluntary service; (vi) Unity; and (vii) Universality. It is apparent that the first of these seven principles, "Humanity", is the one which has promoted the concept of international humanitarian law applicable in armed conflicts. The principle of humanity thus defined in the International Red Cross Movement, consisting of the International Committee of the Red Cross (ICRC), the League of National Red Cross Societies and the National Societies, is as follows:

"The Red Cross, born of a desire to bring assistance without discrimination to the wounded on the battlefields, endeavours - in its international and national capacity - to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship and lasting peace among all peoples."

The humanitarian law of armed conflicts is based upon, and developed from, this principle of the Red Cross movement from the time of its birth in 1863. In particular, humanitarian law devolves from the purpose "to ensure respect for the human being". In warfare the human being is under maximum exposure to the risk of life and health, and is likely to lose one or the other. The human personality is also under maximum threat in time of war. This humanitarian law of armed conflicts must be distinguished from the law of human rights, whether international, as in the two United Nations Covenants of Human Rights of 1966, b/ or the regional

a/ United Nations, Treaty Series, vol. 75, Nos. 970-973.

b/ General Assembly resolution 2200 A (XXI).

law of the European Convention of Human Rights of 1950. c/ In the human rights régimes the purpose is to defend the individual human being from loss of life and liberty and from cruel treatment and oppression at the hands of the State to which he is subjected, whether as a citizen or as a "person temporarily subject to its jurisdiction". Human rights are the legal shield against the oppression of the Government of a State directed at the human being and his development. In the humanitarian law of armed conflicts, the purpose is to balance the needs of humanity against the nature of warfare: no easy task.

3. There has been a modern tendency to relate closely human rights with the law of war, as exemplified in the accepted United Nations parlance of "Respect for human rights in armed conflicts". This is, in juridical terms, a fundamental confusion of distinct legal régimes. With the law of war, one is dealing with States and their populations, or other entities which are in the relation of hostility, one to another, to an extent that those States have resorted to armed force against the enemy State. In the realm of human rights, the law is concerned with the relationship between the citizens of a State and the State Government, that is, ensuring a system of protection of the governed against the Government. When the Red Cross movement refers to humanitarian law, it means the law, particularly the conventional law, since 1864, restraining belligerents and designed to secure the reduction in human loss of life and suffering from acts of warfare. The Red Cross started this penetration into the conduct of warfare with the first Geneva Convention of 1864 relative to the sick and wounded, established after, and as the direct result of, the battle of Solferino of 1859. From that régime of restraint, achieved by neutralizing the medical personnel services, installations and transport, and ensuring better treatment for the sick and wounded on the battlefield, there has grown a large body of humanitarian law which now, in 1981, pervades the whole of the law of war on land and much of the law relating to sea and air warfare.

4. The Second World War had exposed beyond all doubt not only the mass and deliberate violations of the existing law of war, whether of the Hague Conventions of 1907 d/ or of the Geneva Convention for the Relief of the Wounded and Sick in Armies in the Field and the Convention relative to the Treatment of Prisoners of War, of 1929, but the gross inadequacies of much of that law, whether in regard to the treatment of war victims, that is, those who are defenceless in the hands of the enemy, or those civilians who suffer death in massive aerial bombardments, still more, those who are the targets of extermination in the areas occupied by a belligerent whose ideology embraces the liquidation of the racially inferior and all who are "useless mouths".

c/ Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, November 1950).

d/ Carnegie Endowment for International Peace, The Hague Conventions and Declarations of 1899 and 1907 (New York, Oxford University Press, 1915).

5. It was in response to these phenomena of belligerent conduct that the International Committee of the Red Cross sought, in the years immediately following the close of the Second World War, a humanitarian initiative which was as necessary as it was inspiring. The outcome was the establishment of the four Geneva Conventions of 1949, consisting, in all, of some 417 detailed articles each one of which was inspired by the fundamental principles of humanitarianism, and of mechanisms for the implementation and enforcement of such rules. Each such provision was the outcome of a harsh experience of the inhumanity of man to man in times of war. These Conventions constitute today the solid core of the international humanitarian law of armed conflicts, and probably over half of the corpus of the law of war.

6. The first Geneva Convention of 1949 extended and improved the respect and protection to be afforded to the sick and wounded in the armed forces in the field, and to the medical personnel and installations and transport requisite for the proper care and medical treatment of the sick and wounded in those armed forces. The second Convention did the like to the Geneva Convention of 1906 on maritime warfare by extending the principles and rules of the earlier Hague Convention No. X of 1907 e/ for the benefit of the shipwrecked, sick and wounded members of armed forces at sea. The third Geneva Convention of 1949 dealt exclusively with the proper treatment of prisoners of war, from the moment of their capture until their final release and repatriation required upon the cessation of hostilities, in every part of their daily life as prisoners of war. Such life is wholly subject to the power of the Detaining Power. Most of the humanitarian rules took the form of detailed prohibitions upon the conduct of the Detaining Power, but a considerable number made humanitarian action mandatory for the Detaining Power in order to secure the proper and humane treatment of prisoners of war.

7. The fourth Geneva Convention of 1949 was the most innovatory, and was of direct humanitarian response to the gross excesses practised by the German occupation authorities throughout the length and breadth of occupied Europe over a period of some six years, and more especially in the concentration camps. No tongue could relate or pen could describe the depths of infamy and brutality to which the Nazis descended in their governmental policies carried out in occupied Europe. Accordingly, a substantial part of the fourth Convention dealt with the proper and humane treatment to be afforded to enemy persons in occupied territory. The Hague Convention No. IV of 1907 e/ had established a delicate and fragile framework of rules governing wartime occupation, but such rules had proved inadequate, both in content, scope and efficiency in the Second World War. Moreover, the fourth Convention imposed humanitarian restrictions upon the treatment of enemy personnel in the territory of the belligerent enemy State, derived from the harsh experience of that war.

e/ Ibid.

8. The weakness of this extensive régime of humanitarian law lay chiefly in the inadequacy of the monitoring system devised for its implementation. There, the doctrine of State sovereignty impeded the functioning of the protecting Power system (the services, political and humanitarian, of a neutral State appointed by one belligerent to safeguard the interests of its nationals, whether military or civilian, in the hands of the adversary). The Geneva Conventions of 1949 could not remove this impediment, but they sought to provide a system of substitute organizations to take over the role of the Protecting Power where none operated, or had ceased to operate, and of impartial humanitarian bodies such as ICRC. These bodies are entrusted with the humanitarian functions of a Protecting Power, as set out in considerable detail in each of the four Geneva Conventions of 1949. What was lacking in the edifice of humanitarian law after 1949 was a set of legal principles and rules, precise, pragmatic and effective, that sought to impose some limits upon the actual conduct of the actual hostilities.

9. After some false starts in 1957, ICRC secured the convening, by Switzerland, of a Diplomatic Conference on the Reaffirmation and Developments of International Humanitarian Law Applicable in Armed Conflicts, at Geneva in the years 1974-77, designed to reaffirm and develop humanitarian law. The eventual outcome was the establishment in 1977 of two Protocols, additional to the four Geneva Conventions of 1949. f/ Protocol I was devoted to the laws governing international armed conflicts, which were framed to include, for the first time, armed struggles conducted by recognized national liberation movements against colonial, racist or occupation régimes. Protocol II was limited to armed conflicts not of an international character, and carried forward, without superseding the limited humanitarian control of such conflicts achieved by article 3 common to the four Geneva Conventions of 1949. Protocol I may have, as an instrument of law, attained a modicum of success. The case was otherwise, unfortunately, with Protocol II, which finally appeared in a severely truncated form having been received with little enthusiasm, if not active hostility, by the third-world States. The main criticism of Protocol I is that it may have admitted an excessive degree of humanitarianism into the content of its rules, to the detriment of the needs of modern warfare and weaponry. Also, it is generally conceded that the Protocol is too complicated. The Protocol rigidly defined military objectives, making all other objects civilian objects, which are to be exempt from military attacks whether from land, sea or air forces.

10. As a sequel to Protocol I, another diplomatic conference was held in Geneva which finished its work in October 1980. Thereat was established a "Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects". To this Convention, not yet in force, were appended three Protocols, dealing with:

f/ A/32/144, annexes I and II.

(a) The prohibition of weapons the primary effect of which is to injure by fragments which in the body escape detection by X-rays;

(b) Prohibitions or restrictions on the use of mines, booby traps and other devices;

(c) Prohibitions or restrictions on the use of incendiary weapons.

11. It will be apparent that Protocol I of 1977 and the three Protocols appended to the Convention of 1980 exploit already existing fundamental principles of law charged with a humanitarian content. They do so by the express application of those principles to the classes of modern weaponry which are inconsistent with those principles, all of them being humanitarian in quality.

12. Thus far is the limit reached to date of the expression of humanitarian principles in the law of armed conflicts. The movement has grown to large proportions since the incipient humanitarian endeavour of the Geneva Convention of 1864 relative to the sick and wounded. Two world wars, the modern organization and weaponry capacities of States belligerents, have led to a substantial augmentation of the volume of humanitarian law seeking to restrain the conduct of belligerents. The attempt to limit contemporary warfare by humanitarian norms of law is probably the most ambitious law-making project undertaken by man. Yet it is difficult to envisage an area of human activities more in need of humanitarian restraint than warfare. For over three centuries there has been an attempt to accommodate warfare with humanitarianism. Over this period, military needs have been gradually eased from the forefront of the law of war to give place to humanitarian prohibitions. It is possible that at the present time the needs of modern war have overtaken the humanitarian demand. This tendency is not propitious for the effective implementation and enforcement of the new law of armed conflicts. The monitoring mechanisms built into that law for its implementation meet the obstacle of sovereignty, still at the juridical centre of international relations, as long as we have a world composed of sovereign territorial States.

13. As compared to the humanitarian law in times of armed conflict, the efforts by the international community to develop parallel law in times of peace, have yielded inadequate results. Starting with the Universal Declaration of Human Rights in 1948, several declarations and covenants have been adopted, mainly within the framework of the United Nations. However, adherence to them and respect for them have remained at a low level. In addition, efforts to promote human welfare have been made in an isolated and fragmentary manner. No comprehensive approach, embracing various aspects has been attempted, particularly because the area to be covered is too vast and principally because of lack of political will at the international level. Consequently, the challenge to promote a new international humanitarian order which is comprehensive is a gigantic one. The ability of the world community to rise to this challenge will prove, in the final analysis, whether or not man, despite his technological advances, is able to take care adequately of his own well-being.